

MICHAEL JONES

Legal geographies of landscape—long-term historical structures and short-term historical events

Two contrasting examples

This chapter examines differing time perspectives in legal geographies of landscape with reference to Fernand Braudel's presentation of long duration history—*longue durée*—as opposed to short-term history of events—*histoire événementielle*. To illustrate these two time perspectives, I recapitulate two contrasting examples from my earlier research. The long-term perspective is exemplified by studies of “udal law” in Orkney and Shetland—the Northern Isles of Scotland—from its origins in medieval Norse law to its present status as vestigial customary rights manifested in the islands' land tenure, landscape and cultural identity. The short-term perspective is exemplified by studies of planning conflicts related to different landscape values in Trondheim, Norway, as well as more generally public participation—promoted by the European Landscape Convention—as a possible means of dealing with such conflicts, leading to the notion of “landscape democracy”. The examples demonstrate a dialectic between continuity and change in the relationship between law and landscape. Attention to the existence of long-lived deep structures of society that influence human actions and mentalities can serve as a complement to analysis of the day-to-day workings of legislative and other institutions of democracy in dealing with landscape issues.

In this chapter, I revisit work I have undertaken during the last 20 years, subsequent to the Landscape, Law and Justice project that I led in Oslo in 2002–2003. The aim of the chapter is to shed new light on the significance of the time perspective in legal geographical studies of landscape. Legal geography is a field of research that focuses on the complex interactions between law, society and geographical environment—in my research, specifically between law and landscape.¹ The broad question I address in the

1 Jones 2005, pp. 95–96; Jones 2012c, pp. 389–390; Jones & Rannila 2022.

present chapter is how differing time perspectives may influence our understanding of landscape change. I provide two contrasting examples of studies that demonstrate differing time perspectives. The first is an example of a long-term perspective that helps to reveal long-lived underlying structures in society. This is illustrated by studies I have undertaken of what is known as “udal law” in Orkney and Shetland, the Northern Isles of Scotland, from its origins in medieval Norse law to its present status as vestigial customary rights within Scots law. “Udal law” continues to be manifested in the land tenure, landscape and cultural identity of the islands. The second perspective is a short-term one that focuses on discrete occurrences and events within a limited time period. This is illustrated by a series of studies of planning conflicts involving different values ascribed to the landscape, the role of public participation in attempting to solve such conflicts, and the idea of “landscape democracy” that has come to the fore with the emphasis on public participation in the European Landscape Convention of 2000.

My theoretical point of departure is the continuity–change paradox, or continuity–change dialectic. This is expressed in two linked questions: What continues unchanged when changes take place? What changes when things continue? These questions arise from the realization that when changes in landscape and law occur, some things remain the same. In contrast, when attempts are made to keep things as they are, for example, through conservation of nature, cultural heritage or landscape, changes nonetheless occur. Several examples can illustrate the continuity–change dialectic in legal geography. The first example is customary law, which is based on custom from “time immemorial” yet adapts to changing circumstances.² A second example is provided by judicial interpretations, which take into account both legal precedents and legislative changes.³ A third example is the frequent coexistence of both old and new legal systems upon a change of sovereignty.

The tension between the existence of long-term historical structures and short-term historical events is captured by a pair of concepts inspired by the French Annales school of history, *histoire de la longue durée* and *histoire événementielle*.⁴ The first of these concepts, in direct translation “long-duration history”, focuses on almost changeless or only slowly altering cultural structures within which long-standing ideas are maintained over extended time periods. Here, attitudes of thought and action appear to extend further back in time than human memory and are independent of and resistant

2 Olwig 2005.

3 Ivamy 1993, p. 205, referring to English law.

4 The French historian Fernand Braudel (1980d, p. 71) contrasts his notion of the *longue durée* with the notion of *histoire événementielle*, coined by the historian Paul Lacombe and followed up by the economic historian and sociologist François Simiand at the turn of the 20th century.

to economic cycles and crises. The second of these concepts is concerned with the history of events and relates to current events or events taking place on a short timescale. These are events that are reported or chronicled as they occur. The events are perceived as they unfold but underlying structures are frequently not apparent or not considered.

In the following, I first discuss the significance of different time spans for interpretations of history, as presented by Fernand Braudel, the French *Annales* historian, before presenting my two contrasting examples.

THE SIGNIFICANCE OF DIFFERENT TIME SPANS IN HISTORICAL ANALYSIS

Braudel presented and juxtaposed the concepts of *longue durée* and *histoire événementielle* as poles within a triple set of time spans for understanding history. Between these two opposites is the intermediate time span of economic and social conjunctures, or cycles and inter-cycles, as focused on in economic and social history. Braudel's description of the characteristics of the three time spans was developed in several writings during the late 1940s and 1950s⁵ and can be summarized as follows:

- 1) *Longue durée* is "a history that is almost changeless"; it is the history of humans in relation to their surroundings, "a history which unfolds slowly, often repeating itself and working itself out in cycles that are endlessly renewed".⁶ It relates to structures describing the relationship between societies and the surrounding realities over long periods of time, sometimes remaining stable over an infinite number of generations. Such structures and groups of structures are persistent and may last over centuries. These deep-seated structures include sets of concepts regulating living, thinking and belonging. Braudel refers to this as "geographical time".⁷ This is the history of humans in "intimate relationship to earth which bears and feeds" them.⁸ It is repetitive, consisting of ever-recurring cycles. Such long-lived structures provide both support and hindrances. They consist of geographical conditions and con-

