Naveiñ Reet: Nordic Journal of Law and Social Research (NNJLSR) No.6 2015, pp. 115-130

We Need to Talk About the Cultural Commons: Some Musings on Rhizomatic Jurisprudence and Access to Art

Merima Bruncevic[1]

This article analyses the possibility of constructing a legal concept of the cultural commons in order to facilitate access to art. The concept of the cultural commons is here connected to the Swedish legal principle "*allemansrätten*". It is argued that in order to imagine and construct such a concept, legal reasoning must reach beyond certain opposite based dichotomies particularly public-private and open-closed. These dichotomies can be found in for instance intellectual property law. The article argues that a legal cultural commons can be envisioned by applying the rhizome theory developed by Gilles Deleuze and Félix Guattari. The notion of the cultural commons is placed within the Deleuzeoguattarian forms of possession. Keywords: Cultural Commons – Access to art – Gilles Deleuze – Félix Guattari – Rhizome – Jurisprudence

That the Rosetta Stone is probably one of the most important items of cultural heritage for our civilisation is an undisputed fact. Dating back to 196 B.C. it has provided scholars with a key to reading Egyptian hieroglyphs, which in turn has opened up for a wealth of knowledge in terms of the ancient world, as well as to understanding our own society and its past and current structures.

In the year of 2013 the British Museum, the establishment that currently houses the Rosetta Stone among thousands of other pieces of cultural heritage, attracted 6,8m visitors.[2] The museum generated in that same year around £67m in income. The tourism body *Visit Britain* has approximated that Britain's major museums and galleries, including

1 M. Bruncevic, LLD: Department of Law, Gothenburg University, Vasagatan 1, Box 650, 405 30 Gothenburg, Sweden e-mail: merima.bruncevic@law.gu.se

2 Since 2003 Egypt has been requesting the repatriation of the Rosetta Stone, claiming that it is part of Egypt's cultural heritage and serves as an "icon of Egyptian identity" and must therefore be returned to Egypt, its source country. The British Museum, together with some other internationally leading museums, have generally and as a matter of principle claimed that certain cultural heritage items like the Rosetta Stone, on the contrary are now part of our common global identity and as such these items can be attributed to the human kind as a whole. The museums have even issued a joint statement claiming that "objects acquired in earlier times must be viewed in the light of different sensitivities and values reflective of that earlier era" and that "museums serve not just the citizens of one nation but the people of every nation". See e.g., Bailey (2003).This article will not directly address the issue of ownership, and to whom these items of cultural heritage belong. This article addresses the *access* issue, i.e. how making items of cultural heritage open to public access through a legal concept of the cultural commons does not equate depreciation or loss in value in terms of the underlying resource and/or ownership rights connected to it.

the British Museum, earn the UK £1bn a year in revenue from overseas tourists only. This can be compared to the profit that Volvo made in the second quarter of the year 2013, which came in at around £35m. A new Volvo car costs around £30k. A visit to the British Museum is free of charge. In fact, for the last 225 years the British Museum has adhered to the principles of free public access. How is it possible that it can have a comparable turnover to Volvo while remaining free of charge to the general public? It will be proposed here that a simple answer to that question is that while Volvo is structured like a private company, the British Museum is structured and governed like a *cultural commons*.

As part of the 2014 election campaign a Swedish political party released posters where the political "slogans" were only made up of excerpts from pop songs such as Beyoncé's *Who Run the World (Girls)* [sic] and Dolly Parton's *Working Nine to Five.* The copyright holders were quick to protest – the right to use the lyrics in this context had not been cleared, they claimed. This use of their works was not fair use and it constituted infringement of copyrights, they claimed further. The copyright holders had not in any way agreed to be associated with any one political party. A number of Swedish intellectual property scholars were asked to comment on this issue, and they stated without any hesitation, that activities like this are typical cases of infringement of copyright laws. The political party in question retracted, and withdrew the posters.

