

# **The emergence of real property rights in Denmark – A case of path dependent institutional change**

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## Abstract

Motivated by Hernando de Soto (2000) and informed by Douglass C North (1990), the emergence of real property rights in Denmark during a millennium is described in Stubkjær (2007). The present paper aims at reflecting these observations of historians within a theoretical framework.

Hollingsworth (2000) offers such framework, in terms of fairly stable institutional arrangements, which coordinate the interplay between the state and various other actors, and is detailed into institutional sectors, e. g system of education, legal system, etc. Moreover, Mahoney (2000) offers an elaborated set of concepts which assist in the analysis of institutional arrangements and eliciting patterns of institutional reproduction.

Reforms introduced in the 18th century is claimed to set out a Danish path of dependency. The reform setup was contingent on previous events, notably the Reformation in the 16th century, including transformation of landed church property into crown land, as well as the codification of scattered rules into the Danish Code of 1683. The body of the paper applies the theoretical framework on historical evidence including:

1. The 18th century Danish version of the enclosure movement, bringing about individual ownership for a substantial part of the rural population
2. The introduction of mortgage associations from 1850, allowing ordinary owners access to credit at low cost
3. The codification of land registry practises as of 1926, which maintained Danish Code principles, different from the prevailing German system
4. The acquisition, from the 1960s, of individually owned detached houses by a major part of the working force, while natural resources were simultaneous protected through effective land use planning.

Similar patterns of institutional interaction during the four segments support a claim of path of dependency. The main contribution is the demonstration of institutional arrangements, which support the emergence of real property rights.

## 1. Introduction

Why are some countries economically much more successful than others? Such questions have motivated a wide variety of research. For example, Richard A. Easterlin motivated such research in his Presidential address to the Economic History Association in 1980. A variant of the question goes: Why capitalism triumphs in the West and fails everywhere else? as stated in the subtitle of the much quoted book by Hernando de Soto (2000). De Soto answers this question, in large part, by pointing to the fact that most of the assets in successful Western nations have been integrated into one formal legal property system, which raises the question of how this formalization came into being. According to de Soto “[t]he Western nations have so successfully integrated their poor into their economies . . . [yet] they have lost even the memory of how it was done, how the creation of capital began . . .” and, to remedy the problems the world is currently facing, “[t]hat history must be recovered” (2000, 8, 9).

In 'The Institutionalization of Real Property Rights: The Case of Denmark' (2008) the present author contributed to answering the call of de Soto. The book chapter notes how the institution of real property rights has been addressed and traced historically by Douglass C. North (1990), and in the first part of the chapter applies North's model of long term development to reflect on the Danish case. North contrasts the economic development of North and South America. He finds that North America from the 1750s onwards is characterized by *religious diversity, local political control, and the growth of assemblies*, all of which it inherited from Britain. Within the said framework the colonist entrepreneurs were free to develop (1990, 102). Contrarily, the economic development of South America is characterized by North as involving the conquerors' imposition of a "*uniform religion and uniform bureaucratic administration on an already existing agricultural society.*" French- and U.S.-inspired constitutions were installed during the early nineteenth century, but in spite of that, efforts towards decentralization of powers were unsuccessful after the first years of independence (1990, 102–3).

The Danish evidence is puzzling, as Denmark had a uniform (Lutheran) religion well beyond 1849 where a new constitution introduced freedom of religion. Moreover, like South America, Denmark had a uniform bureaucratic administration. 'For the case of Denmark it seems that bureaucracy at least permitted if not fostered an economic development comparable to that of North America' (Stubkjaer, 2008, 235). The puzzle is resolved by interpreting the factor of the growth of assemblies in the wide sense as including the creation of socially active associations:

In the U.S. from the beginning of the eighteenth century, and in Denmark from the middle of the nineteenth century, people could spontaneously unite into associations, voice their demands, and through the associations contribute to the solving of societal problems by applying domain-specific knowledge to the modification of institutions. In the Catholic south, such associations and their intentions tend to be assessed and monitored by the establishment, generally a resource-consuming process, which might well confuse the original intentions. (Stubkjaer, 2008, 238)