5 My summary of the three time spans is based on Braudel 1980a, pp. 3–4; 1980c, pp. 27–34; and 1980d, pp. 74–75.

6 Braudel 1980a, p. 3.

7 Braudel 1980a, p. 4.

8 Braudel 1980b, p. 12.

straints, biological realities, limits of productivity, spiritual constraints, and mental frameworks that Braudel terms “the prisons of the *longue durée*”.⁹

- 2) Conjunctural history is a “history of gentle rhythms, of groups and groupings” influencing the history of “economies and states, societies and civilizations” as well as warfare. Braudel refers to this as “social time”.¹⁰ This is economic and social history focusing on cyclical movements and conjunctures over time spans ranging from a decade to half a century. This relates to the expansion and contraction of the material conditions linking economic and social life.¹¹
- 3) *Histoire événementielle* is the history of events on the scale of humans in particular rather than of humans in general. It is the history of surface disturbances, exciting and rich but “perilous”, as it “simmers with the passions of the contemporaries who felt it, described it, lived it, to the rhythm of their brief lives”. It has “dimensions of their anger, their dreams, and their illusions”. Braudel refers to this as “individual time”.¹² By implication it is an emotionally charged history. It relates to daily life and day-to-day events, as recorded by a chronicler or journalist. Braudel refers to this as a type of “microhistory”.¹³

Braudel argues for the distanced approach of the *longue durée*.¹⁴ Nonetheless, he states that it would be an error to choose one of these historical time spans to the exclusion of all others. The task of the historian is “to distinguish between long-lasting movements and short bursts, the latter detected from the moment they originate, the former over the course of distant time”.¹⁵ Economic cycles and structural crises “tend to mask the regularities, the permanence of particular systems [...] the old habits of thinking and acting, the set patterns that do not break down easily and which, however illogical, are a long time dying”.¹⁶ There is an “unconscious history” that belongs in part “to the time of conjunctures and wholly to structural time”, which can become visible.¹⁷ However, “the length of time is fundamental, for even more significant than the deep-rooted structures of life are their points of rupture, their swift or slow deterioration

9 Braudel 1980c, p. 31.

10 Braudel 1980a, pp. 3–4.

11 Braudel 1980d, p. 75.

12 Braudel 1980a, pp. 3–4.

13 Braudel 1980d, p. 74.

14 Braudel 1980c, pp. 35–38.

15 Braudel 1980c, p. 34.

16 Braudel 1980c, p. 32.

17 Braudel 1980c, p. 39.

under the effect of contradictory pressures".¹⁸ He emphasizes that the different time spans are nonetheless interdependent.¹⁹

Further, history should not be explained in terms of a single dominant factor.²⁰ Explanations of one structure may be "sometimes overshadowed, sometimes thrown into relief by the presence of other structures".²¹ History is always dependent on concrete social situations. History is "in the landscape, in the heart of life itself".²² My understanding is that Braudel uses the term "landscape" here as a metaphor for the complexity of the real world that it is the historian's task to explain.

Braudel does not discuss landscape further. However, I would contend that Braudel's different time spans are relevant for landscape history as an approach to understanding landscape change. In the following, I recapitulate and re-examine two contrasting examples of my earlier work in the light of Braudel's two poles, *longue durée* and *histoire événementielle*, and pay less attention to the time span of conjunctural history.

"UDAL LAW" IN ORKNEY AND SHETLAND —AN EXAMPLE OF *LONGUE DURÉE*

I have examined "udal law" from historical-geographical and cultural-historical perspectives since the 1980s. Besides undertaking fieldwork in Orkney and Shetland and conducting qualitative semi-structured interviews with inhabitants of the islands, I have analysed published collections of legal documents going back to 1299, topographical descriptions, geographical and historical accounts, legal interpretations and fiction. This research has addressed the question of how "udal law" has been articulated through time and expressed in interactions between central legislation and legal practice on the one hand and local customs, land tenure and landscape on the other hand.

My research has resulted in a series of publications from 1996 onwards.²³ In the proceedings of the concluding conference of the Landscape, Law and Justice project, held in 2003, my article presents my research on "udal law" as one of several examples of historical-geographical studies of law and landscape.²⁴ In an article published in

18 Braudel 1980c, p. 45.

19 Braudel 1980c, p. 48.

20 Braudel 1980b, p. 10.

21 Braudel 1980c, p. 51.

22 Braudel 1980b, p. 9.

23 Early articles are Jones 1996 and 2001.

24 Jones 2005.

the proceedings of a conference held in 2010, I discuss how interpretations of law and landscape vary and are contested, depending on whether the Norse influence or the Scots influence on the history of Orkney and Shetland is given most weight.²⁵ In an article in *GeoJournal* in 2012, I examine arguments by a group in Shetland and Orkney who claim indigenous rights for Norse descendants. Based on the definitions of indigenous peoples applied by the United Nations, International Labour Organization and the World Bank, I conclude that indigenous status was not applicable.²⁶ In an article published in an anthology on *The Right to Landscape*, I take forward the discussion of contested interpretations of history and claims of indigenous rights. I argue that the right to landscape as a collective asset involves a wider polity than those with property and land rights.²⁷ In two substantial publications, I present and discuss “udal law” in a long-term historical perspective. The first is a chapter in the volume on *The Law* in the 14-volume work *Scottish Life and History: A Compendium of Scottish Ethnology* in 2012.²⁸ The other is a chapter in the volume *Legislation and State Formation: Norway and its Neighbours in the Middle Ages*, based on a presentation in 2012 at a conference held as part of a history project on the medieval Norwegian realm.²⁹ In a recent article, I examine “udal law” as it has appeared in fiction to evoke the island landscapes of Orkney and Shetland.³⁰ In the following I will present this work in summary³¹ and relate it to the idea of *longue durée*.