The intellectual property scholars were probably right in asserting that this was not fair use and that the posters therefore constituted infringing use. However, it can be argued that this occurrence could have perhaps been the perfect opportunity to re-instigate the discussion concerning the scope of fair use when it comes to utilisation of copyright protected works within the contexts of freedom of expression, such as in connection with political utterances. This could have also been the golden opportunity to discuss what constitutes copyright protected works and in turn what constitutes the unrestricted free expression *now,* in the globalised, media saturated, branded, knowledge society. Perhaps it could have been in order for someone to raise the argument that the world is in constant change, and so is our way of communicating, and as such the legal constructions of closed copyrights versus open free expressions as a dichotomy needs to be addressed. Today, as part of our everyday communications, we constantly make references to songs, brands, popular culture, current events – it has become part of our daily language. Our multi-media, connected, network based existence is loaded with copyright protected works and trademarks that have worked their way into our patterns of communication. We say that we "google" when referring to conducting searches on the internet, regardless of which search engine we are using, we "facebook", we "tweet", we "xerox" and so on. We do all this, fully oblivious to the fact that we are in fact using (and diluting!) copyright

protected works and trademarks, that we are engaging with the fair use and public domain principles, and all other activities permitted and not permitted through the constructions of intellectual property laws. It could have therefore, perhaps, been warranted to at least ponder the argument that this is how we communicate, by referencing content, by re-locating and re-using, *repurposing,* each other's expressions. It could have been argued that this is the very language of the digital media knowledge society, it has become part of our language and it has become our way of interacting with each other, of expressing ourselves. So when the political party retracted and withdrew their posters it could have, perhaps, been argued that the freedom of expression was limited a little by claiming that this was infringing activity, full stop. Perhaps, at least a (rhetorical) question would have been in order, to ask, whether this potentially also could mean a restriction on freedom of expression.

Often, private ownership laws such as intellectual property laws are pitted against issues of access or freedom of expression, very much like in the two instances described above. The one has to benefit at the cost of the other. It has now come a time when we need to talk about a legal field where these two interests can converge into an alliance: within the scope of a legal cultural commons.

This article analyses the possibility of constructing a legal concept of the cultural commons. Such a concept can and will be connected to the Scandinavian legal principle "*allemansrätten*" below. It will be argued that in order to imagine and construct a legal cultural commons, we must reach beyond certain (stifling? false?) dichotomies, such as public-private, and allow for a reasoning that is open to multi-layered, constellation-based legal concepts. An attempt to do just that will be done below by applying the rhizome theory developed by Gilles Deleuze and Félix Guattari.

The commons and "*allemansrätten*"

When we talk about "the commons" what is most often discussed, at least in legal studies, are the natural commons and access to it (e.g. Valguarnera 2013a, see also Valguarnera 2013b) - i.e. access to open fields, wide landscapes, green pastures, lakes, rivers... One may also be referring to the resources tied to this category of commons such as irrigation water, clean and fresh air, fisheries or berries. The commons, it is often assumed, has to do with distribution and allocation of (natural) recourses. It can also be a question of access to nature and land that might be owned by some, and that may, under limited forms be accessed by the wider public (Hyde 2012). In connection to the right to access nature, the Scandinavian customary legal principle, which can be described as a right to roam,

called "*allemansrätten*"[3] has been developed.[4] *Allemansrätten* has for a long time been acknowledged as a *bona fide* legal principle by for instance the Swedish Supreme Court (*Högsta Domstolen*) and is today also inscribed in the Swedish constitutional law[5] and in the Swedish Environmental Code (*Miljöbalken*).[6] In broad terms, the principle grants the public a right to access and roam in nature, which means, generally speaking, that everybody may, for a limited time and on certain terms and conditions,[7] dwell in nature, hike, camp, swim in lakes, pick berries, and so on.

