

En institusjonell tilnærming til dispensasjonspraksis i Norge

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Leikny Gammelmo: An Institutional Approach to Dispensation Practice in Norway

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The Norwegian Planning and Building Act seems to provide several opportunities to exercise discretion and give dispensations from the rules. In areas where the Planning and Building Act and land use plan prohibit the subdivision of real property, dispensation seems to be given more frequently than the intentions of the government would imply. Why is this so? Are the rules unclear or do the public administration and politicians in the municipality develop their own norms and procedures? By using dispensation within the legal system, the municipality is allowed to set aside the fundamental idea of planning. This paper uses institutional theory to look into the phenomenon of dispensation. Using Ostrom's Institutional Analysis and Development (IAD) Framework it is possible to see what factors have an impact on the result of an application.

Key words: real property, public administration, discretion, dispensation, institutional theory, trust.

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Introduction

Without rules, there would be chaos. If we lived our lives and determined our actions without rules we would be, according to Hobbes, in a state of war, with everyone against everyone. This was his model of the state of nature, an untidy condition requiring rules. People first constructed informal rules and devised sanctions for not following them. Today we can use the formal and informal rules – our institutional framework – to seek knowledge about how our actions should be performed.

The process of forming real property is affected by numerous different interests. The rules of the Planning and Building Act² and the land use plans do not always successfully match the wishes of the landowners or developers, nor the public interest. In Norway, a way of balancing the various interests in a

reasonable decision is to grant dispensation from the general rules. Institutional theory will be used to explore the process of granting dispensation and the way in which various forces affect this process. In the discussion below the term dispensation is defined as the process of granting dispensation from the general rules on forming real property.

The theory of institutions is primarily based on the work of Ostrom (1933–2012). In 2009 Ostrom received «The Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel» for «her analysis of economic governance, especially the commons»³. It is also based on North (1920–2015⁴), who received the Nobel Prize back in 1993 «for having renewed research in economic history by applying economic theory and quantitative methods in order to explain economic and institutional change»⁵.

1. Project web page: <https://www.nmbu.no/prosjekter/node/25207>

2. LOV-2008-06-27-71: Lov om planlegging og byggesaksbehandling (plan- og bygningsloven)

3. http://www.nobelprize.org/nobel_prizes/economic-sciences/laureates/2009/press.html [15 Nov. 2015]

4. <https://news.wustl.edu/news/Pages/douglass-north-obituary-11.24.15.aspx> [1 Des. 2015]

5. http://www.nobelprize.org/nobel_prizes/economic-sciences/laureates/1993/north-facts.html [15 Nov. 2015]

Institutional theory can be one way to understand social science. In the field of property formation Ramsjord (2014) has used it in his research about property formation, while Ridderstrøm (2015) has done so to study planning and health. This can provide a useful perspective for my project about municipalities and the property formation process. This paper will introduce the idea of using Ostrom's Institutional Analysis and Development (IAD) Framework in this context. The research project «Changing real property» will focus on the public administration⁶ in the municipality and its role according to the Planning and Building Act and practice in property formation processes. This project will look at the process for cases of the kind described in the Planning and Building Act, section 20-1 letter m.

Land use plans are legally binding in Norwegian law. Nevertheless, the Norwegian Planning and Building Act, chapter 19, gives municipalities the opportunity to approve an application that does not comply with the rule of law or land use plan, provided that certain conditions are met. The dispensation can be subject to certain conditions, for a specific period, or «forever». Dispensation may be given in conjunction with a building application or in the property formation process. The example in this paper will be the case of property formation as subdivision of real property. The main focus of this paper is on dispensation according the Norwegian Planning and Building Act chapter 19 seen from an institutional viewpoint, and the evolution of these rules, which seem to largely develop as local practice.

According to national statistics from 2014, the number of dispensations in Norway in areas zoned for agriculture, nature and recreation have not been higher since 2003. The number of dispensations in the 100-meter buffer zone along watercourses and the sea shore also appears to be on the increase, see figure 3. There are no good statistics showing dispensations from the prohibition against

subdivision of real property. Still, in many cases an application for subdivision of real property will be what provides land to build on⁷.

The intention of the Norwegian Planning and Building Act of 2008 was to restrict the ability to grant dispensation. The rules can be said to be unclear, leaving a high degree of discretionary power in the hands of the public administration. Actions, norms, and individual adaptations in municipalities seems to evolve, if not in different directions, then at different speeds. Why is this so? Are the rules unclear or do the public administration and politicians in the municipality develop their own norms and procedures?

The aim of this paper is to use institutional theory as a perspective for looking at the public administration's way of handling dispensations relating to the subdivision of real property; can this theory explain how institutions involved in dispensation practice have evolved in the public administration in Norway?

Method and data

This paper, and hence the method used, is a literature study. The aim is to gain a better understanding of institutional theory and of how to use this perspective to look at questions related to property formation. The literature is «a body of information existing in a wide variety of stored formats that has conceptual relevance for a particular topic of inquiry» (Groat and Wang 2002). The challenge is to use this body of information to get an overview of the topic of inquiry according to key sources, key theories, and the major issues and debates about the topic. And then to report the research, as Oliver (2010:168) puts it, accurately and in a way that is accessible to the reader. The paper aims to give an insight into how institutional theory can be used in research on property formation. The literature reviewed is divided into two groups: (1) literature on institutional theory;

6. Public administration in this context, is the part of government dealing with real property like the planning authority, the examiner of the application for subdivision of real property, the land surveyor, or the registrar of the land register and cadastral map.