The second part of the book chapter explores Danish evidence in more detail, as it assesses the existence and spread of individual real property rights, as well as the impact of mortgaging. It finds that by the year 1700 real property rights did exist in practice, yet less than 1 percent of the population actually had owner status. Furthermore, owners, whether it were crown, landlord, or tenant, were bound to one another by a host of rules, contracts, and conventions. By 1800, a land reform had changed the situation and about half of all farm holdings were acquired by tenants as freeholds. In the period 1919-1930, fiefs (manors) were forced into fee simple (free land), which allowed farm workers to become smallholders. Also, ordinary owners' obligations towards family and heirs were lifted. And finally, a construction boom 1960 - 80 resulted in 1,130,241 detached houses and farm houses being owned by individuals in 2001 (out of a population of 5.3 million). As for the impact of mortgaging, it notes that mortgaging was available throughout the period studied. The main impact of the Danish mortgaging scheme is found when it facilitated the extension of real property rights to skilled blue collar workers after the 1960s and contributed to a successful urban development. However, the specific importance of mortgaging for general economic development seems not corroborated by the Danish evidence.

The present paper addresses largely the same Danish body of evidence, but aims at casting it in a more rigorous form by adopting the conceptualization of institutional change of James Mahoney (2000). It thus intends to identify a critical juncture, the preceding contingent events,

and a subsequent chain of dependent events, where self-reinforcing mechanisms establish new institutional arrangements in a path-specific way, as detailed in the following section on methodology. The self-reinforcing mechanisms found in the Danish context are, to large part, associations which unfold in the social space between individuals and state(s). The principle of subsidiarity, which was adopted by the 1992 Maastricht Treaty on European Union, point towards the benefit of leaving tasks to subordinate units. Therefore, the principle is briefly introduced here and it is shown how Danish 19th century events abides with the principle even before it was coined.

Before delving into methodology, mention must be made of another investigation of the dichotomy of developed states and developing or even failed states, namely Francis Fukuyama's 'The Origins of Political Order'. Like de Soto, he looks for explanations on, how to arrive into a rich, stable developed country. 'One of the problems with Whig history is that it makes England's history paradigmatic for the rise of constitutional democracy as such. There were, however, other paths ..'. ... 'Most people .. [of the rich, stable countries] .. have no ideas of how Denmark itself got to be Denmark - something that is true for many Danes as well.' (2011, 14). Fukuyama devotes a section on 'Getting to Denmark' (pp 431 - 434) and his points will be integrated into the subsequent recapitulation of Danish events. Interesting in the present context is also that Fukuyama considers the Protestant Reformation of 1536 as the 'single event that sent Denmark .. off on a distinct development path' (p. 432). It is argued below that the turning point, or critical juncture in Mahoney's terms, was the land reform with liberation of serfs of the 18th century. Anyway, the availability of two positions contributes to clarify the matter.

The paper is structured as follows: After section 2 on Methodology, Danish history before the critical juncture is summarized in section 3. The issue of critical juncture is addressed in section 4, while section 5 details the self-reinforcing mechanisms at work during subsequent centuries. Discussion of outcomes (6) and Conclusion (7) closes the paper. Reference is occasionally made to statute acts. Following Danish convention, sections of acts are called paragraphs and designated with §, to avoid confusion with the sections of the present paper.

## 2. Methodology

Searching for better understanding of what constitutes institutional analysis, J. Rogers Hollingsworth discusses the terminology applied by Douglass North (2000). Skipping details of this discussion, the terminology of North is adhered to in the following, which means that institution is understood as the tacit norms and written rules that shape the repeated patterns of human interaction. Also in line with North, institutions are different from organisation. Organisation are those groups of people and the governance arrangements (articles, decision structures) they create to coordinate their team action against other teams performing also as organizations. While a bank is generally dubbed a 'financial institution', in institutional analysis it is considered an organisation. Associations are a sub-type of organisations.