Udal land is inherited land held by allodial tenure. This is a freehold tenure of Scandinavian origin involving the notion of “absolute” ownership in the sense that landowners were not subject to a feudal superior, as was the case elsewhere in the British Isles and in much of continental Europe. The term “udal” (also spelt “odal”) is derived from Old Norse *óðal*, which refers to the right of kin to a landholding. In Orkney and Shetland, “udal law” has often been used for the whole Norse legal system that existed in the islands at the time of the transfer of Orkney and Shetland to the Scottish Crown in respectively 1468 and 1469 as part of a royal marriage settlement between the rulers of Denmark–Norway and Scotland (initially transferred as a mortgage or impignoration). Principal features of “udal law” as it was practised later include: allodial land

25 Jones 2012a.

26 Jones 2012b.

27 Jones 2011.

28 Jones 2012c.

29 Jones 2013a.

30 Jones 2023.

31 The sources used for my historical account of “udal law”, presented here in summary, can be found in the reference lists of the seven aforementioned articles. Only references to additional information are included here.

titles (compared with Scotland otherwise, where feudal titles were the norm until they were abolished in 2003); ownership of the foreshore by the adjoining landowner (the foreshore is Crown property in the rest of Scotland); rights to salmon fishing by the adjoining landowner (whereas elsewhere in Scotland they belong to the Crown); the obligation of landowners to pay “scat”, a land tax of Norse origin, until this was abolished in 2000; joint ownership of common hill grazings known as “scattalds”; the use of weights and measures of Norse origin as a basis for paying taxes in kind until this was abolished in 1826; and the notion of “udallers”, landowners tracing their ancestral land back to Norse origins. Today, “udal law” survives vestigially despite the general application of Scots law; specifically, foreshore and salmon-fishing rights still legally belong to the adjoining landowner.

Table 1. “Udal law” timeline

- C. 800 AD or earlier: Norse colonization of Orkney and Shetland.
- 1160s: Gulating Law of western Norway thought to have applied in Orkney & Shetland.
- 1195: Shetland placed directly under Norwegian Crown.
- 1274: Magnus Code (Law Code of King Magnus of Norway) valid in Orkney & Shetland.
- 1330: Scottish Earls of Orkney, under Norwegian suzerainty.
- 1468/1469: Pawning of Orkney and Shetland to Scottish Crown.
- 1472: Act of Scottish Parliament formally annexed Orkney and Shetland to Scottish Crown.
- 1567: Scottish Parliament recognized laws of Orkney and Shetland.
- 1581–1610: Stewart Earls exploited confusion between Norse and Scots law. Period of social injustice.
- 1611: Scottish Privy Council proscribed “foreign laws” in Orkney and Shetland, but Country Acts (by-laws) re-enacted local legal customs. Udal lands and feudal lands.
- 1707: Union of Scottish and English Parliaments—legal authority passed to Westminster.
- 1713–1838: Legal disputes over rights to whales driven ashore.
- 1733–1759: Legal disputes over customary Norse weights and measures.
- 1780–1859: Sagas translated to English. Victorian interest in “Vikings”.
- 1826: Use of Norse weights and measures abolished.
- 1860s–1930s: Norse “revival”—scholarly works, document collections. “Udal law” as symbol of Orkney and Shetland identity.
- 1890–2004: Five legal verdicts on “udal law” in Scottish Court of Session. Legal commentaries.
- 1998: Scottish devolution and restoration of Scottish Parliament. Land reform. Vestiges of Norse customary law remain within Scots law.
- 2000: “Scat” abolished.
- 2003: Feudal land titles abolished.

The main phases in the development of “udal law” in Orkney and Shetland can be summarized in a timeline (*Table 1*). Orkney and Shetland were colonized by the Norse *c.* AD 800 or earlier. It is debated whether the existing Pictish population were subject to genocide or total assimilation by the incoming Norse settlers. The Gulathing Law of western Norway is thought to have applied in the islands from the 1160s. This was subsumed in the Law Code of King Magnus Lagabøte of Norway, promulgated in 1274. These law codes stipulated landowners’ rights and duties. Shetland was separated from the Norse Earldom of Orkney in 1195 and became subject directly to the Norwegian Crown.³² From 1330, the Earls of Orkney were Scottish, although under Norwegian suzerainty. In 1468 Orkney and in 1469 Shetland were pawned to the Scottish Crown. An Act of Parliament formally annexed the isles to the Scottish Crown in 1472.³³ Due to uncertainties regarding the status of Norse law after the transfer of sovereignty, the Scottish Parliament specifically recognized in 1567 the validity of the laws of Orkney and Shetland, but at the same time feudal charters were also being granted. Between 1581 and 1610, the islands were enfeoffed first to Earl Robert Stewart and then to his son and successor Patrick Stewart, who became Earls of Orkney and Lords of Shetland. They exploited the confusion between Norse and Scots law for their own ends. This was a period of procedural injustice marked by disregard for correct legal principles. As a consequence, in 1611, an Act of the Scottish Privy Council proscribed what were termed “foreign laws” in Orkney and Shetland. However, in the following years, by-laws, termed Country Acts, re-enacted local legal customs. Udal lands and feudal lands were distinguished from one another in rentals. The Union of the Scottish and English Parliaments in 1707 resulted in legislative authority passing to Westminster. Heavy customs duties imposed by Parliament on salt imported by German traders in return for fish led to the demise of Shetland’s trade with Germany.³⁴ This contributed to a serious economic depression, resulting in the bankruptcy of many estates. A new class of landowners bought up estates and set up as merchants in their own right, resulting in a decline in the number of old udal estates.³⁵