7. In Norway, the system requires that you first apply for dispensation for the subdivision of real property and then a further dispensation for the building project. See statements from the Ministry of Local Government and Modernisation 2007a and 2007b.

and (2) literature about dispensations pursuant to the Norwegian Planning and Building Act chapter 19.

Data about current practice comes from the questionnaire in the research project «Changing real property». This data was collected over the period from 1 December 2015 to 5 February 2016. The questionnaire was sent to people in the public administration who handle applications for property formation. Out of 428 municipalities, 408 handle these applications themselves, and 237 answered the questionnaire. This gives a response rate of 58%. The answers come from municipalities in all regions of Norway and represent all sizes of municipalities measured by population. The questionnaire was sent to the respondents directly using the software Questback.

Background

Property formation in Norway

To understand the institutions involved in property formation and the use of discretion in dispensation cases, a short introduction to the nature of property formation is needed. Property formation is about developing and evolving our built environments. It can be carried out for the sake of profit, for greater privacy, to improve the use of the real property or for the common good. Alternatively,

viewed in a wider perspective, it is the realization of a land use plan.

In the context of this paper, a rather simple⁸ example of property formation will be used: subdivision of real property into two or more real properties. Figure 1 shows an example of subdivision where the landowner wants to divide his or her real property, 1/1, into two. This will later be used as an example when describing a case of subdivision that requires dispensation. Now the figure illustrates a «normal» case where there is no need for dispensation. According to the Planning and Building Act section 20-2 and 20-1 letter m, you have to send an application and get approval when you want to subdivide real property. The application should include specific information about the project and be in accordance with the Planning and Building Act and the land use plan.

Discretion and dispensation

In the Planning and Building Act, we find several sections that give room for discretion. One example is in section 26-1. The new real property should not be formed in a way that makes it unfit for being built on because of its size, shape or location. What is considered a good or bad shape is part of the discretionary practice. Another example can be found in section 27-4, which deals with the need for access to the new real property. Be-

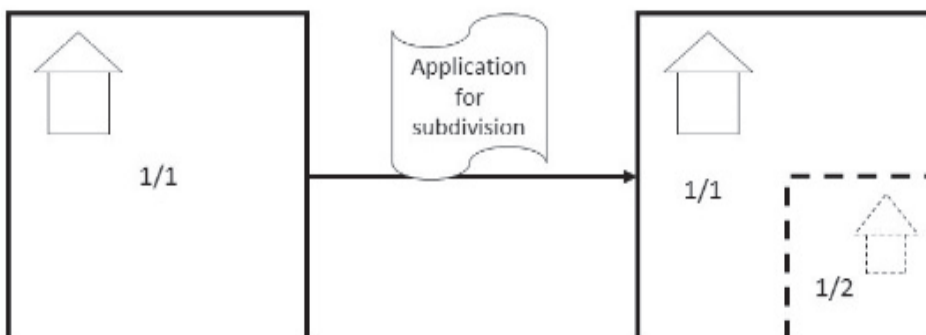


Figure 1: The landowner, A, has an agreement with a buyer, B, to divide A's real property (1/1) into two, so B can set up a house (1/2). To do so they first have to send an application for subdivision of the real property to the municipality, in accordance with the Planning and Building Act section 20-2 and 20-1 letter m.

8. Simple in the way of illustrate, it is not necessary simple to handle for the public administration.

fore a new real property is approved, lawful access to a road that is open to the general public or permit holders must be secured, or some other road connection which the municipality considers satisfactory. Then in the final sentence of this section, it says that if this road connection, at the municipality's discretion, cannot be obtained without disproportionate difficulty or expense, the municipality may accept a different arrangement.

These examples show that the public administration is given power to make its own judgment; in other words it is given discretion. In a court of law discretion is defined as a

«liberty or privilege allowed to a judge, within the confines of right and justice, but independent of narrow and unbending rules of positive law, to decide and act in accordance with what is fair, equitable, and wholesome, as determined upon the peculiar circumstances of the case, and as discerned by his personal wisdom and experience, guided by the spirit, principles, and analogies of the law» (Law Dictionary).

In the context of the public administration, the Law Dictionary's next definition is more appropriate:

«When applied to public functionaries, discretion means a power or right conferred upon them by law of acting officially in certain circumstances, according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others. This discretion undoubtedly is to some extent regulated by usage, or, if the term is preferred, by fixed principles» (Law Dictionary).

As the examples above show, these sections of the planning and building act allow discretion to be exercised. Another example is the use of discretion in cases of dispensation. When the landowner or developer wants to

do something slightly different from the land use plan, they ask for dispensation. Dispensation is an exemption from the act and regulations «a permission to do something forbidden (...). A relaxation of law for the benefit or advantage of an individual» (Law Dictionary). The Planning and Building Act chapter 19 gives this opportunity in section 19-1:

«Dispensation requires a reasoned application. Before a decision is made, neighbors shall be notified by means as mentioned in section 21-3. Special notification is however not necessary where the application for dispensation is filed at the same time as an application for a permit pursuant to chapter 20, or where the application clearly does not affect the neighbors' interests. Regional and central government authorities whose field of responsibility is affected directly shall have an opportunity to express their views before dispensation is granted from plans, planning requirements and the prohibition in section 1-8.»