Hollingsworth suggests that institutional analysis includes a specification as regards the level of enduring of components, and offers a structuring of institutional components in five layers or types, cf Table 1 (his references to sources are omitted here):

<p><b>Table 1: Components of institutional analysis, according to J.R. Hollingsworth (2000)</b></p>
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Hollingworth's structuring of institutional components has a striking similarity with the levels of social analysis, proposed by Oliver E. Williamson (2000), cf Table 2 (phrasing modified):

<b>Table 2: Levels of social analysis according to O. Williamson (2000)</b>		
<b>Levels of social analysis L1..L4</b>	<b>Frequency (Years)</b>	<b>Examples</b>
L1: Informal institutions: Traditions; religion	$10^2$ to $10^3$	Proclamation and change of belief systems; reformations.
L2: The institutional environment: Who is authorized to change rules	10 to 100	Constitutional changes. Redesign of government, e.g decentralization. Implementing or changing of property rights, e.g. restitutions.
L3: Governance: Play of the game - changing rules	1 to 10	New organisations. <i>Institutional transactions</i> . Change of rules for processes and information flows.
L4: Resource allocation and employment	Continuous	<i>Transactions in assets</i> : e.g. purchase of house; Change of property unit: e.g. subdivision

A detailed analysis of differences and similarities is deferred here, as the tables suffice as background for stating that the reported Danish events generally relate to Williamson's level L2: Change in the institutional environment, but also include the levels above and below.

## 2.1 Path dependence

Having established an understanding of the level of social analysis, the focus now shifts towards establishing a set of concepts which allows for a consistent rendering of how an event in history A is related to a later event B. Following James Mahoney (2000), B is *contingent* on A, if - given a certain theoretical understanding of how causal processes work - B was not expected to take place, and yet the occurrence of B is more likely than random. Next, *critical junctures* are characterized by the adoption of a particular institutional arrangement from among two or more alternatives. According to Mahoney, these junctures are "critical" because once a particular option is selected it becomes progressively more difficult to return to the initial point when multiple alternatives were still available. As we shall see, the final part of this definition is not met by the Danish evidence. A critical juncture is indeed identified, but the alternatives available at the outset were by no means outruled during the next more than two hundred years. The third term is *self-reinforcing sequences*. Here, initial steps in a particular direction induce further movement in the same direction such that over time it becomes difficult or impossible to reverse direction. Economists characterize such self-reinforcing sequences with the expression "increasing returns", but we shall see that the Danish self-reinforcing motivation was not of a strictly economic flavour. Fortunately, Mahoney draws on Randall Collins and his framework for analyzing institutional reproduction in sociology. Here we find *Functional explanation* and *Legitimation explanation* which fits the

Danish perception of change. In Denmark, the functional explanation holds, as institutions were reproduced because they served a function for the overall system, namely “the sustained flourishing of the country”, besides being beneficial for the persons involved. The legitimation explanation holds that institutions are reproduced because actors believe it is morally just or appropriate. The religious aspect was addressed in some detail in Stubkjaer, 2008, and will be mentioned only occasionally here.

The above definitions of contingent events, a critical juncture, and self-reinforcing sequences or mechanisms are structuring the below analysis of how Danish events relate in path-dependent sequences.

## 2.2 The principle of subsidiarity

Article 5 of the Treaty on European Union, established 1992 in Maastricht, reads:

3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The principle was set out in some detail by Oswald von Nell-Breuning (1952), but it emerged already in 1931 in the Roman Catholic social encyclical *Quadragesimo Anno* (Pius XI, 1931). The document notes a ‘.. rich social life which was once highly developed through associations of various kinds.. .’ However, by the time of writing ‘there remain virtually only individuals and the State.’ (78). It finds that ‘.. it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do.’ (79). ‘Therefore, those in power should be sure that the more perfectly a graduated order is kept among the various associations, in observance of the principle of “subsidiary function,” the stronger social authority and effectiveness will be ..’ (80). A recent analysis of the term is provided by Jacques Pelkmans (2005).