The right to roam in and access nature has in Scandinavia traditionally been considered to be of particular significance since it is directly connected to the public health and wellbeing. The wellness produced by continuous and frequent access to nature ought to be, it is argued, secured and safeguarded. This wellness that access to nature gives rise to has thus been given a legal status and transformed into a public right. *Allemansrätten* as a legal construct connotes a reasonable and limited access to nature, under terms and conditions, and has never been of such legal character that it encroaches on the underlying ownership of e.g. the land. The limitations to *allemansrätten* are often described in the following manner: the public may roam in the woods but may never enter the fenced off private garden or the family home on the same land. The public may thus dwell in nature but this comes with the obligation not to disturb private life, not to litter or damage the land, nature, animals or crops.

The phenomenon that we call *the commons* is a complex concept and not always directly connected to e.g. rights to access or rights to roam such as the *allemansrätten* legal principle. Instead, the notion of the commons is presented as a concept used to describe one of many categories of co-ownership, of resource distribution, allocation and management. It is often connected to a space or a realm where resources are co-owned, held and managed in common. In recent research it has been shown that such a space must not necessarily

3 This principle also exists in various forms in the other Scandinavian jurisdictions, e.g. in Norway where it is called *"allemannsrett"* and codified in the Norwegian Outdoor Recreation Act (*Friluftsloven*). A similar principle exits in Finish customary law, "*jokamiehenoikeus*", but while it is not directly codified it is mentioned in the Finish Nature Conservation Act (*Luonnonsuojelulaki*) and Criminal Code (*Rikoslaki*).

4 It can be compared to the Anglo-Saxon "right of way".

5 Swedish Constitutional Law (*Regeringsformen*), 2:15.

6 Mainly in chapters 2 and 7.

7 While the term "*allemansrätten*" is not defined in law, initially being a customary legal principle, it is usually interpreted in the following manner: Short-term stay usually means a 24 hours stay. The public is allowed to pick berries, flowers, mushrooms, cycle, hike, swim, etc. The public may not do any harm to the nature, land, crops, animals, and so on. The public may not disturb the private residences.

be a physical space. As such, the concept of commons is typically nowadays divided in two – the *natural commons* which consists of nature and the resources in nature such as land, water, air; and the *human* or *cultural commons* which consists of the man-made, intellectual and cultural resources and comprises broadly of language, knowledge, ideas, images, rites, expressions, styles, beliefs, etc. (Hardt 2010. See also (eds.) Bertacchini, Bravo, Marrelli & Santagata 2012). Thus, there are (at least) two types of commons: the natural commons and the human made, cultural commons. Within the second type of commons, namely the cultural, we find the aesthetic expressions, cultural heritage and works of art.

In economic terms the commons is often presented within a "prisoner's dilemma" setting, that is, as a paradox where property that is somehow managed in common also produces free riders and as a consequence may result in an over-use and eventual peril of the underlying resources, depreciation of value, and that it therefore can undermine individual ownership rights. This tendency can lead to the so-called *tragedy of the commons.*[8] This is part of a larger argument that makes the claim that resources will always be best managed in private, by virtue of the incentives bestowed on the individual owner by the private property rights as a legal and economical construction. Elinor Ostrom, the Nobel laureate in Economy, managed to show in her pioneering work *Governing the Commons: The Evolution of Institutions for Collective Action*, (Ostrom 1991) how this is not necessarily always the case and how the concept of the commons as a tool, *on the contrary*, can mean an optimal management of resources, particularly when it comes finite resources in nature (see also Lessig 2001: 94).

UNESCO divides world heritage in two categories: natural and cultural. If natural heritage is envisioned as a natural commons that partly can be governed by such a legal principle as the various forms of the Scandinavian *allemansrätten* it warrants the question whether this rationality can be transposed to the cultural landscapes? It can be discussed whether the same type of legal reasoning could also govern the *cultural* commons that

8 In the much discussed and nowadays legendary essay by Hardin, 'The Tragedy of the Commons' (Hardin 2009, [1968]) he envisions a pasture, where animals graze, that is open to all shepherds. Such an open pasture eventually prompts the egotistic shepherds to overpopulate it and overuse it, Hardin argues. The egoistic shepherds will be driven by the unlimited access to the pasture that will benefit them. This will in turn lead to overgrazing of the pasture, which in its turn will result in the destruction of an otherwise fertile land. Hardin thus concludes in a much-quoted passage: "Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit—in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all." (Hardin 2009:246).