The arguments to get this approval must be related to the real property and be possible for anyone to invoke. If the application for subdivision of real property requires dispensation, there are three possible reasons:

1. The subdivision is in an area where the act prohibits division⁹
2. The subdivision is in an area where the land use plan prohibits division¹⁰
3. The subdivision is not in accordance with the requirements of the plan¹¹

The authority empowered to grant dispensation is the municipality (section 19-4). The municipality, often represented by the Standing Committee for Planning, is conferred the authority to grant dispensation. The municipality can also delegate authority to the administration, which then makes the administrative decision on the application. According to my research, only 40% of re-

9. Such as the prohibition zone 100-meter border to water.

10. For example when the use of new real property is for housing and the purpose in the land use plan is industrial purposes.

11. For example, the size of the new real property is larger than maximum size in the regulations.

spondents say that the decisions about dispensation are delegated. What some of them also say, in answer to an open-ended question, is that this may depend on the complexity of the case. The landowner has to provide an application for dispensation (section 19-1). Affected parties are notified, both neighbours and regional authorities.

The first Planning and Building Act came into force in 1965¹². The act regulated, among other things, the planning of use of our environment. The ability to grant dispensation was introduced in section 7 of the 1965 Act. The question of dispensation practice was discussed during the revision of this act. The new act came into force in 1985¹³ and the ability to grant dispensation continued in section 7. Section 17-2 of the 1985 Act regulated a 100-meter buffer zone along watercourses and the sea shore. Then a new, totally revised Planning and Building Act was introduced in 2008. Now there is a new proposal to change the rules on dispensation again (Ministry of Local Government and Modernisation 2015).

Decisions on applications for dispensation probably involved a greater degree of discretion under the Planning and Building Act of 1985 than under today's act. The possibility of granting dispensation remained in the 2008 Act, but partly because of challenges arising from different practices with respect to «special reasons» (section 7 of the 1985 Act), the principle of «reasoned application» was introduced in section 19-1, and section 19-2 specified that evaluations should be based on a balancing of considerations.

No one has an entitlement to a dispensation and it is not straightforward to get one. The preparatory works for the current Planning and Building Act (Ot.prp. nr. 32 (2007–2008) section 6.19) point this out, as well as the importance of the process that precedes the approval of a land use plan. The objectives behind the provision from which dispensation is given must not be significantly disregarded. In addition, there has to be a weighing up of interests, where the benefits of the case must be weighed against the disadvantages. The government highlighted an

important difference between giving dispensation from a land use plan and changing the plan. If we grant dispensation, the plan remains unchanged (Government 1984). Dispensation can thus be an easier way to adapt to current needs.

Introducing a case

To illustrate a case where the application for subdivision needs dispensation we will use the first figure and add some further information, see figure 2. In this case the landowner, A, wants to sell a part of his real property, 1/1, to buyer B. The real property lies less than 100 metres from the shore, so A needs dispensation from the prohibition against dividing land in this area (section 1-8). The real property is designated as farmland in the land use plan. In this area, there is a general prohibition against division of land if it is not for agricultural use. B wants to buy the new real property to build a house. They are in need of a second dispensation. A sends a complete application to the municipality.

The decision on whether or not dispensation shall be given involves balancing various considerations invoked by the landowner, A, against the interests of society. It can be argued that it is important to preserve nature while the owner's argument in favour of plots for development coincides with the municipality's desire for more housing. In some municipalities, there may be one person who exercises this discretion. In others, they will have an interdisciplinary discussion. Regardless of the discussion in the municipality, a consultation process is needed if the municipality wants to give its approval. This process can be an action situation in the Institutional Analysis and Development framework (see figure 6). In answer to the question of whether they send the case to consultation if needed, nearly 90% of the respondents answered often or always.

A dispensation in this example entitles A to do something other than the land use plan intends. The first dispensation in this example leads to a new real property. The next step requires dispensation from the prohibi-

12. LOV-1965-06-18-7 Bygningslov (repealed)

13. LOV-1985-06-14-77 Plan- og bygningslov (repealed)

Status of land use plan: farmland

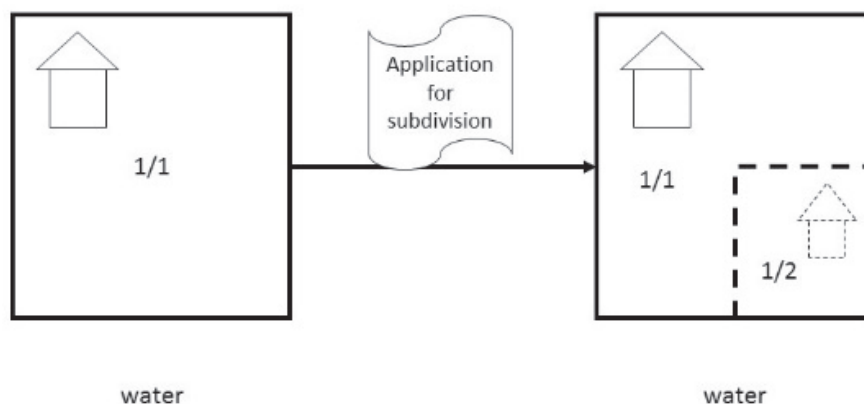


Figure 2: Example: The owner of 1/1 will sell a part of his real property. The new real property will be less than 100 meters from the shore and in a part of the municipality where the land use plan says it is only for farmland.

