

Dealing with diversity in land tenure and rights within LADM

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Diversity, even with common roots

- Property rights, including land rights, very diverse, even in Europe
 - EU Lisbon treaty: ‘The Treaties shall in no way prejudice the rules in Member States governing the system of property ownership’ (art.345)
 - Of course its language has its own words for ‘similar notions’, even two jurisdictions with shared language have often different wordings
 - Core right, esp. ownership, rather similar (e.g. Civil Law Codes), but..
 - more customary rights very diverse (although number of effected parcels might not be that large), even in Europe
 - individual possession of flats extreme diverse (own part of building, co-own whole building, special cooperation, stocks in company, ..)

Diversity linked to broader law

- Land tenure, the way people hold the land, is set by the 'land law' in place
- This is a part of the Legal Regime
 - statutory law (written down and codified)
 - common law (judgment as precedent)
 - customary law (assumed that code is well known by all members of society)
- Regularly a mix exists in a country → legal pluralism



**Legal Families in Europe -
Newman and Thornley (1996)**

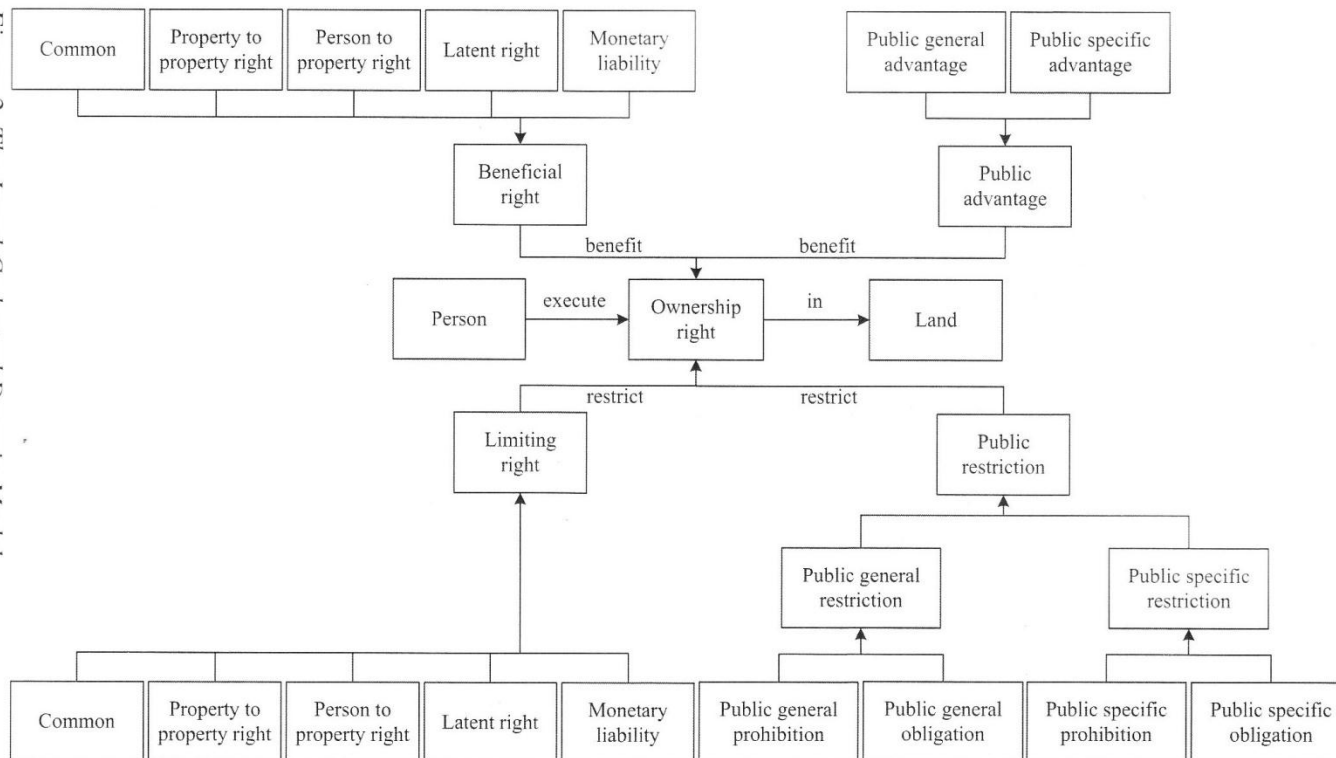
Diversity, some common elements

- Land Rights rather limited, even ownership
- Layered rights (leasehold), secondary rights (usufruct)
- Restrictions and responsibilities

- One person's right, is the neighbors burden (e.g. servitude)
- Rights that are linked to another right (not to be separated) (-,-)
- Stake in group rights (e.g. joint facilities (*mandeligheid*), which can not be separated from the main right
- Mortgage (hypotec) on any other strong rights

Legal Cadastral Domain Model (Paasch 2012, PhD to be defended September 2012) – several versions (compare Annex F - FDIS)

Figure 2. The Legal Cadastral Domain Model.