The application of a 20th century concept on 18th century events does not intend to claim that the creators of 18th century institutional arrangements had a ‘principle of subsidiarity’ in mind. Rather, the principle serves as a frame for the presentation of Danish evidence concerning the provision and role of social entities operating between the state and the family or individual. These intermediate social entities interact with markets, because of the economic nature of their activities, but the market aspect is not a central issue in conventional Danish historical narratives. We shall see demonstrated by the following Danish evidence that the new institutional arrangements actually created markets, or occasionally regulated their function. The new market structures were sort of side effects of the implementation of institutional arrangements, the objectives of which were cast in existential terms.

## 3. Danish history before the critical juncture

The formalization of real property rights emerged in Denmark during the eleventh century through the influence of the expanding Roman Catholic Church. The oldest diploma known is a deed of gift from King Canute to the cathedral in Lund, dated May 21, 1085. Education of scribes took place at cathedral schools, in the context of cathedral chapters, which were established, for example, in Lund in 1085 and in Ribe in 1145. In 1479, the University of Copenhagen was established and lectured theology, medicine, and law.

General principles for the adoption of formal rules were only just beginning to emerge. Provincial codes appear in 13th century, e.g. Jyske lov of 1241. From 1360 on new kings had to agree to a Coronation Charter, modeled after the English Magna Carta of 1215. By the same token, the assembly of lords became the forum for adoption of new legislation, until absolutism was introduced in 1660. The later versions of Coronation Charters charged the king with the task of providing "happiness" for his subjects and specifically was admonished in writing to judge impartially.

The codes and Coronation Charters include quite specific regulations regarding the transfer of real property right, e.g. concerning the publishing of conveyance. As courts were in place across the country in 16th century, recording in chronological registers of conveyance and mortgage deeds was also requested.

It thus appears that real property rights were installed in 15th century Denmark, as formal conveyance did in fact transfer rights in land. However, as regards the implications of these rights one cannot be sure: Exchange of land and other assets was a way of establishing social relations, including mutual obligations, and the impersonal alienation of an asset is something that emerged very slowly. Furthermore, although the collections of rules generally include inheritance rules, we cannot be sure as to what bindings restricted the dispositions or - in other terms - whether the owner in fact was the individual person or the family (Stubkjær, 2008, 240f).

Lutheran Reformation occurred as of 1536. The first Lutheran king, Christian the Third, balancing between the factions of nobles, the major cities, external powers in Germany and the Netherlands, and the Catholic clergy, managed to get hold of the country by force. Church land and church offices, such as cathedral chapters, were taken over by crown administration without much further change. If real property rights existed, this seizure cannot be considered but a gross infringement on these rights. However, having obtained control, he occupied himself with the reestablishment of legal procedures. Careful management of crown contracting concerning entailed estates gave the crown badly needed income. The accounting practice quickly spread through the whole country. By the late seventeenth century, tax registers were in place both at the manors and centrally. They mentioned every holding, copyhold as well as freehold, and its duties.

The outcome of a Swedish attack on Denmark allowed the crown to ally with the burghers of Copenhagen and establish an absolutist state. The development of a 'state of justice' (German: Rechtsstaat) was fostered by the issuance in 1683 of the Danish Code, well hundred years before the comparable Code Civil of France. By about 1650, 47 percent of the land of the kingdom (not including boroughs) was under crown administration, including church holdings. Another 47 percent was owned by the nobility, while about 6 percent was freehold. Less than 1 percent of the population owned this land.