tion against building in the 100-meter belt along the shore, in an area near the water that should be available to the public for recreational activities. The second dispensation in this example entitles A to establish a new residential property in an area where the land should be used for agriculture. Asking for a dispensation in areas designated as farmland is the most common request according to the respondents (over 70 % mark this as a reason that occurs often).

The example shows two different types of dispensations (type 1 and 2 mentioned above). In some municipalities, you will not get approval to divide agricultural land without going through a planning process. In others, granting dispensation can be a way of

solving a problem of finding land to build on and enabling population growth, or reflect a political desire to give people the right to decide for themselves where to live. The use of dispensation can be a result of an old plan that does not meet today's needs. The respondents were asked if they emphasized various considerations when processing applications. The options included local political goals like increased settlement, which nearly 70% of the respondents marked as a reason. The nature of the new real property, e.g. whether it will create new jobs, was also important. Equal treatment was the most important consideration of the options given to the respondents. This was cited by over 90%. See the result in table 1.

Table 1: When processing an application for dispensation various considerations can be emphasized. The respondents were asked which of the following considerations they emphasize; it was possible to choose more than one.

	Percent
Applicant's credibility	6.2%
Applicant's role / position in the community	0.5%
Equal treatment	92.9%
The project's nature (e.g. that it creates jobs)	51.2%
Local policy objectives (e.g. increased settlement)	69.7%
N	211

As can be seen from the statistics in figure 3 there has been increasing use of dispensation over the last ten years. This seems surprising given that the rules were made stricter during this period. The formal rules have changed but practice seems to have moved in the other direction. The figure clearly shows that there has been no reduction in dispensations after the new Planning and Building Act came into force in 2009. The numbers refer to new buildings. As de-

scribed earlier, there is often an application for subdivision of a real property before the building application, and the same political considerations and land use plan underlie the approval of these applications. In the most recent five-year period to 2014 dispensations granted for new buildings in areas designated for agriculture, nature conservation, outdoor activities and reindeer husbandry have increased by 13% (Statistics Norway).

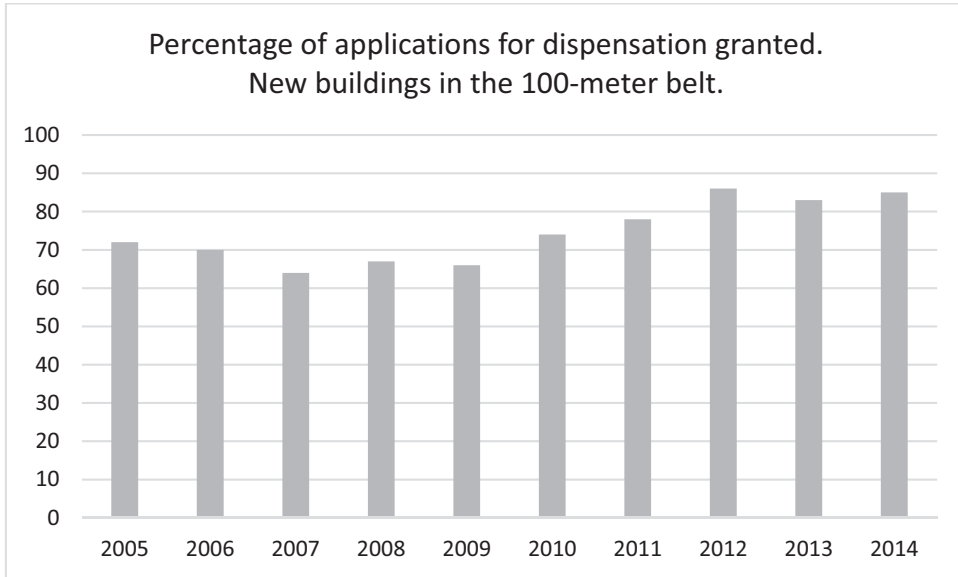


Figure 3: This figure shows the number of dispensations granted for new buildings in the 100-meter belt. There is often an application for subdivision of a real property before the building application and that application will in these cases also require dispensation (Source: Statistics Norway).

Institutional perspective ***Institutional research***

Institutional theory provides a perspective for investigating and doing research. When dealing with institutional theory the term «institution» needs to be defined. Defining the term institution Bush (1987) starts with the society and builds a pyramid or puzzle to define institutions:

«Society may be thought of as a set of institutional systems. An «institutional sys-

tem,» in turn, may be thought of as a set of institutions. And an institution may be defined as a set of socially prescribed patterns of correlated behaviour. In each of the above sentences the term «set» refers to functionally interrelated elements» (Bush 1987:1076).