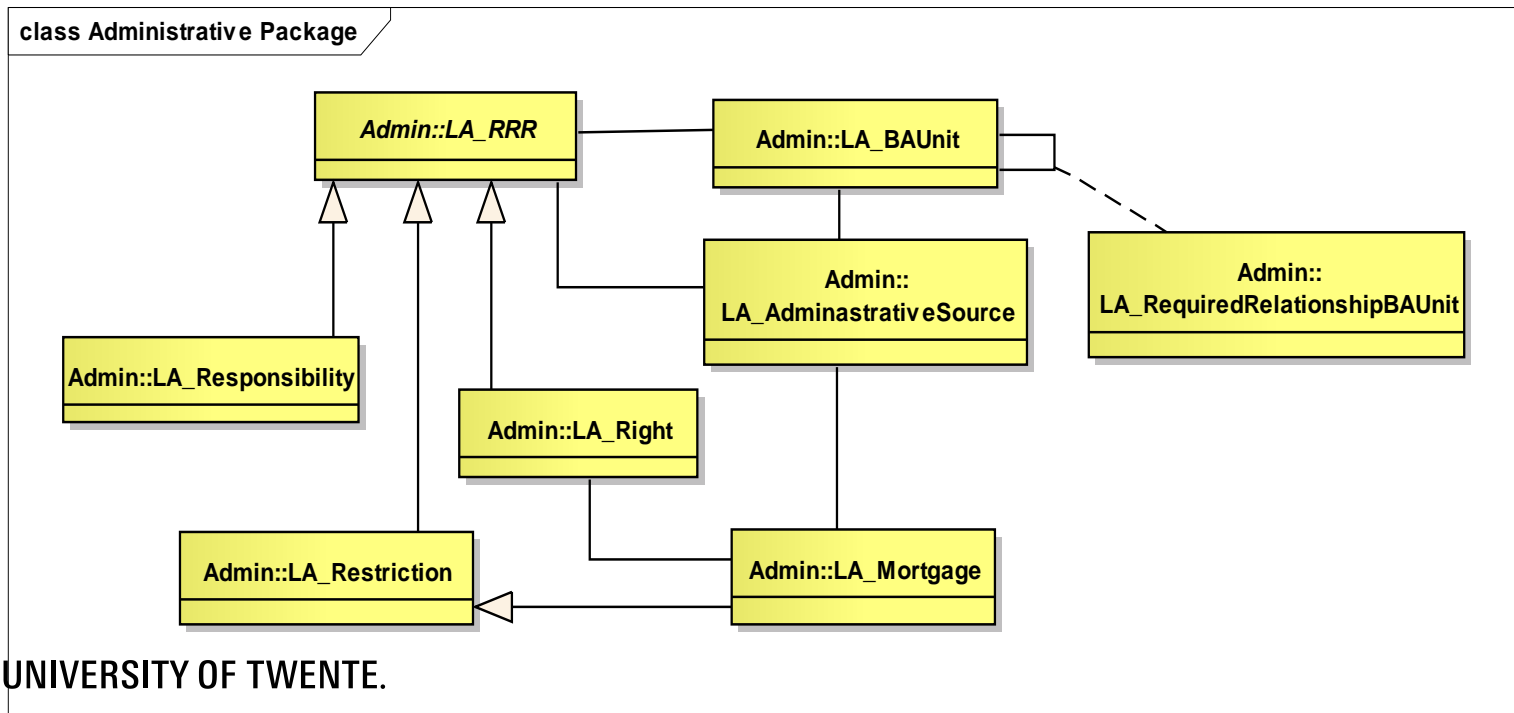


Diversity, common 'data' requirements

- Once a good picture was found of patterns of 'how people hold land', this could be put into the LADM class diagram
- The exact 'tenures' (in the local language) to be put into 'pull down' menus; with the exact meaning the law and practice (not needed for the model, unless it diverts from the modeled 'land to person (or ..)' links)
- Groupings of 'land' under the same tenure linked to same person can be legally seen as one property, and led to introduction of BAUnit.
- Even 'land'-less properties can be treated

LADM: Administrative (legal)

- RRR (Right Restriction Responsibility) has associations with Party (Person) and Basic Administrative Unit (and indirectly to SpatialUnit)
- Rs are in principle based on legal documents or decisions
- A RRR can be temporal



Can LADM deal with all tenures ?