Francis Fukuyama, in his account on Denmark, mentions the Coronation Charters, the Reformation, and the 'increasingly sophisticated bureaucracy' of the absolutist state. However, his account emphasizes the impact of education performed by parish priests after the Reformation in 1536 (Fukuyama, 2011, drawing on Ove Korsgaard, 2008). In the context of preparing for examination at the confirmation of the about 14 years old boys and girls, the priest would teach them according to Martin Luther's Lesser Catechism. Moreover, the Lutheran emphasis on reading the Bible, and the extended availability of printed exemplars also encouraged reading ability. However, most authors attribute general education in reading

and writing to a later period, marked by the so-called Princess-schools from 1719 onwards, the printing of the first schoolbook: ABC, in 1731, and an act on general education of 1814. Undisputed is that the cathedral schools of the Catholic time were continued in terms of about ten such schools across the country (DH, 7, 148), secondly, that the Danish populace of 18th century was relatively well educated, and finally that by 1850, illiteracy was largely eradicated.

The educational impact of the priesthood, mentioned by Fukuyama and Korsgaard, could in addition to education of some sort be attributed to the fact that the parish priest, spanning an integrated spiritual and secular world view, acted as the local arm of state administration, which implied the communication of ordinances and orders to the village community.

#### **4. The critical juncture and its basic reinforcing mechanism**

Francis Fukuyama posits that 'If there is a single event that sent Denmark ... off on a distinct development path, it was the Protestant Reformation.' A subsequent change came in terms of a land reform, which he described as 'The critical political revolution [which] came in the period from 1760 to 1792, when an enlightened Danish monarchy progressively abolished a form of serfdom known as the *Stavnsbånd*, ..'. Finally, 'The second major event making possible modern Danish democracy ... [came in terms of a] 'farmer-based political movement inspired by the priest and educator N.F.S. Grundtvig ...'. [When the Danish welfare state finally arrived in 20th century] .. it was based not solely on an emerging working class but also on the farmer class, whose mobilization was facilitated at key junctures not by economic growth but by religion' (Fukuyama, 2011, 432-434).

A somewhat different interpretation of events is motivated in the following. However, Fukuyama's reference to religion as a key facilitator is fully endorsed. In the terminology of the Methodology section, institutional reproduction may be explained by *legitimation*: Danish actors conceived their behavior as morally just or appropriate (cf. Mahoney, 2000, 517).

Also, the interpretation of events in (Stubkjær, 2008) tend to consider the Reformation as a breaking point. In comparing the Danish evidence with North's model of the divide among North and South America, the uniform Protestant Denmark is compared with the uniform Catholic South America. Moreover, after seizure of church land, the first Lutheran king protected property rights by monitoring the chancellery and in general reinforced legal institutions by outlawing dual standards.

The main reason to postpone the critical juncture to the land reform of 18th century is that the events leading to Reformation, as conceived by Danish historians, do not show reasonable alternatives. The only alternative to stabilization in terms of Reformation seems to have been a continued unrest. As we shall see, the critical juncture was indeed contingent on the Reformation. A further motivation to establish the land reforms as the critical juncture is that this position is also taken by a Danish historian, Claus Bjørn (1998), who consider the reforms 'the outset of modern Denmark'. Finally, the land reform, but not the Reformation is included among the 'Milestones in building national social cohesion in Denmark' in a recent interpretation by Bengt-Åke Lundvall (2012).

##### **4.1 Alternatives to 'the Danish position'**

During 18th century, new farming technology and systems of crop rotation provided options

for changing agricultural production in North Europe. As mentioned by Fukuyama as well, the liberal ideas of Adam Smith's *Wealth of Nations* were well known in Danish circles, as his book was translated into Danish in 1779, and reviews of the translation attest that the book was well known already in its original version of 1776 (DH, 10, 105). Some manor lords, e.g. Tyge Rothe, took a liberalist point of view and claimed freedom, not only for the serfs, but also for manor lords. The latter would imply that existing statutory regulation of the number and size of farm units should be lifted, in order that manor lords could abolish peasant farms and include the land under manor farming, similar to the enclosure movement in England. Other, e.g. the civil servant C A Fabricius, defended what became known as 'the Danish position', which aimed at protecting the basis for living of peasants by maintaining regulation, including provisions concerning a farm size that fitted the production capacity of a family. The manor lords around the crown, in particular C F D Reventlow, opted for 'the Danish position' which was in fact implemented, but against protests from the nobels. (DH, 10, 80f, 94f)