In this way, the institution investigated is a part of an institutional system and the society consists of numerous systems. I will assume that the institutions also affect each

other. Peters (2012:6) makes a connection between the State and society by saying that «[t]he State is virtually a metaphysical entity which embodies the law and the institutions of government, yet somehow also transcends those entities. Also, in this tradition the State is linked organically with society and society is significantly influenced by nature of the State».

North (1990) defines institutions as the rules of the game in a society or, more formally, the humanly devised constraints that shape human interaction (North 1990:3). The role of the institutions «in a society is to reduce uncertainty by establishing a stable (...) structure to human interactions» (North 1990:6). Furthermore, they «provide the basic structure by which human beings throughout history have created order and attempted to reduce uncertainty in exchange» (North 1990:118).

Ostrom (2005:3) proposes that «broadly defined, institutions are the prescriptions that humans use to organize all forms of repetitive and structured interactions (...) Individuals interacting within rule-structured situations face choices regarding the actions and strategies they take, leading to consequences for themselves and for others.»

Mahoney and Thelen (2010:4) argue that «nearly all definitions of institutions treat them as relatively enduring features of political and social life (rules, norms, procedures) that structure behaviour».

Peters (2012) introduces several definitions of institutions. Different approaches to institutions in the new institutionalism are investigated. For every approach, a definition of institutions is given. The idea of a «good institution» is described under the various approaches. Some of these approaches will be dealt with later in this paper. In his discussion of normative institutionalism, Peters (2012:29) describes institutions as a loosely used word in political science «to mean everything from a formal structure like a parliament to very amorphous entities like social class, with other components of the socio-political universe such as law and markets also being described as being institutions».

To summarize, there has been and still is research carried out to understand institutions and to use institutional theory to understand reality. The institutions are formal and informal statements of how people can, must or must not interact with each other. The institution that is the topic of inquiry in this paper is the use of dispensation in the case of subdivision of real property. This institution is a combination of statutory authorization, norms, and traditions in the relevant municipality, political goals and other exogenous variables.

The fact that reality is complex and not all types of subdivision of real property are adequately covered by the rules and land use plans leads to the need for other rules. At the outset, there are norms about living together, and ideas about ordered allocation of land to various activities. Then we have enacted rules about it, monitoring and sanctioning compliance with rules and norms about living together, and about land use. Adapting rules to a complex reality can require a system of dispensations.

New institutionalism

Institutional theory is not new. Peters (2012) has introduced the idea of new institutionalism. This opens the possibility of applying this theory to fields outside those where it has traditionally been used. In the field of property formation, institutional theory is used, in the most recent years, by Ramsjord (2014), Ridderstrøm (2015), Hanssen, Hofstad and Saglie (2015), and Singaas (2016¹⁴). Ramsjord uses the theory of transaction costs to analyze private developers' use of the land consolidation court in property formation processes. A process, which in most cases is carried out by the public administration in the municipalities.

In the case of dispensation, the historical perspective is of importance. The evolution of institutions has roots in the past. As Peters (2012:viii) says, «Human learning is more than the accumulation of the experiences of an individual over a lifetime. It is also the cumulative experiences of past generations.» You may say that the institutions are our col-

14. Public defence 28 February 2016 at NMBU. Title of the thesis «Regional Planning as a Tool for Comprehensive Management in the Wild Reindeer Mountains».

lective memory of the past. According to Mahoney and Thelen (2010) there is normally a gradual change if we see the institution in a historical perspective. It might seem like a particular event changed the rules, but looking at history the rules can be formed in the society as informal rules long before they are written down. And changes in the formal rules are often part of a process or a reflection of how the rules are actually used in practice.

According to Peters (2012:25, 26) it was March and Olsen¹⁵ and their theoretical perspectives that reshaped political science. Institutional analysis had a comeback and became a central part of the discourse in political science. Peters refers to this as normative institutionalism. «This title reflects the central role assigned to norms and values within organizations in explaining behavior in this approach» (Peters 2012:26). People are shaped by their membership of institutions. They must «pick and choose among influences and interpret the meaning of their institutional commitments. (...) the individuals select a number of different roles and play those appropriate for the institution that is most relevant at the moment.» Or «search for some reconciliation among the memberships that is good enough» (Peters 2012:26). The roots are to be found in the old institutionalism of sociology and organization theory. March and Olsen saw the normative basis as appropriate for political science too (Peters 2012:28). March and Olsen said that «social, political, and economic institutions have become larger, considerably more complex and resourceful» (March and Olsen 1984:734), which can also be said about today's society.

Humans make institutions

In an article, Fennell (2011) defines «Ostrom's Law: A resource arrangement that works in practice can work in theory.» This ties in with the thoughts of de Soto (2001) about «listening to the barking dogs» in reference to making institutions by listening to

the people and in a way implementing the extralegal into the legal system. «Institutions are constructs of the human mind» according to North (1990:107). And as previously mentioned, we make them to provide structure, to escape from chaos.

The first step of making informal rules is to write them down, or in other ways ensure that people know about them. The next step is then to ensure that the rules are followed. Rules are said to be never self-interpreting and never exhaustive. In many situations, we just know what to do, how to deal with the situation. We do not apply the rules consciously or unconsciously.