- STDM, the social tenure domain model, proves it can deal with quite some variety (Chris's PhD)
- Joao's PhD shows the same for Portugal
- Public restrictions might be harder to cover (e.g. Baldios)
- Systematically documenting those is very recent
 - Legal families for administrative law are not the same
 - Different ministries have different law drafting tradition
 - Restrictions thought out from the thematic issue, not LIS

Social Tenure (Right) - Continuum

- Ownership
 - Apartment - Right
 - Co-operations
 - Occupation
 - Tenancy
 - Possession
 - Miri – Milk – Waqf
 - Restriction Types
 - State Property
 - Etc << can be extended
- Non-formal and informal rights
 - Customary Types,
 - Indigenous Rights
 - Tenancy
 - Possession
 - (Certificate of) Comfort
 - Disagreement
 - Overlap
 - Uncontrolled Privatisation
 - Conflict situations
 - Etc << can be extended

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 - Legal families for administrative law are not the same
 - Different ministries have different law drafting tradition
 - Restrictions thought out from the thematic issue, not from LIS, so link to 'land' might be vague (e.g. historical monuments in NL – contour)

Figure 3. A classification of public regulations (Paasch 2012)

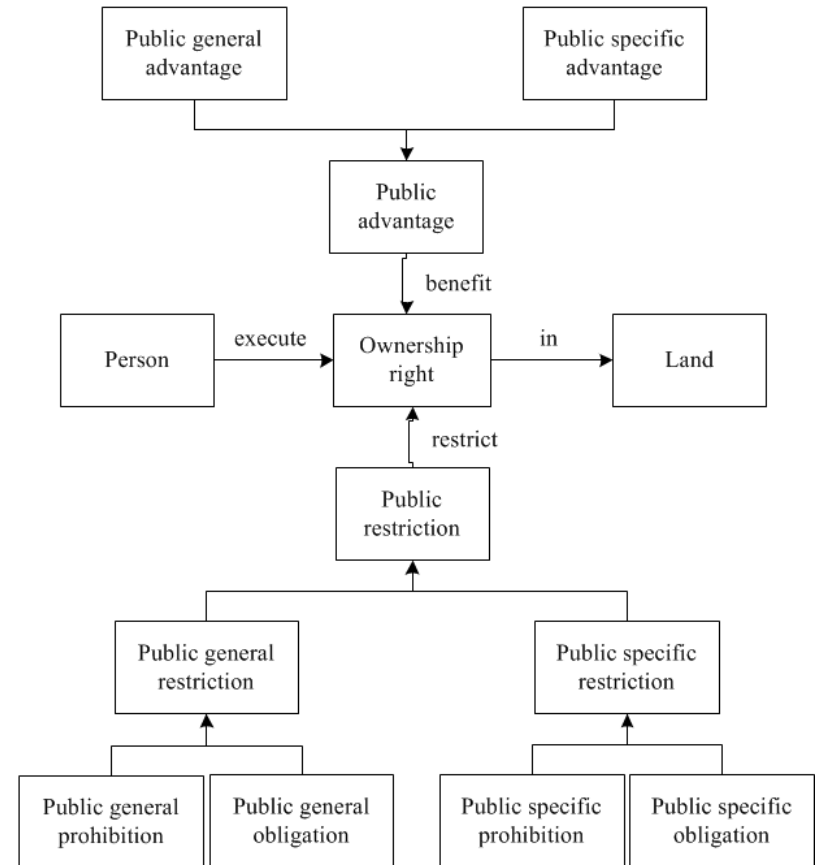