Between 1713 and 1838, a long-lasting series of legal disputes arose over rights to pilot whales driven ashore. The disputes were between the whale hunters and the landowners onto whose foreshores the whales were driven. The landowners claimed a share of the value of the yield, which was contested by the hunters. The courts found in favour of the landowners in accordance with legal interpretations of local customary law.

32 Thomson 2001, pp. 121–122; Ballantyne & Smith 1999, pp. xi, 1.

33 Thomson 2001, p. 220; Ballantyne & Smith 1999, pp. xiv, 19.

34 Shaw 1980, p. 181.

35 Simpson 2019.

Between 1733 and 1759, a legal dispute arose over the use of Norse customary weights and measures for the payment of “scat”, paid in kind by landowners to the Earl. The landowners claimed that the Earl was unjustly manipulating the weights and measures in his own favour. However, the court found in favour of the Earl. Although clearly socially unjust, these legal verdicts reflected the locus of power of the day.

Beginning in 1780 and continuing until 1873, a series of translations of the Norse sagas were made into English. The first full translation of *Heimskringla, or Chronicle of the Kings of Norway*, was by the Orkney estate owner Samuel Laing in 1844, eight years after his return from a two-year sojourn in Norway. In his published travel journal he idealized Norwegian independent proprietors of small farms and their “udal law” of succession.³⁶ The saga translations contributed to a growing Victorian interest in what became termed “the Vikings”. In Orkney and Shetland there took place a Norse “revival” between the 1860s and the 1930s, with the publication of scholarly works and collections of historical documents. This popular and scholarly interest in the Viking and Norse history was largely driven by middle-class intellectuals, with a tendency to romanticize Norse or Viking cultural heritage. “Udal law” became a symbol of Orkney and Shetland identity and became expressed in the landscape. On the old harbour quay in Lerwick, Shetland, is a sign greeting visitors, displaying Shetland’s coat of arms, which depicts a Viking galley with the slogan “Med lögum skal land byggja” (“The land shall be built by law”). Although probably borrowed from Roman law, this slogan is found in several of the medieval regional laws (termed “landscape laws”) of Scandinavia, among them the Gulathing Law, as well as in Njál’s Saga. The Viking ship first appeared on the borough arms of Lerwick in 1882. Together with the slogan, it was included in the Zetland County arms in 1931 and transferred to Shetland Island Council’s arms in 1975.

Between 1890 and 2004, there were five legal verdicts on “udal law” issued in the Court of Session, Scotland’s supreme court. Two of the verdicts upheld claims made under “udal law” while three rejected such claims. In 1890, landowners’ claims to a share in whales driven onto their shores were now considered unjust and rejected by the court. A verdict in 1903 accepted that the adjoining owner of udal land had the right of ownership of the foreshore, while a verdict in 1907 upheld the adjoining landowner’s right to salmon fishing. In 1963, a landowner’s claim under “udal law” to a share in treasure trove found on his land was rejected by the court. Finally, in 1990, claims of udal rights to the seabed were rejected. As a result of these verdicts, “udal law” became a recurring topic in legal commentaries.

36 Laing 1837; 1844; Jones 2013b; 2023.

Scottish devolution and the restoration of the Scottish Parliament in 1998 was followed by land reform whereby feudal land ownership as well as “scat” were abolished. The last vestiges of “udal law” regarding foreshore ownership and salmon-fishing rights remain as customary law within the corpus of Scots law.

Through these many dramatic historical events, including a change of sovereignty, the Stewart Earls’ oppressions, the introduction of a new legal system, and some of the longest-running legal court cases in Scottish history, the history of “udal law” provides an example of *longue durée*. Underlying legal structures going back to Old Norse times have persisted up to the present and continue to be manifested in land tenure and landscape as well as being reflected as an element in regional culture and identity.

Historical accounts are always partial, depending on the perspective or focus, and what is extant of documentary or other evidence. “Udal law” is one of many strands of Orkney and Shetland history, one of an interlocking set of structures. Other strands include the pivotal role of the sea in the islands’ history through fishing, maritime trade, kelp production and, more recently, oil exploration and exploitation on the continental shelf. Another strand is control of the surplus from agricultural production by landed estates through rents from their tenants, not alleviated until the Crofting Acts at the end of the 19th century. The *longue durée* dimension of “udal law” is dependent on the availability, selection and interpretation of documentary evidence from the 12th century until the present. However, a significant factor is which groups in society had an interest in producing and interpreting the documentary evidence at different times.