The above excerpt may suffice to document one alternative to 'the Danish position'. Another alternative may be a 'do nothing' option, as was the situation in Prussia, where liberation of serfs was postponed well into the 19th century. Danish upper strata spoke German, and new ideas were in 18th century communicated through journals in German language like *'Nachrichten von dem Zustande der Wissenschaften und Künste in den Königlichen Dänischen Reichen und Ländern. Kopenhagen und Leipzig'*, e.g. 13th issue, 1755 (Review of the state of Sciences and Arts in the Royal Kingdom of Denmark). However, successful Danish commerce with overseas trading centres called strongly for keeping good relations with the English, while exchanges with Prussia and Rusland remained at the level of foreign affairs (DH, 9, 383f; 10, 162)

## 4.2 Characteristics of the critical juncture

The new institutional arrangement was briefly stated in 1792-terms on the 'Liberation Column', which was later surrounded by the city of Copenhagen. On its four plates you read:



- For Christian the Seventh, the King of Denmark and Norway, from united and grateful citizens:
- The King ordered that adscription should cease and land laws be given order and strength, that the free peasant may become spirited and enlightened, diligent and good, honest citizen, happy.
- The King recognised that the freedom of the citizen, determined by just law, gives love of the fatherland, courage to defend it, a desire for knowledge, an attraction to industry, the hope of good fortune
- The foundation stone was laid by Frederik, the King's son, the friend of the people, MDCCXCII

The liberation of serfs is repeatedly celebrated, cf the stamp from 1938.

The land reform of 18th century implied that serfs eventually became yeomen. Also, the importance of general education was mentioned above. Yet, as the wording of the column attest, it would be misleading to conceive the induced change in economic or rational terms only. This is further substantiated by the fact that at the occasion of the king's thirty-second

birthday in 1755, the Lord Steward Adam Gottlob Moltke, through the above-mentioned *Nachrichten*.. invited the general public to prepare treatises on “every subject that may serve the sustained flourishing of the country.” Treatises could be handed in anonymously and were published during the following decade (1755–1764). This implied that censorship was de facto lifted. The treatises and the subsequent debate created a spirit of engagement in economic and political affairs among the reading strata, notably priests and other university-educated officials (Stubkjær, 2008, 245). Expressed in general terms: The elite invited its able dependents to participation. Taking into consideration that subjects of the time, not only in Denmark, were monitored by the establishment through censoring and Conventicler acts, it may be argued that the invitation, which was officially repeated in 1768, de facto entitled or empowered Danish subjects to participate in a sustained effort to make Denmark a flourishing country (Stubkjær, 2008, 235f).

Recent research by Bengt-Åke Lundvall seems to support the position that Danes in general are mindful of how to improve their actual context. He notes that the innovations mainly take the form of incremental changes:

.. production in many of the industries characterizing Denmark’s so-called low- and medium-tech production is based upon extensive knowledge inputs related to a high degree of change and flexibility in firms’ use of resources. This includes rapid diffusion of new technologies and frequent incremental product innovation that combines a high level of competence in industrial design with advanced organizational techniques and marketing methods. The innovations often reflect interaction between skilled labour, engineers, and marketing people. (Lundvall, 2012, 118)