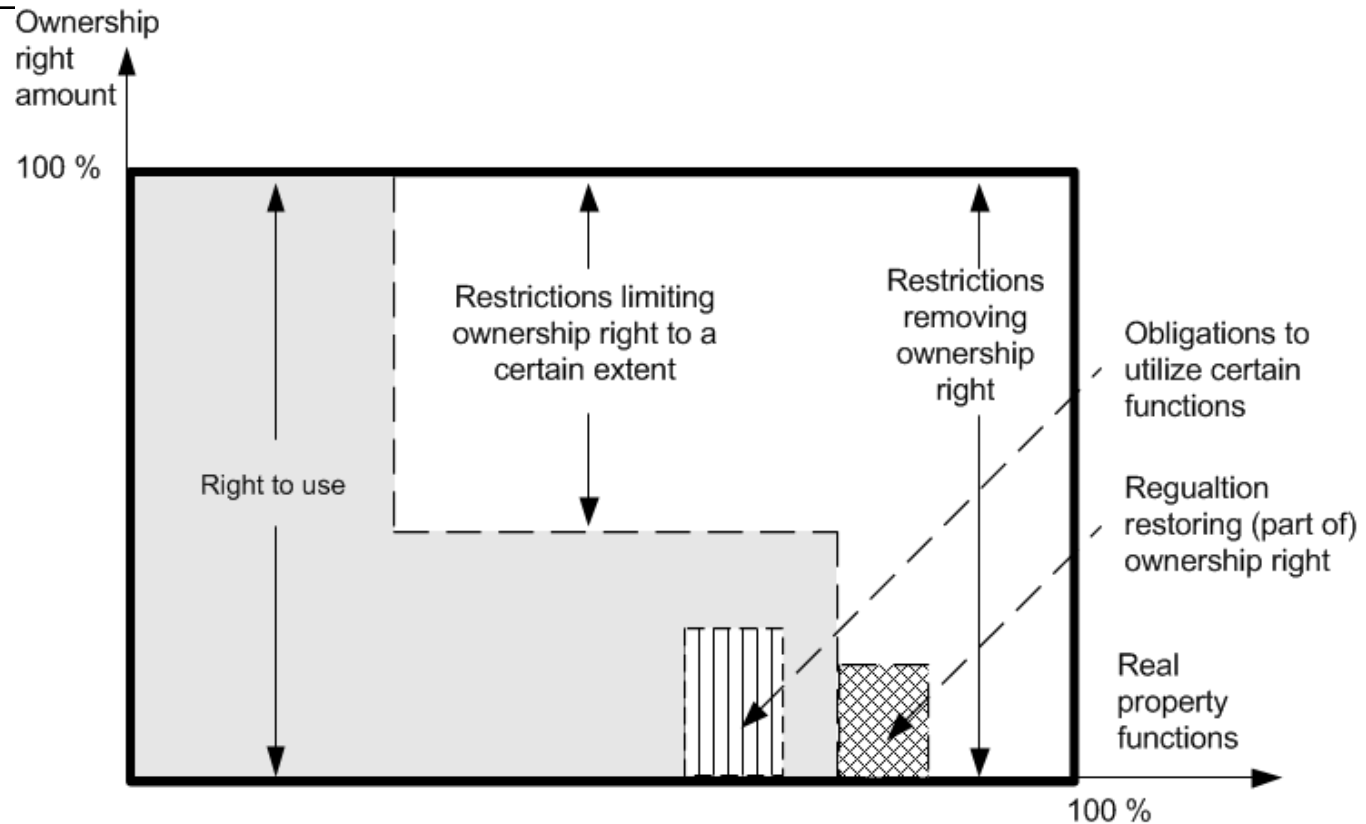





Figure 2. Public regulations influencing property right ownership. Based on Ekbäck (2000). (Paasch 2012)



 = Effective ownership functions

 = Public regulation functions

 = Effective ownership functions restored by a regulation

 = Public obligations

Can we understand the tenure types from LADM ?

- This is not easy, e.g. due to the nested way of UML versus the way laws are constructed (it feels easier for spatial units)
- Some help from instance level diagrams
- See Annex C (informative) of FDIS (contributions from João)
 - [Instance1.rtf](#) (leasehold (next to ownership))
 - [Instance2.rtf](#) (servitude (right of way) on Amalia's land)
 - [Instance3.rtf](#) (farm composed of several parcels)

Final Remarks

- LADM can handle a large diversity in tenure / land rights
- Flexibility increased during the standardization process (via experts from countries with a specific situation)
- When making country profile, sometimes a new solution needs to be added (esp. when no expert participated)
- Understanding LADM for this topic is not easy, esp. not for legal experts
- LCDM classifies RRR more then before, but does not lead to harmonization (and for these purposes not needed)
- Is diversity a functional or cultural 'need' ?