comprises of the common cultural heritage that is (constantly being) created by the human intellect, knowledge, skill and ingenuity and resources connected to it such as cultural expressions and works of art. In order to provide an answer to this question we must now start talking about the legal concept of the cultural commons more seriously and ask whether a cultural *allemansrätten* can be conceived of legally. And could it, as with its natural counterpart, be inscribed in law, even constitutional law?

I propose that it is possible, provided that some dogmatic legal constructions and principles are reimagined in order to reach beyond certain obstacles that have so far hindered the construction of the legal cultural commons. Such obstacles are for instance the (false?) dichotomies e.g. the notion of the public and the private as opposites, or that ownership of cultural works can either be governed by a legal concept that is conceptually closed (e.g. individual intellectual property rights) or open (i.e. a reduction or removal of the intellectual property rights for the benefit of for instance freedom of expression, free open access, and so on).

Particularly in the Scandinavian legal traditions, we are quite accustomed to legal constellations such as *allemansrätten* as a right to *access*. Furthermore, the Swedish Environmental Code is based on principles and conceptions that are able to handle various seemingly different interests simultaneously (e.g. conservation of nature and the biospheres, as well as the interests of the land owners, the state, the public, future generations), in an economically and democratically sustainable manner. Could the same be done for the *cultural* environment?

It can be argued that today the natural and cultural resources can be equated. The public has a claim on the right to access both the natural and the cultural commons, a claim on both the natural and cultural spheres; a claim on equitable access to vital resources needed in order to feel well, partake in the democratic community, and simply lead a (perhaps Aristotelian?) good life. As opposed to the natural resources, the cultural resources are not, necessarily, dwindling. It means that at least Ostrom's conclusions can possibly be transferred to the cultural sphere (see also Hess & Ostrom 2007). I propose that a concept of the cultural commons, inscribed in law, does not have to presuppose the removal of entitlements, or the restriction of individual rights as intellectual property rights. On the contrary, it has to do with conceiving of an economically, culturally and democratically *sustainable management* of the cultural commons that comprises of cultural resources and cultural heritage, and that takes into consideration all types of interests (owners, users, state, public, future generations and so on). Such a legal concept, based on the constellation

of a number of interests, can be envisioned by employing the rhizome theory developed by Gilles Deleuze and Félix Guattari and discussing a rhizomatic jurisprudence.

Rhizomatic jurisprudence – resolving the dichotomies

Gilles Deleuze wrote several books on art (Deleuze 2003; Deleuze 2009, Deleuze 2010, etc.). And a lot has been written on the subject of Gilles Deleuze and art (e.g. Sauvagnargues & Bankston, 2013). Perhaps an equally vast amount of studies have been conducted on the topic of jurisprudence and art (e.g. Douzinas & Nead 1999, Ben-Dor 2011). In recent research various interesting connections have even been made between Deleuzian philosophy and jurisprudence (Bruncevic 2014; de Sutter & McGee (eds.) 2012; Mussawir 2011a; Mussawir 2011b; Lefebvre 2009; Braidotti, Colebrook & Hanafin (eds.) 2009; Lefebvre 2007; Moore 2007; Lefebvre 2006; Lefebvre 2005; Moore 2004, Moore 2000). In *Fixing the Shadows* (Bruncevic 2014). I discuss how a Deleuzeoguattarian approach to jurisprudence can further enable access to art by envisioning and constructing a legal concept of the cultural commons. Some main arguments of that study are presented here.