According to Searle (1995) important parts of institutions exist only in the minds of people. If we look to Douglas (1986) she says that the strongest institutions exist only in the minds of people. The importance of the culture and society will make a difference to the development of institutions and how they change through time. It might be easier to relate to a rule that you understand. «I believe we have recently underestimated the degree to which people accept institutions because they think the institutions have the right answer, because institutions embody a value that the people also accept» Stinchcombe (1997:8) says.

Humans are part of the institutions, like guardians. In the case of dispensation, these actors will be the people working in the public administration and the judicial authorities. There must be someone who believes in the rules and guards them in order for them to work (Stinchcombe 1997). Then we have different communities that interpret the rules. These can be epistemic communities. These are a «network of knowledge-based experts who help decision-makers to define the problems they face» and they «are socio-psychological entities that create and justify knowledge»¹⁶. On the other side, so to speak, we have the corporate culture. This can be of great interest when it comes to dispensation. The understanding of such rules can evolve in the public administration. In a way, we

15. Peters refers to writings in the 1990s. The first writings, which provided the foundation stones for Marc and Olsen's later work were «The New Institutionalism: Organizational Factors in Political Life» (1984) and «Rediscovering Institutions. The Organizational Basis of Politics» (1989).

16. Definition available at https://en.wikipedia.org/wiki/Epistemic_community [20 Nov. 2015].

can have guardians of the rules interpreting them differently and thereby evolving different dispensation practices.

Other actors may want everything to remain as it is – to maintain the status quo. The institutions we have or the current understanding of them suits this actor. «Path dependence means that history matters» writes North (1990:100). There are parties that over the years have gained benefits within the system as it is. These are described as symbiont change-agents by Mahoney and Thelen. While they «rely on the preservation of the institution, parasites themselves carry out actions that contradict the «spirit» or purpose of the institution, thus undermining it over the long run» (Mahoney and Thelen 2010:24). This type of change-agent seems to occur in the context of dispensation (figure 6).

Institutional change

«We live in an uncertain and ever changing world that is continually evolving in new and novel ways» says North (2005:vii) in his book about economic change. He points out the need to see economic change in a broader perspective. It is a result of other changes (North 2005:1):

1. in the quantity and quality of human beings
2. in the stock of human knowledge particularly as applied to human command over nature
3. in the institutional framework that defines the deliberate incentive structure of a society

This broader perspective will be applicable to other topics as well. Seeing changes in the way of giving dispensation is part of a larger picture. It has to be seen in the perspective of changes in the surroundings. In this perspective North (1990:91) points out another thing that is also important, «perhaps most important of all» he says «the formal rules change, but the informal constraints do not». So in the Planning and Building Act from 2008 they changed the rules for dispensation, but

maybe the implementation of the rules hasn't changed that much because of the way the public administration practises discretion and the politicians' wishes for the municipality.

So let us walk on «the path of institutional change», as North (1990:92) describes it. Evolution in biology¹⁷ has inspired North's way of describing economic evolution. Nevertheless, there is a significant distinction between these two fields, because in economy the selection mechanism is «informed by beliefs about the eventual consequences» (North 2005:66). He points out the importance of humans being able to take decisions based on knowledge, beliefs and culture. Bush (1987) also discusses culture:

«Socially prescribed behavior is the story of how these choices, and the critical history of any culture is the story of how these choices evolved in the life experience of the community. (...) institutional change is discretionary precisely because all social prescriptions are the outcomes of conscious choices made at some point in the life history of the culture» (Bush 1987:1077).

He then introduces the terms behaviour (B) and value (V) and says, «The diagnostic characteristic of an institution is the value structure that correlates the behaviour within it. It follows from this that institutional change must entail a change in the value structure of the institution» (Bush 1987:1078). The connection of institutions with history and culture is a recurring theme in the understanding of institutions. To simplify the matter slightly, it revolves around how they were brought into being by humans in the first place, how the actors understand them, and how they now change.

Turning to Mahoney and Thelen (2010) we find an introduction to a theory of gradual change. As they say: «Once created, institutions often change in subtle and gradual ways over time» (Mahoney and Thelen 2010:1). What also appears to me on reading them is that institutions contain the possibility of change within themselves. It is the

17. See Lewis and Steinmo (2012) article on how institutions evolve and the evolutionary theory.

very nature of institutions that they can change over time. Mahoney and Thelen provide us with a tool for understanding what kind of change we will get, based on the characteristics of the institution in question, the political context and the kind of change-agent (Mahoney and Thelen 2010:table 1.2 and 1.4).

Institutions providing security

We have now looked into some of the theories on how institutions evolve and change. We know that we need the institutions to provide order and hence security. What kind of security do they provide in the context of subdivision of real property and the local processing of applications for dispensation? To answer this question I will state that there are two important keywords: information and trust.

North (2005:15) highlights uncertainty as a challenge and he introduces five different degrees of uncertainty defined by how they can be reduced:

1. Uncertainty that can be reduced by increasing information given the existing stock of knowledge.
2. Uncertainty that can be reduced by increasing the stock of knowledge within the existing institutional framework.
3. Uncertainty that can be reduced only by altering the institutional framework.
4. Uncertainty in the face of novel situations that entails restructuring beliefs.
5. Residual uncertainty that provides the foundations for «non-rational» beliefs.

