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*Norwegian Life and Society*

# **THE NORWEGIAN LEGAL SYSTEM**

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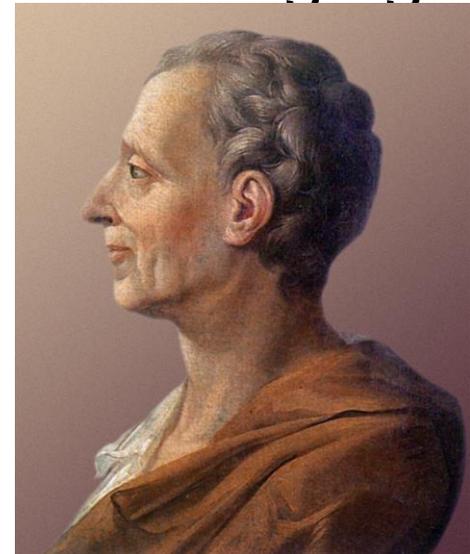
# Outline

1. Introduction
2. Foundation: the Constitution of 1814
3. The legislative branch: the parliament
4. The executive branch: the government
5. The judiciary: the courts
6. Common or civil law system?
7. Major trends

# 1. Introduction

How did the European legal systems, including the Norwegian legal system, come about?

- 17th century 'Age of Enlightenment' challenging absolutist monarchies
- Montesquieu
  - separation of powers doctrine
  - system of 'checks and balances'



## 2. Foundation: The Constitution of 1814

- 17<sup>th</sup> of May 1814: adoption of Norwegian Constitution

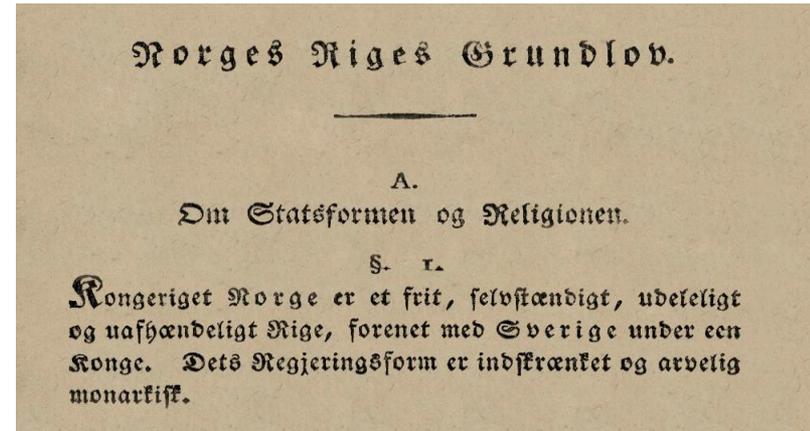
*syttende mai/Grunnlovsdagen*



- Norway goes from union with **Denmark** into union with **Sweden** as consequence of Napoleonic Wars
- **1905**: Norwegian independence; Prince Carl of Denmark as the first “Norwegian” King (becomes **King Håkon VII**)

# The Constitution

- inspired by US, France radical and democratic (sovereignty of the people – elected legislative body: the *Stortinget*)
- constitutional monarchy
- legally binding, limiting legislative and executive powers
- judicial review as part of division of powers



# 3. The Parliament (Stortinget) – the legislative branch

- “The people exercise the legislative power through the Stortinget”
- unicameral
- power to issue new legislation
- principle of legality
  - rule of law
  - state authorities obliged to act through parliamentary legislation (e.g. criminal sanctions, taxes)
  - citizens able to foresee their legal position (legal certainty)
- constitutional limitations on legislator
  - division of powers
  - judicial review (fundamental rights)
- **Sametinget** representing Sami people



## 4. The Government – the executive branch

### The Council of State:

- chaired by the King
- adoption of decisions
  - matters of main significance



### The governmental conference:

- chaired by the Prime Minister
- preliminary discussions



# The executive branch (2)

## Legislative process:

- Substantial influence on the legislative process (“lov”) through control of administration (ministries)
- Power to issue directives and regulations (“forskrifter”) – delegated powers