Gilles Deleuze is one of the twentieth century's most important thinkers (if we are to take Michel Foucault's word for it). Together with Félix Guattari, he developed the concept of the "rhizome" (*le rhizome*) in their influential work *A Thousand Plateaus: Capitalism and Schizophrenia* (Deleuze & Guattari 2011). As a philosophical tool the rhizome is complex to outline by its very nature. The rhizome can be described as a concept that promotes connectivity, heterogeneity and multiplicity. The concept challenges cognitive hierarchical systems and binary reasoning. It describes alternative modes of organisation that are not dependent on, either metaphorical or actual, vertical hierarchies, that produce binary opposites that lock reasoning into paradoxes. Such vertical hierarchies are usually opposite-based, and can give rise to a steady decrease of possible alternatives in philosophy, or I as am exploring here, in jurisprudence.

The critique of systems and vertical hierarchies in legal philosophy is certainly nothing new or unfamiliar to the researchers in the realms of critical or alternative jurisprudence (Douzinas 2014). What the rhizomatic approach adds to the critical jurisprudence is a methodological possibility of providing both the critical as well as, in Deleuzian manner of speaking, the *clinical* (Deleuze 1998) i.e. the possibility of revealing the potential of law and conceiving of alternative jurisprudential concepts and tools. The particular theoretical tools that the notions of connectivity, heterogeneity and multiplicity produce enable the conception of such a legal concept as the cultural commons, a constellation concept that connects the private *and* the public, the open *and* the closed, the ownership

and the access. The rhizomatic approach allows the *or* to be turned into a performative *and* with the application of the Deleuzeoguattarian theory:

> "A rhizome has no beginning or end; it is always in the middle, between things, interbeing, intermezzo. The tree is filiation, but the rhizome is alliance, uniquely alliance. The tree imposes the verb 'to be', but the fabric of the rhizome is the conjunction, 'and... and... and...'" (Deleuze & Guattari 2011: 27).

The paradox of access to art has so far been this: artworks are legally conceived of as *either* privately closed off though e.g. intellectual property law and where access is granted case-by-case, often in a commercial manner. In such a case one or several individuals own the artwork and the person who can afford access is the one who is granted access: the artwork is seen as a commodity. *Or* the artwork is legally conceived as completely open, as a free expression or as part of the public domain, and as such it is un-owned or owned by everybody. In the cases where artworks are legally constructed as fully open or in the public domain the incentive to create and exploit one's intellectual works diminishes as this approach restricts or removes the individual ownership right, and this can lead to fewer works, less diversity and *ipso facto* become a *cultural* tragedy of the commons. The rhizome theory provides an alternative to this conundrum.

The core idea of the rhizome theory in law may be that it appears to be able to transcend these, admittedly false, dichotomies between e.g. public and private, open and closed, as it is stressing not the hostile opposites, but rather interlinkage, the and... and... and... (Deleuze&Guattari 2011: 27) and the potential of constructing legal concepts based on alliances rather than oppositions. Which means that a cultural commons as a concept can be formulated legally, with e.g. some inspiration from the Scandinavian *allemansrätten*. In this manner, as we shall see shortly, the principles of the rhizome do not *dissolve* but rather *resolve* the dichotomies so that a constellation based concept can be formulated legally, one that can tend to several different interests at the same time.

Therefore, jurisprudence may have rhizomatic qualities. The concept of *allemansrätten* is a prefect example of the rhizomatics of law, where the idea of the public and the private can co-exist and not necessarily form a hostile opposite. The concept of the cultural commons can thus be moved away from the prisoner's dilemma setting, from the tragedy of the commons, from being understood as paradoxical in terms of the private and public, or as only belonging to the extra-legal, political, sociological, or economical realms. The rhizome theory attracts legal attention as it disrupts the need for a distinction between

an inside and an outside of law, of describing public and private as each other's opposites, and it provides a legal alternative beyond the notion of ownership and access as each other's antitheses.