“Udal law” relates to a form of land tenure that initially concerned kinship rights to land among those who traced their ancestry to the Norse settlers of the islands. The origins of udal tenure lie further back than human memory. As a mental structure, the notion was promoted and kept alive by different social groups who at different times had specific interests in particular aspects of udal tenure. Law texts and records of court cases show that it was the landowning class among the Norse settlers that was concerned with udal tenure, and this continued after the transfer of the islands to the Scottish Crown in the 15th century. However, incoming Scots landowners partly acquired udal titles or replaced them with feudal titles. During the 16th century, Scottish legal practices and feudal terminology became increasingly common. During the 17th and 18th centuries, udal kinship practices became associated with a dwindling group of small landowners, who had retained remnants of the subdivided estates of the earlier Norse landowners. On the other hand, the long-lasting legal dispute in the 18th century over the use of Old Norse weights and measures for the payment of “scat” to the Earl concerned the maintenance of the Earl’s privileges against landowners. However, the even longer-lasting series of court cases in the 18th and 19th centuries con-

cerning rights to whales driven ashore was an assertion of landowners' claims against the whale hunters.

The Scottish Enlightenment of the 18th century and early 19th centuries led to topographical descriptions of Orkney and Shetland by local persons of authority as well as visitors, some of whom but not all mentioned udal practices. The Enlightenment literature gave way during the 19th century to a romantic conception of the Norse cultural legacy, including udal tenure, promoted in part by intellectuals and a growing reading public although also by landowners continuing to argue that the payment of scat was unfair. The 20th-century court cases and the associated media interest cemented the concept of "udal law". It became increasingly associated with regionalism and regional autonomy movements. However, by the beginning of the 21st century, the idea of "udal law" has become attenuated and is now mainly associated with political fringe groups.

The deep-rooted structure or *longue durée* of "udal law" is dwindling, or—in Braudel's terms—has become subject to "slow deterioration under the effect of contradictory processes".³⁷

PLANNING CONFLICTS, LANDSCAPE VALUES, PUBLIC PARTICIPATION, AND LANDSCAPE DEMOCRACY—AN EXAMPLE OF *HISTOIRE ÉVÉNEMENTIELLE*

My second example is my research on landscape values and local planning conflicts, conducted in Trondheim, Norway, over a 45-year period, and leading on to wider studies of public participation, as it is provided for in the Council of Europe's European Landscape Convention (ELC) of 2000.³⁸ My research in Trondheim was concerned with how the implementation of planning law through day-to-day decisions is reflected in the physical landscape, showing which forces in society can help explain how the landscape is formed in practice. The ELC requires that landscapes be recognized in law as an essential component of people's surroundings, their shared cultural and natural heritage, and their identity; that procedures for public participation relating to landscape matters be established; and that landscape be integrated into regional and town planning policies as well as other policies. The ELC was ratified by Norway in 2001 and came into force in 2004, leading to changes in Norwegian planning legislation in 2008.

37 Braudel 1980c, p. 45.

38 Council of Europe 2000a.

The research in Trondheim began in 1977 with an action group supporting a local urban community that was threatened by redevelopment.³⁹ This and other cases indicated that many local planning conflicts arise due to incompatibility between different values attached to the landscape among different interest groups. On the basis of existing literature, I developed a classification of landscape values presenting different types of economic value and non-economic amenity value (*Table 2*).⁴⁰ Using a pair of concepts from social anthropology, I suggested that the outcome of planning disputes could be understood as adhering either to a harmony model or to a conflict model. According to the harmony model, disputes were resolved by institutional means, involving negotiation among established interest groups. Under the conflict model, disputes involved active contestation by non-established interests, represented by action groups, and the outcome would be less predictable. These concepts became theoretically nuanced through reference to Habermas' theory of communicative rationality and the ideal conditions of communication as opposed to Foucault's emphasis on the role of power relations and contestation in communicative action.⁴¹

Table 2. Landscape values

Economic values

- Subsistence value
- Market value
- Long-term economic value (utilitarian ecological value)

Non-economic amenity values

- Ecological value (“intrinsic” ecological value)
- Scientific and educational values
- Aesthetic and recreational values
- Orientational and identity values

Security values

- Defence value
- Demarcation value (boundaries)

“Negative” values

- Derelict land
- Slums

Source: Jones 2009.

³⁹ Jones & Olsen 1977; Jones 2018.

⁴⁰ Developed over time between 1977 and 2008 (Jones 1979; 2009).

⁴¹ Summarized in Jones 2018 with full references.