Lundvall continues by tracing 'the historical roots of the adaptive governance mode' which constitutes an industry-related alternative to the present, legal-administrative account. Here, an administrative complement to Lundvall's observation shall be presented: In the context of a land registry reform (cf section x below), it was discussed, how to skip outdated recordings and introduce missing references, e.g to easements. The profession of chartered surveyors agreed in case of subdivision, etc. to obtain from the land registry of the local court a list of easements in the property units involved in the case, and next report back the location of each easement relative to the pertinent future parcels. The agreement was conditioned by the reservation that this reporting could be done 'without substantial further work' (Da: uden væsentligt merarbejde). We here find the same habit of agreeing to improve the situation where feasible, and the tacit understanding of doing so loyally. Both industry and chartered surveyors have to earn their money, but innovation appears not to be motivated primarily from a market perspective. Motivation comes - it is posited here - from the past call of the highest authority to serve the sustained flourishing of the country.

## **5. The self-reinforcing mechanisms at work**

The government in charge of the land reform developed a practice of performing a sort of pilot projects, next motivate the agents concerned to develop a feasible way of implementing the benefits demonstrated through the projects, and only then institute ordinances with binding mandates and procedures (e.g. DH, 10, 82). This dependency by the crown on local local initiative motivates the reference to the principle of subsidiarity. We shall see this pattern at work in the following.

### **5.1 The 1776 order on lifting of joint cultivation**

On May 13, 1776, shortly after taking office, the king Frederic the Sixth issued an order on the lifting of joint cultivation (H. Jensen, 1936, 107). The order was based on previous experiments and further reforms carried out on crown land, as well as on the debates over and outcomes of previous orders on villeinage and joint cultivation.

The order introduced a new mechanism. While the former schemes left the right of initiative with the landlord or a majority of the tenants, the initiative was now given to whoever amongst them functioned most effectively as an entrepreneur. A single tenant of the village was entitled to trigger a quasi-legal process by which his share was extracted from the joint tilling of the township. The individualization of farming did not imply the immediate granting of ownership; rather, copyhold generally became hereditary and obligations were gradually transformed into cash fees.

The land reform process was conducted by a land surveyor, who prepared two detailed maps in scale 1: 4000, one depicting the present size and yield assessment of homogenous pieces of land within the township, and one showing for each participating tenant his share of the township yield, consolidated into a few parcels of regular shape. The assessment of yield was done by two village peasants, elected by the villagers themselves. The costs of the process had to be paid by the villagers, and all township parties had to contribute to the costs, whether they wanted to extract their share from the community or not. Claims were submitted to a three-person committee, which was chaired by the chief official of the county. The central administration (Rentekammeret) elected the two other persons from amongst the local judges, higher officials or nobles. Further claims were resolved by the Rentekammer, except for claims specifically regarding title, which were to be handled by the ordinary courts.

No tenant was forced to leave the cultivation community of the township, but the ideal solution would be to spread the new production units equally over the township area in order to minimize working distances and obtain parcels of regular shape. However, the township community dealt not only with production matters, but also with other community affairs according to customary and tacit rules. The desire to keep close to the old, secure community is still visible across Denmark in terms of the so-called star allotments, where boundary banks and hedges radiate from the village centre between the old farm houses to the township boundary.

The 1776 order, codified in 1781, released the social engagement needed to perform the land reform in Denmark, which by 1810 was largely completed. It instituted a practice of drawing on the best of available resources: Local tenants to assess the quality of the soil, the specialized skill of land surveyors to unite the technical, economic and legal issues involved, and local and central legal expertise to ascertain a fair procedure. When full ownership was established after a few generations, the outcome in addition to the new strata of 'free peasants' included a widely extended market in real property.

## **5.2 The 1850 act on mortgage associations**

Another illustration of the application of the principle of subsidiarity was the 1850 statutory act on the establishing of mortgage credit associations and credit societies (Da: Lov om oprettelse af kreditforeninger og lånekasser af 20. juni 1850). The act was motivated by widespread demand, not only from borrowers, but also from lenders at a time where institutionalized credit hardly existed. Borrowers experienced constraints in accessing credit due to the dependency on personal goodwill of lenders and prevailing loan conditions. Holders of capital on the other hand also had an interest in institutionalized credit, so as to hold more

liquid financial assets and to obtain better protection against risks. Drawing on inspiration from Germany, a proposal on foundation of mortgage credit associations was put forward by the economist A. F Bergsøe in 1839, but debate, among others on the requested loan to value ratio, postponed the enactment (Haldrup, 2011).