The cultural commons and the Deleuzeoguattarian forms of possession

The models of possession developed by Deleuze and Guattari, within the setting of the rhizomatic theory, can potentially handle a concept that is a constellation of private and public. These two models of possession are *the sedentary model* and *the nomadic model* respectively. Deleuze and Guattari distinguish the two forms of possession by claiming that the first is *territorialised* (i.e. within a known economical form of production and within a territorially defined legal order) and that the second is *deterritorialised* (i.e. the one that emerges from new modes of production, with e.g. new technology, new laws, new forms of management, the one that cannot instantly be recognised by any one readymade economical or legal principle only). The sedentary model is for instance dependent of stable forms of regulation, of defined territories and jurisdictions. This sedentary model presupposes *enclosure* or *exclusivity;* in order to possess material property the object has to be enclosed and governed by individual property rights. If the object of possession is immaterial it has to be enclosed conceptually by e.g. individual rights and exclusivity principles, for instance intellectual property law. Contrary to the focus on enclosure and exclusivity that are both tightly connected to the sedentary model, the nomadic model does not imply any such exclusion or stable territory-based possession (Mussawir 2011:107). Under the nomadic model, Mussawir writes, "possession implies a different kind of relation that *cannot sustain any of these elements of establishment, exclusion and lack*. Since possession does not imply division, exclusions or stable territory, [it] requires other factors altogether" (Mussawir 2011:107).

The sedentary form of possession is dependent on the possibility to divide and exclude – it requires a *striated space*, a territorialised legal order. The nomadic form of possession challenges the notions of division, exclusivity, territoriality and enclosure, it is a *smooth space,* not (yet) territorialised by the legal order. However, when Deleuze and Guattari discuss the nomadic forms of possession they do not present it as the opposite of the sedentary form. They write:

> "[W]e must remind ourselves that the two spaces in fact exist only in mixture: smooth space is constantly being translated, transversed into striated space; striated space is constantly being reversed, returned to

> smooth space [….] and the two can happen simultaneously." (Deleuze & Guattari 2011: 524)

It is this very continuity, the constant movement from one form to another, the unfinished transitions from the one form to the other, that must be understood and it is imperative that it be kept in mind when discussing the concept of the commons (natural as well as cultural). The concept of the (again, natural as well as cultural) commons can never be approached as a static, or *striated*, legal concept or form of possession. The concept of the commons must be understood as a deterritorialising, nomadic legal form of possession. However hard we might try, it is still for instance very difficult to territorially govern or enclose digital and dematerialised, cultural forms of expressions. Within the Deleuzeoguattarian theory, possession cannot be equated to 'ownership' either, at least not 'ownership' as we have come to know it. Rather, the modes of possession indicate that to possess does not necessarily equate 'to own'. As Leif Dahlberg argues with reference to digital media content and Roman Law:

> "[T]he concept of property is complex, and possession (possessio, *occupatio, usucapio,* or *detentio),* for example, does not automatically or necessarily lead to an exclusive and absolute ownership (*dominium*). Whereas in ancient Rome this distinction between possession and ownership generally applied to property in land, today it also bears on the ways in which media users may use the digital media content they have acquired or purchased." (Dahlberg 2011:264)

The concept of the cultural commons may appear to be as a 'the opposite of private' or as an equal to 'public' form of possession. But it is not. It is a moving, iterant nomadic form of possession. When Lawrence Lessig for instance comments on the cultural commons he claims the key issue is that commons are producing something of value. This value can be a resource e.g. in terms of decentralised or open innovation (Lessig 2001: 85). He argues further:

> "[Commons] create the opportunity for individuals to draw upon resources without connections, permission, or access granted by others. They are *environments* that commit themselves to being open. Individuals and corporations draw upon the value created by this openness. They transform that value into other value, which they then consume privately." (Lessig 2011:85)

An environment in which the open access and the private exploitation and consumption do not cancel each other out is precisely the rhizomatic quality of the Deleuzeoguattarian forms of possession that we need, one that opens the theoretical possibility of envisioning and formulating a legal concept where the two can be connected instead of presented as a false dichotomy. As such, it does not dissolve the dichotomies such as private and public, they remain separate. However, it *resolves* them, from being antagonistic opposite-based pairings, instead becoming an alliance in a rhizomatic concept within the nomadic form of possession.