Between 1983 and 2007, I led 25 case studies in Trondheim in which Master's students undertook studies of planning situations involving landscape values. These were studies of individual events on a short-term timescale. The studies involved analysis of planning documents and qualitative interviews with representatives of different interest groups such as residents, landowners, developers, businesses, planners and conservation authorities. The principal questions addressed were: Whose values shape the landscape? What weight is given to the existing landscape in planning? Who delivers the premises for planning? At issue were the application and interpretation of the Planning and Building Act and which interests in society were favoured through the legal procedures of planning approval. In summary, the studies indicated that residents have in general little real influence over planning; economic values tend to be weighted highest; and, where protests occur, they are strongest against powerful business interests and developers, especially when these are allied with public agencies. Where the outcome could be said to accord with the harmony model, minor adjustments could occur in the plan before adoption. Where the outcome could be said to accord with the conflict model, the planning process could be delayed, yet major changes occurred in only a few cases.⁴²

With the advent of the ELC in 2000, I turned in my work to the potential of public participation, as provided for by the ELC, for solving planning conflicts related to landscape. The result was an anthology examining participation theory as well as lessons from eleven European examples.⁴³ The case studies included positive examples of good practice whereby participation gave increased legitimacy for landscape planning, contributed to awareness-raising, helped solve conflicts through mutual understanding and promoted improved dialogue through new methods of communication. The studies also identified problems of participation. It can be time-consuming and costly. Apathy or social barriers may hinder involvement. Aims of different stakeholders may be incompatible. There is a danger of manipulation by powerful interests (the "tyranny of participation").⁴⁴ It was found that participation is often steered top-down. The power relations between experts, stakeholders and citizens are under-communicated. Further, the practice of public participation has an unclear relationship to the institutions of representative democracy. Moreover, minority interests in multicultural societies are not always recognized. Migrant groups such as asylum seekers and "illegal" migrants as well as other deprived groups are in general excluded from participatory processes.

42 The case studies from Trondheim and their theoretical underpinnings are summarized in Jones 2018, where references to my earlier publications are listed.

43 Jones & Stenseke 2011.

44 Cooke & Kathari 2001.

Studies of public participation led to the notion of “landscape democracy”, inspired by the work of the Danish environmental and planning philosopher, Finn Arler.⁴⁵ In the ELC’s *Explanatory Report* of 2000, participation by “local actors” is presented as “creating a true ‘landscape democracy’”.⁴⁶ However, this is a narrow conceptualization of the relationship between democracy and landscape. The difference between bottom-up initiatives by civil society and top-down consultation involving defined stakeholders is not problematized. Furthermore, this formulation of “landscape democracy” does not specifically refer to elections or referendums. It neglects the role of elected bodies and electorally responsible administrations, intended to represent the will of the majority, and the role of the judiciary in upholding the rule of law and safeguarding minority interests. Other dimensions of democratic society not referred to include market forces, reflecting willingness to pay, and recognition of the right to public protest. I argue that each of these different institutions of democracy have both advantages and disadvantages. The complexity of the interplay between these different institutions of democracy, combined with many different types of democracy, can help explain the limitations of public participation. This complexity helps explain the great variety of ways in which democratic processes affect and interact with landscape.⁴⁷

A focus by researchers, reporters and chroniclers on the short-term events that characterize day-to-day democratic processes, such as those presented here, can be characterized as *histoire événementielle*. Explanations of the specific events are valid only for limited time spans and local geographical contexts. How these events play out in relation to long-term underlying structures of society, such as class relations, property ownership and wealth accumulation, requires a certain distancing in time and space to become fully visible.

DISCUSSION

With regard to “udal law”, I have argued that, although property ownership and land rights shape landscape to a significant degree, the right to landscape involves a wider public as specified by the obligation under the ELC to establish procedures for public participation by all parties with an interest in the landscape.⁴⁸ My example of studies of planning conflicts, public participation and “landscape democracy” illustrates the complexity of democratic planning of landscape issues. These studies relate to law and

45 Arler 2008; 2011.

46 Council of Europe 2000b.

47 Jones 2016; 2018.

48 Jones 2011, p. 82.

legal interpretations at different geographical levels—international conventions such as the ELC, national planning and conservation laws, the administrative apparatus of national and local governments charged with implanting the laws, and community institutions regulating use of landscape at the local level. The vast quantity of planning documents, information websites, minutes of meetings, media reports, and both academic and non-academic articles and chronicles in present-day society pushes analysis in the direction of *histoire événementielle*.

The deep structure associated with landscape is often not immediately visible. Values attributed to landscape relate to its multiple uses and significance for livelihoods, dwelling, ecology, orientation, defence, demarcation, scientific endeavour, education, aesthetic pleasure, identity affirmation, recreation and diverse other amenities. These values can often come in conflict with one another and may result in contestation and conflicts of varying intensity. I suggest that human attachments to particular landscapes and the desire of groups of people to decide on and shape their immediate physical surroundings can be considered to constitute a deep structure of *longue durée*.

This human attachment to landscape is akin to Yi-Fu Tuan's notion of "topophilia", defined as including "all of the human being's affective ties with the material environment".⁴⁹ He states that human responses to their environment may be aesthetic, tactile, or express feelings towards a place as home, as a locus of memories, or as a means of gaining a livelihood. Familiarity and attachment, and awareness of the past, are important elements in the "love of place".⁵⁰ Topophilia "is not the strongest of human emotions", says Tuan, but may become compelling when "the place or environment has become a carrier of emotionally charged events or perceived as a symbol".⁵¹

What might appear as micro-histories of attachment and resistance to outside forces in single locations also mirror what is happening in many different locations, with increasing co-ordination through transnational networks. Many contemporary planning conflicts are a reaction to societal problems that have manifested themselves for decades, resulting from the power of market capitalism, transnational corporations and international trade agreements lying beyond democratic control, and leading to destruction of cherished local landscapes. These forces can thus be considered to reflect recent conjunctural history. Opposition to redevelopment and the wish to retain landscape values are symptomatic of a desire to maintain continuity.⁵² Landscape is thus a dimension of living and belonging, a relationship to one's environment and the

49 Tuan 1974, p. 93.

50 Tuan 1974, p. 99.

51 Tuan 1974, p. 93.

52 I am indebted to Amy Strecker for helping me express the insights of this paragraph.

people in one's immediate surroundings, which although not conflict-free manifests a *longue durée* structure.