Rules and information can be helpful to reduce uncertainty. When legislation gives the public administration space to practise discretion and to give dispensation, it will result in a lack of information in the system and for future landowners. The land administration system shows the land use plan. A dispensation will not alter this plan and will be «invisible». Some people will hear that it is easy to get a dispensation and some will have the opposite impression. This lack of information can make the outcome unpre-

dictable and it can weaken people's confidence in the system.

Arruñada (2012) has written about the benefits of impersonal exchange. It increases the number of potential buyers for a property, it means you can get information without knowing the buyer and as a buyer you do not need to know the landowner. A land registration system can provide this information. Another important benefit is reduced transaction costs. In the context of the subdivision of real property, Arruñada's ideas can be usefully applied to the availability of information, but the benefits of reducing transaction costs are less relevant. When it comes to land registration systems, this can vary from a simple register to a land administration system¹⁸. In the case of dispensation, it could be an important source of information if all dispensations were registered and marked in the map. Landowner would have access to much more information.

Rothstein (2005) combines the presence of social traps and trust with institutional theory. He points out that there can be differences, not only between countries but also between communities (Rothstein 2005:26). «Including people to make the transition from mistrust to trust is probably one of the more difficult tricks in the world of politics» (Rothstein 2005:23). Trust can be important for an institution and society to work. It seems that there are no recipe for getting out of a social trap. «In concrete terms, what might be the process that the actors in a society undergo as they make the transition from deep mistrust to trust? That is, once we have ended up in a social trap, how do we get out of it?» (Rothstein 2005:167).

Returning to dispensation practice, trust is essential to ensuring that people believe that applications receive equal treatment. Dispensation is in some ways a means test. This can lead to mistrust. Normal application processes are more transparent and trustworthy. A subdivision according to a land use plan will nearly automatically give the landowner an approval. The subdivision in our example is neither in accordance with the land use plan nor with the prohibition against building in

18. See Williamson et al. (2010) for a deeper understanding of land administration systems and their benefits.

the 100-meter belt. Hence, the landowner needs a dispensation and the public administration must perform a means test before giving its approval or refusal.

For the public administration, it can be of interest to build up social capital in order to gain trust. On the individual level, social capital is the «sum of the numbers of social contacts multiplied by the quality of trust in these relationships» (Rothstein 2005:66). The social capital in an organization, Rothstein continues, «is determined by (a) the extent of social contacts and networks that people have on average and (b) the extent to which people generally believe that they can trust most of those contacts.» The conclusion is that an organization with many trustworthy people gives the organization a greater social capital. If the public administration does not treat applications for dispensation equally the local community may start to mistrust it. The public administration can get a bad reputation in the local community or in the higher administrative authorities, as the County Governor (Fylkesmannen). The municipality can also get a rebuke from the Parliamentary Ombudsman. For a public administration that gives too many dispensations or one that is too strict there are no real sanctions beyond this. One possible outcome is that this system may end up in a social trap. Because of mistrust and inconsistencies in the use of discretion. This would be an interesting area to pursue.

Discussion

The rules for dispensation are a mix of formal and informal institutions. To explain the evolution of dispensation as an institution I will start by saying that it is a part of a corporate culture. Nevertheless, people from an epistemic community can be hired and influence the understanding of the rules in the corporate culture. In this way, they can provide new knowledge for the corporate culture that may change it. The corporate culture refers to the shared values, attitudes, standards, and beliefs that characterize members of an organization. In the context of subdivision of real property, the municipality is both a part of the institution as the guardian of

the rules and an organization with its own corporate culture.

Factors that influence how the public administration deals with applications for dispensation may be colleagues, internal procedures, epistemic communities, acts and regulations, statements by the Ministry of Local Government and Modernisation, political decisions (both on national and local level), the local community, and the involved parties.

To understand dispensation as an institution we will analyze it using the Institutional Analysis and Development (IAD) Framework developed by Ostrom. The IAD model helps us to understand how the processing of an application for dispensation functions as an action arena. According to Ostrom (2005:186) there are different ways of classifying rules, and this way can be «a useful system for those interested in linking rules and the action situations created by rules, the biophysical world, and communities.» Figure 4 shows a simplified presentation of what is a high complex process.

In the figure, Ostrom (2005:15, 2011:10) is introducing us to positions. These are combinations of the roles of the actors and possible actions. In figure 5 these are the owner, the public administration, and the consulting authorities. In their positions, they have to obtain information and they can have some kind of control. Like the owner, who knows that he or she has to submit a complete application, but it is their own choice whether or not they do so. The owner controls what kind of information he or she will provide. Then the public administration must go through the application and see if it is possible to grant dispensation. If so, it must send the application to the consulting authorities. In this part of the process, the public administration must say something about this case in relation to similar cases and provide enough information so that the consulting authorities can reach an opinion. After going through the different stages of the process, there are in the end only two potential outcomes: approval (and approval subject to certain conditions) or rejection of the application. The considerations made by the public administration are based on all the information obtained in the process. «In the assess-

ment of whether dispensation from plans should be granted, central government and regional frameworks and goals must be assigned particular importance. [They should]

not grant dispensation where a directly affected central government or regional authority has expressed a negative view on the application for dispensation» (section 19-2).