A legal concept of the cultural commons as a "cultural *allemansrätt*" – a possibility

As we saw above, *allemansrätten* in nature comes with responsibilities in terms of the privacy and ownership; and the person who is given the right to access nature is also simultaneously given an obligation not to harm, disturb, litter, nor to damage the land, its resources, biospheres, the animals or the crops. When we finally arrive at *allemansrätten* in culture, it too must come with similar set of limitations, obligations and responsibilities, i.e. to not harm the underlying individual ownership right and the resources connected to it. A right that allows the public to, during a short term and under certain conditions, legally access the cultural landscapes and, *current* and future as well as older or even ancient, cultural heritage. This can be done through a legal constellation that focuses on sustainability of cultural heritage, both the heritage that has existed for centuries as well as the one that is coming into existence now and that is constantly being produced.

The rhizomatic approach to legal reasoning opens up the possibility to conceive of such concepts that can handle the public and the private together as an alliance in law. The sedentary and nomadic forms of possession indicate that there is a sliding scale between ownership, possession and access, and this can be upheld and recognised legally in a concept of cultural commons.

Enabling access to artworks through a legal concept of the cultural commons works thus *in conjunction with* current intellectual property and other private ownership laws. A lot of inspiration can be drawn from the institutions that are already somehow managed and governed as cultural commons such as our museums, libraries, archives, open access platforms, commons initiatives... They also show us that principles of free public access do not necessarily preclude profit.

Access to art through a cultural commons is the equivalent of the hiking, camping and the picking of berries in the cultural environment. The notion of "environment" is also what further enables the connection with the natural commons and *allemansrätten* to be made even more comfortably. It has to do with the public's cultural health and wellbeing. It certainly has to do with democracy. This approach is both an economically and democratically sustainable management of our common cultural resources.

The rationale of this article has been this, to present some musings on *the possibilities* in terms of rights to access that can be inscribed in law through a legal concept of the cultural commons. This potential is already there in many of our legal orders. I have presented *allemansrätten* as one such example. UNESCOs regulation of world heritage may be another. A commons-based access, as has been argued here, is capable of handling the private *and* the public simultaneously.

In critical legal studies the constructivist approaches to legal concepts are sometimes frowned upon, the critical is often favoured over the clinical. The Deleuzeoguattarian approach to legal philosophy allows for an alliance between the critical and the clinical. This is one among many connections that is enabled by the rhizomatic approach. *This is rhizomatic jurisprudence.* But the clinical presented here is only the beginning of this on-going approach. The next step is to go ahead and construct the legal concept of the cultural commons, one that can handle access to current as well as to ancient cultural heritage. It could maybe be formulated as the "cultural *allemansrätten*", or as a principle that is inscribed in the national laws of Europe? Or maybe as an EU directive? Or maybe… To achieve that, we have to acknowledge the possibilities of law and we now not only need to, we *have to*, talk about the legal concept of the cultural commons.

References

Bailey, Martin (2003-01-21). 'Shifting the blame' at Forbes.com. http://www.forbes.com/2003/01/21/cx_0121hot.html. Last accessed 24 July 2014.

Ben-Dor, Oren (ed.) (2011). Law and Art: Justice, Ethics and Aesthetics, Routledge.

Bertacchini, Enrico; Bravo, Giangiacomo; Marrelli, Massimo and Santagata, Walter (eds.) (2012). Cultural Commons: New perspectives on the Production and Evolution of Culture, Edward Elgar.

Braidotti, Rosi; Claire Colebrook and Patrick Hanafin, (eds.) (2009). Deleuze and Law: Forensic Futures Basingstoke: Palgrave Macmillan.

Bruncevic, Merima (2014). Fixing the Shadows: Access to Art and the Legal Concept of Cultural Commons, Juridiska Institutionens Skriftserie, University of Gothenburg.

Dahlberg, Leif (2011). 'Pirates, Partisans and Politico-Judicial Space', in Law & Literature, Vol. 23, Issue 2, pp. 262-281, p. 264.