CONCLUSION

“Udal law” as an example of *longue durée* shows how a deep, long-lived structure of ideas and actions related to land tenure manifests itself over time through specific events—and emotions—in interaction with economic and social cycles. While not always socially just, it has maintained a degree of permanence over a long period of time, although it has gradually dwindled in significance in the face of other and newer realities. This illustrates what remains unchanged when changes occur.

Planning conflicts concerning landscape often arise when redevelopment faces those interested in maintaining non-economic amenity values associated with their surroundings. Amenity values are often best conserved where the landscape is subject to little or slow change. Such values frequently come into conflict with market-economic values, which tend to be realized through rapid landscape change in the form of redevelopment. Despite measures to protect natural and cultural heritage from change by means of conservation areas, such areas continue nonetheless to change under the influence of economic and social pressures arising in the surrounding areas. This illustrates that changes occur despite attempts to keep things unchanged.

The “udal law” case indicates how studying landscape in the long term can help identify deep-seated social and mental structures within legal geography. This perspective problematizes sources of law (including customary law) in terms of cultural identity and social justice. Both this and the example of planning conflicts problematize landscape in terms of political power, legal (procedural) justice and broader social justice.

“Landscape democracy” concerns how varying forms of democracy and their legal underpinnings affect our surroundings. Complementary to analysis of the day-to-day workings of legislative and other institutions of democracy in dealing with landscape issues is attentiveness to the existence of long-lived deep structures of society that influence, for good or ill, human actions and mentalities. A broad analysis of the workings and complexity of “landscape democracy” can thus be a step towards understanding how it might be possible to meet in a just and socially acceptable manner the multiple challenges of the 21st century: pandemics, global economic recession, loss of biodiversity, and sustained attacks on democracy by authoritarian regimes and extremist movements.

REFERENCES

- Arler, Finn 2008. 'A true landscape democracy', in Sven Arntzen & Emily Brady eds, *Humans in the Land: The Ethics and Aesthetics of the Cultural Landscape*, Oslo: Unipub, pp. 77–101.
- Arler, Finn 2011. 'Landscape democracy in a globalizing world: The case of Tange lake', *Landscape Research* 36, pp. 487–507.
- Ballantyne, John H. & Brian Smith eds 1999. *Shetland Documents 1195–1597*, Lerwick: Shetland Islands Council & The Shetland Times.
- Braudel, Fernand 1980a [1949]. 'The Mediterranean and the Mediterranean world in the age of Philip II: Extract from the Preface', in Fernand Braudel, *On History*, transl. Sarah Matthews, Chicago: The University of Chicago Press, pp. 3–5.
- Braudel, Fernand 1980b [1950]. 'The situation of history in 1950', in Fernand Braudel, *On History*, transl. Sarah Matthews, Chicago: The University of Chicago Press, pp. 6–22.
- Braudel, Fernand 1980c [1958]. 'History and the social sciences: The *longue durée*', in Fernand Braudel, *On History*, transl. Sarah Matthews, Chicago: The University of Chicago Press, pp. 25–54.
- Braudel, Fernand 1980d [1958–1960]. 'History and sociology', in Fernand Braudel, *On History*, transl. Sarah Matthews, Chicago: The University of Chicago Press, pp. 64–82.
- Cooke, Bill & Uma Kathari eds 2001. *Participation: The New Tyranny?* London: Zed.
- Council of Europe 2000a. *European Landscape Convention, Florence, 20.X.2000, ETS No. 176*, <http://conventions.coe.int/Treaty/EN/Reports/Html/176.htm>, accessed 6 March 2007.
- Council of Europe 2000b. *European Landscape Convention, ETS No. 176, Explanatory Report*, <http://conventions.coe.int/Treaty/EN/Reports/Html/176.htm>, accessed 6 March 2007.
- Ivamy, E.R. Hardy ed. 1993. 'Precedents', *Mozley & Whiteley's Law Dictionary*, 11th edn, London: Butterworths.
- Jones, Michael 1979. 'Change in a Norwegian rural landscape: Concepts and case study', in P. Flatres ed., *Paysages ruraux européens: Travaux de la Conférence européenne permanente pour l'étude du paysage rural, Rennes–Quimper 26–30 septembre 1977*, Rennes: Université de Haut Bretagne, pp. 469–491.
- Jones, Michael R.H. 1996. 'Perceptions of udal law in Orkney and Shetland', in Doreen J. Waugh ed., *Shetland's Northern Links: Language and History*, Edinburgh: Scottish Society for Northern Studies, pp. 186–204.