## Executive power – enforcing legal order:

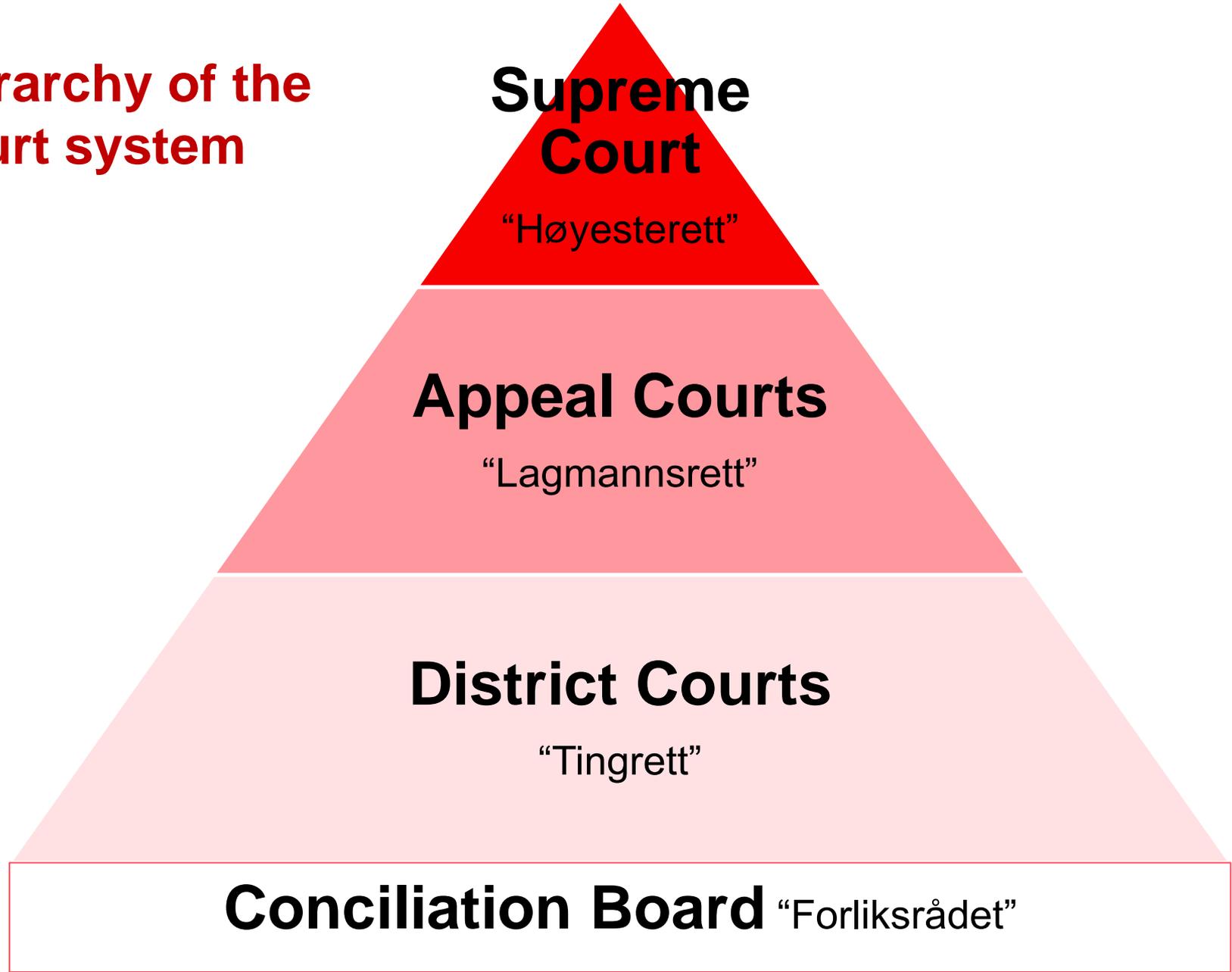
- Control of police and military
- Criminal cases
- Civil cases
- Other fields of law

## 5. The judiciary – the court system

- independence of courts
- control of executive and legislative (judicial review)
  - May 2014 amendments to Constitution: more fundamental rights
- other tasks of the courts
  - general jurisdiction
  - criminal cases
    - no investigative courts
  - civil cases
    - not all disputes settled in courts of law
    - conciliation proceedings
  - administrative cases
- courts can only rule in *legal matters*
- court decisions ‘within reasonable time’