Deleuze, Gilles and Félix Guattari, (edition from 2011 [1988]). A Thousand Plateaus: Capitalism and Schizophrenia, (trans. and foreword) Brian Massumi, London: Athlone.

Deleuze, Gilles (2010, [1985]). Cinema 2: The Time Image, (trans.) Hugh Tomlison and Robert Galeta, Continuum.

Deleuze, Gilles (2009 [1983]). Cinema 1: The Movement-Image, (trans.) Hugh Tomlinson and Barbara Habberjam, University of Minnesota Press.

Deleuze, Gilles. (2003 [1981]). Francis Bacon: The Logic of Sensation, (trans.) Daniel W. Smith, Continuum.

Deleuze Gilles, (1998). Essays Critical and Clinical, (trans.) Daniel W. Smith and Michael A. Greco, London, Verso.

Douzinas, Costas (2014). A Short History of the British Critical Legal Conference or, the Responsibility of the Critic' in Law & Critique 25:187–198.

Douzinas, Costas and Lynda Nead, (eds.) (1999). Law and the Image: The authority of Art and the Aesthetics of Law.

Hardin, Garrett (2009, [1968]). 'The Tragedy of the Commons' in Journal of Natural Re-sources Policy Research, 1:3, 243-253.

Hardt, Michael (2010). 'The Common in Communism', in Rethinking Marxism: A Journal of Economics, Culture & Society, 22:3, 346-356.

Hess Charlotte and Elinor Ostrom, (2007). Understanding Knowledge as a Commons: From Theory to Practice, MIT Press.

Hyde, Lewis (2012). Common as Air: Revolution, Art and Ownership, Union Books.

Lefebvre, Alexandre (2009). The Image of Law; Laurent de Sutter, Deleuze: La Pratique du Droit Paris: Michalon.

Lefebvre, Alexandre (2007). 'Critique of Teleology in Kant and Dworkin: The Law Without Organs (LwO),' in Philosophy Social Criticism 33: 179–201.

Lefebvre, Alexandre (2006). 'We Do Not Yet Know What the Law Can Do' in Contemporary Political Theory 5: 52–67.

Laurent de Sutter and Kyle McGee, (eds.) (2012). Deleuze and Law, Edinburgh University Press.

Lefebvre, Alexandre (2005). 'A New Image of Law: Deleuze and Jurisprudence,' in Telos 130: 103–126.

Lessig, Lawrence (2001). The Future of Ideas: The Fate of the Commons in a Connected World, New York: Random House. 94.

Moore, Nathan (2007). 'Icons of Control: Deleuze, Signs, Law,' in International Journal for the Semiotics of Law 20: 33–54.

Moore, Nathan (2004). 'So You Love Me' in Law and Critique 15: 45–64.

Moore, Nathan (2000). 'A Distant Hand Fell From His Shoulder' in Law and Critique 11: 185–200.

Mussawir, Edward (2011a). Jurisdiction in Deleuze: The Expression and Representation of Law, Rutledge.

Mussawir, Edward (2011b). 'The Activity of Judgment: Deleuze, Jurisdiction and the Procedural Genre of Jurisprudence' in Law, Culture and the Humanities 7: 463.

Ostrom, Elinor (1991). Governing the Commons: The Evolution of Institutions for Collective Action, Cambridge University Press.

Sauvagnargues, Anne and Samantha Bankston, (2013). Deleuze and Art, Bloomsbury Publishing.

Valguarnera, Filippo (2013a). 'Commons: framtid eller rättsligt kätteri?' in Miljörättsliga Perspektiv och Tankevändor: Vänbok till Jan Darpö och Gabriel Michanek, (eds.) Lena Gipperth and Charlotta Zetterberg. Uppsala : Iustus.

Valgarnera, Filippo (2013b). 'Access to nature and intergenerational justice' in (eds.) Saki Bailey, Gilda Farrell and Ugo Mattei, Protecting Future Generations Through Commons, Trends in Social Cohesion, No. 26, Council of Europe Publishing.