- Jones, Michael 2001. 'Scots and Norse in the landscape of Orkney and Shetland: Visible landscape and mental landscape', in Frederick H.A. Aalen & Mark Hennessy eds, *Proceedings of the Permanent European Conference for the Study of the Rural Landscape: Papers from the 17th Session, Trinity College Dublin, Ireland, 1996*, Dublin: Department of Geography, Trinity College, University of Dublin, pp. 4–10.
- Jones, Michael 2005. 'Law and landscape—some historical–geographical studies from Northern Europe', in Tiina Peil & Michael Jones eds, *Landscape, Law and Justice: Proceedings of a Conference Organised by the Centre for Advanced Study at the Norwegian Academy of Science and Letters, Oslo 15–19 June 2003*, Instituttet for sammenlignende kulturforskning, Serie B: Skrifter 118, Oslo: Novus forlag, pp. 95–109.
- Jones, Michael 2009. 'Analysing landscape values expressed in planning conflicts over change in the landscape', in Veerle Van Eetvelde, Marjanne Sevenant & Lisa Van De Velte eds, *Re-Marc-able Landscapes: Marc-ante Landschappen: Liber Amicorum Marc Antrop*, Ghent: Academia, pp. 193–205.
- Jones, Michael 2011. 'Contested rights, contested histories: Landscape and legal rights in Orkney and Shetland', in Shelley Egoz, Jala Makhzoumi & Gloria Pungetti eds, *The Right to Landscape: Contesting Landscape and Human Rights*, Farnham & Burlington, Vermont: Ashgate, pp. 71–83.
- Jones, Michael 2012a. 'Udal law and contested histories of land tenure and landscape in Orkney and Shetland', in Inese Stūre & Olģerts Nikodemus eds, *Proceedings of the 24th Session of PECSRL—Permanent European Conference for the Study of Rural Landscape: Living in Landscapes: Knowledge, Practice, Imagination*, Riga: Žurnāls "Latvijas Zinātņu Akadēmijas Vēstis", pp. 105–118.
- Jones, Michael 2012b. 'Playing the indigenous card? The Shetland and Orkney Udal law group and indigenous rights', *GeoJournal* 77:6, pp. 765–775.
- Jones, Michael 2012c. 'Udal law', in Mark A. Mulhern ed., *Scottish Life and Society: A Compendium of Scottish Ethnology*, vol. 13: *The Law*, Edinburgh: John Donald & European Ethnological Research Centre, pp. 389–417.
- Jones, Michael 2013a. 'Notions of "udal law" in Orkney and Shetland: From medieval Norse law to contested vestiges of customary rights within Scots law', in Steinar Imsen ed., *Legislation and State Formation: Norway and its Neighbours in the Middle Ages*, Oslo & Trondheim: Akademika, pp. 133–166.
- Jones, Michael 2013b. '"I do not know in Scotland a valley so beautiful...": Samuel Laing's topographical–geographical observations in central Norway, 1834–1836', *Journal of the North Atlantic*, Special Volume 4, pp. 207–218.

- Jones, Michael 2016. 'Landscape democracy and participation in a European perspective', in Karsten Jørgensen, Morten Clemetsen, Kine Halvorsen Thorén & Tim Richardson eds, *Mainstreaming Landscape through the European Landscape Convention*, Abingdon: Routledge, pp. 119–128.
- Jones, Michael 2018. 'Landscape democracy: More than public participation?', in Shelley Egoz, Karsten Jørgensen & Deni Ruggeri eds, *Defining Landscape Democracy: A Path to Spatial Justice*, Cheltenham: Edward Edgar, pp. 16–18.
- Jones, Michael 2023. 'Literature, law, and landscape: "Udal law" in the fictional island landscapes of Orkney and Shetland', in Ryan Foster & Chris Coojimans eds, *History, Landscape, and Language in the Northern Isles and Caithness: 'A'm Grippit Dis Laand': A Gedenkschrift for Doreen Waugh*, Turnhout: Brepols, pp. 103–123.
- Jones, Michael & Venke Olsen eds 1977. *Ilsvikøra – Footdee: To samfunn—Samme debatt*, Trondheim.
- Jones, Michael & Päivi Rannila 2022. 'Nordic legal geographies—past and present', presentation at the Nordic Geographers' Meeting, Joensuu, Finland, 21 June 2022.
- Jones, Michael & Marie Stenseke eds 2011. *The European Landscape Convention: Challenges of Participation*, Dordrecht: Springer.
- Laing, Samuel 1837 [1836]. *A Journal of a Residence in Norway During the Years 1834, 1835, and 1836: Made with a View to Enquire into the Moral and Political Economy of that Country, and the Condition of its Inhabitants*, 2nd edn, London: Longman, Orme, Brown, Green, and Longmans.
- Laing, Samuel 1844. *Heimskringla; Or Chronicles of the Kings of Norway, Translated from the Icelandic of Snorro Stureson, with a Preliminary Dissertation*, London: Longman, Brown, Green, and Longmans.
- Olwig, Kenneth R. 2005 'The landscape of "customary law" versus that of "natural law"', *Landscape Research* 30:2, pp. 299–320.
- Shaw, Frances J. 1980. *The Northern and Western Islands of Scotland: Their Economy and Society in the Seventeenth Century*, Edinburgh: John Donald.
- Simpson, Charlie 2019. 'History of fish processing: From air drying to herring curing, trade ebbs and flows across many centuries', *The Shetland Times* 27 December, pp. 22–23.
- Thomson, William P.L. 2001. *The New History of Orkney*, Edinburgh: Mercat Press.
- Tuan, Yi-Fu 1974. *Topophilia: A Study of Environmental Perception, Attitudes, and Values*, Englewood Cliffs, New Jersey: Prentice-Hall.