## Hierarchy of the Court system



## District Courts

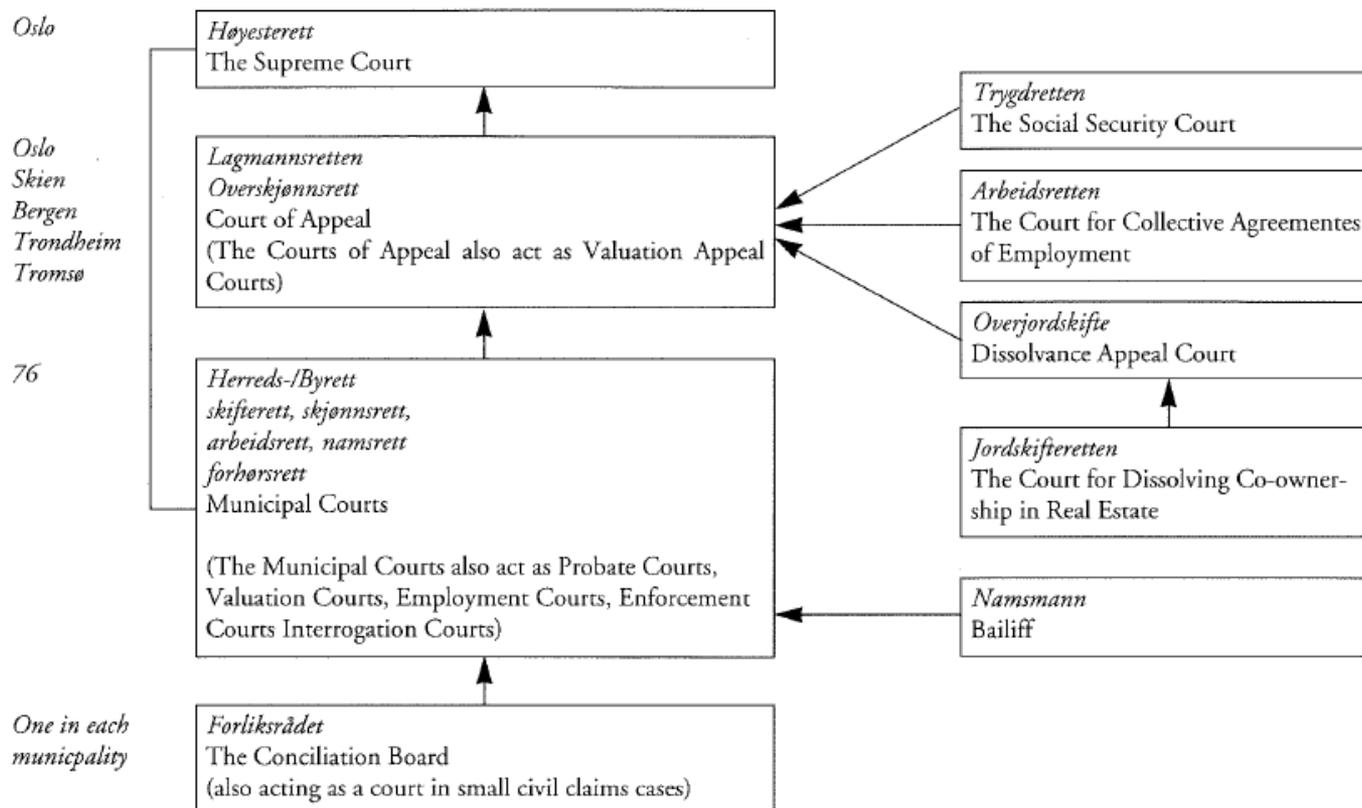
- 83 District Courts
- jurisdiction in all matters (general jurisdiction)
  - no division of ordinary courts and administrative courts
  - no division of criminal courts and civil courts
  - no separate constitutional court(s)
  - **Special courts**: Labour Court (Arbeidsretten) and The Land Consolidation Courts (Jordskiftedomstolene)

## Appeal Courts

- only 6 Appeal Courts
- right to appeal
  - in civil cases
  - in criminal cases

*Structure of the court system*

The following diagram sets out the hierarchy of the courts in the Norwegian legal system :



Composition of the Court

Supreme Court :	5 professional judges
Appeal Court :	3 professional judges <sup>1</sup>
Municipal Courts :	1 professional judge <sup>1</sup>

# The Norwegian Supreme Court

## Restricted right to appeal

- determined by Appeals Selection Committee

## Purpose

Principal goal: *ensure clarity and development of the law within the framework that follows from the Constitution and law*

- Not to ensure right outcome in each and every case
- Ensure uniformity of legal process
- Resolve matters where the law is unclear
- Develop the law
- Decide in matters of principle



Above: **Toril Marie Øie**, the first woman ever to hold the post of Chief Justice of the Supreme Court of Norway (2016)

# Composition of the courts

## Professional judges

District Courts: 1/2 (Cv+2) (Cr+3)

Appeals Courts: 3 (Cv/Cr+ 4)

### Supreme Court

- 1 of the 2 chambers: 5
- Grand Chamber: 11
- Plenary Session: 20

## Lay judges

### Civil cases:

None, but parties may demand

### Criminal cases:

Lay judges in majority in first and second instance. None in the Supreme Court.

Jury trials in major criminal cases (3+7)

# Court proceedings and hearings

## Civil cases

strong oral tradition

- witnesses, documentary evidence and legal arguments presented directly before the court during “main hearing”

## Criminal cases

oral tradition even stronger

- judges as “*tabula rasa*”
- presumption of innocence
- evaluation of evidence
- principle of contradiction

principle of transparency

## 6. A civil or common law system?

### Civil law

- extensive and detailed legislation
- principles of law; strong doctrines

### Common law

- case-law developed by courts of law
- tradition

### Norwegian law

- importance of parliamentary legislation
  - legislation less detailed
  - trusts courts to find “spirit of the law”
- but courts emphasise the “preparatory works” of legislators
  - Supreme Court’s case-law highly important
    - Courts recognised to “develop law”
    - Fields of law that are not legislated
- Scandinavian “legal pragmatism” – fewer principles and doctrines

# 7. Some major trends affecting the Norwegian legal system

- wide administrative powers in aftermath of WWII
- increased protection of citizen's position
- protection of those in weaker positions
- deregulation – more free market?
- EU and EEA
- human rights
- soft on crime – tougher on crime?