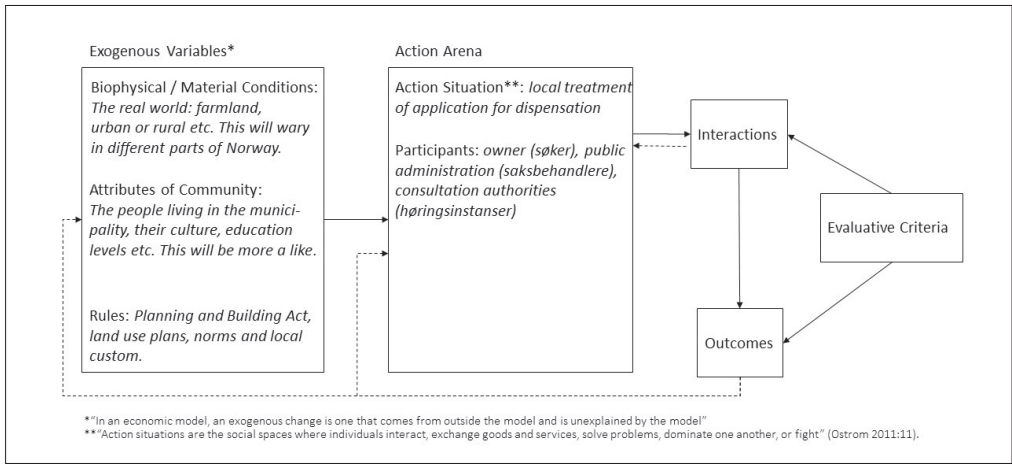


Figure 4: Using the Institutional Analysis and Development (IAD) framework to analyse local treatment of applications for dispensation. The model is based on Ostrom’s IAD framework (Ostrom 2005:15, 2011:10).

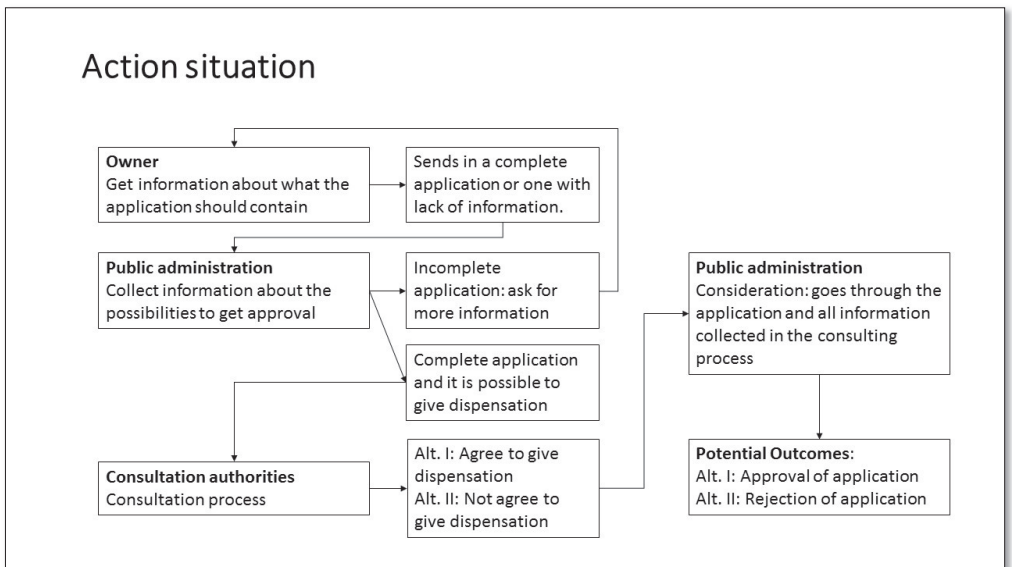


Figure 5: A closer look at the action situation of local processing of applications for dispensation based on the model of the internal structure of an action situation (Ostrom 2005:33, 2011:10). It is possible to expand the figure into different action situations, like one for the consultation process and one for the processing by the public administration. As Ostrom points out, it can be difficult to see where one action situation ends and another starts.

Concluding remarks

Ridderstrøm (2015:119) says that the strength of institutional theory is that it gives a framework to interpret and understand the actions of the actors. In the case of dispensation, institutional theory has now been used to investigate how dispensation in subdivision of real property can be interpreted and understood in the action situation of local processing of the application. It appears that institutional theory can be useful in describing the current situation, using the IAD framework.

For the public administration, it may be appropriate to apply a pragmatic approach (logic of appropriateness) to the application of rules on granting dispensation. Peters (2012:27) describes this as a concept in the normative institutionalism where the participants in the organization have a commitment to the goals of the organization or at least an acceptance of them. This corresponds to the case where an employee of the administration may argue that practice should be stricter, but political goals and the organization's common sense suggest a more liberal approach. As we saw in the results from the questionnaire, political goals are taken into consideration in the process.

When it comes to the actual case of dispensation given in this paper, institutional theory gives a useful perspective on how these rules, norms and regulations are used, and evolve. To get a better insight into the relevant actions of the actors, in this case the public administration, a more descriptive method must be used.

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