With seven sections, the act provided an enabling framework for groups of land owners, who wanted to establish such mortgage credit associations. The substantial rules were rendered in § 4, which specifies criteria for the capacity of the interested parties and for the content of articles as follows (a few detailed provisions are omitted):

- a. Landowners must represent an interest of at least 1 million 'Rigsbankdaler' [about € 270.000] and their holdings be located closely enough that the executive committee conveniently can assess the value and the maintenance of the securities.
- b. Each landowner can engage into the association with an amount of a maximum of 60 per Cent of the value of his holding, assessed according to prudent assessment rules to be specified in the articles
- c. The amount of mortgage bonds charging the association may at no point in time exceed the sum of mortgage deeds in the association's possession.
- d. All interested parties are solidary responsible for bonds charging the association with the full value of the holding of each party .. ..
- e. The mortgage bonds must be interest-bearing and amount to at least 50 'Rigsbankdaler' [~ €15]
- f. The articles must request any interested party be liable a certain proportion to amortize the loan, in addition to the stipulated interest
- g. The articles must request from the executive committee that yearly, complete accounts of the association are published, and account extracts are sent quarterly to the Minister of the Interior
- h. No change can be made to the articles except through the procedure established by these and with the approval of the Minister of the Interior

The Minister of the Interior was on approval of articles to issue a public notification or else inform the applicants of reasons for no approval (§ 5). § 6 addresses modifications concerning credit societies, while § 7 announces that preferential treatment beyond the provisions of the act may only be achieved through a supplementary, statutory act. The benefits granted to the mortgage associations are enumerated in §§ 2 and 3:

## § 2

- a. Mortgage bonds, registered on name or on bearer, may be issued on unstamped paper and also transferred without stamp duty.
- b. The executive committee is legally entitled to unite with holders of mortgage bonds in order to implement foreclosure auction against holders of mortgage deeds, who do not honour their contractual duties. Legal action against the implemented foreclosure auction shall not stop or override it, on condition that the auction is performed according to statutory acts of 1817 and 1833. Holders of mortgage bonds enjoy right of recourse against the association to obtain full compensation.
- c. The cost of transfer of money and deeds on behalf of the association may take place at the reduced rate which applies to the National Bank
- d. The interest rate in mortgage deeds and in mortgage bonds may exceed 4 per Cent per annum.

§ 3 Guardians of property and public foundations may place the concerned assets in mortgage bonds.

By 1860, five mortgage associations were established, covering both city and land holdings in most of Denmark (Haldrup, 2011; 2014). Notable in the present context is the way the principle of subsidiarity was implemented: The state offered specification of the economic setup (esp. § 4), drawing on its reliable court system (§ 2.b on foreclosure auction), granting a reduction in transaction costs (§ 2.a-c), and providing a further incentive by lifting the standard usury clause of a maximum interest rate on 4 per Cent (§ 2.d). The initiative was left to 'honest citizen', in reality the wealthier segment of society.

The mortgage associations came in existence some decades before the well-known Danish cooperative movement took off. It seems thus likely that the practise of establishing associations with economic impact was supported through the provisions of the mortgage credit act, including the practise that both articles and accounts should be publicly available and articles should specify binding rules concerning future change of the articles.

The act created a new market in mortgage bonds and thereby introduced impersonal access to investment and borrowing.

### **5.3 The cooperation movement in Denmark**

The Danish cooperation movement is briefly mentioned here, because it is an indispensable element of the Danish historical narrative. The first consumer cooperative was established in 1866, inspired by the Rochdale weavers. The first cooperative dairy was established in 1882 and the first cooperative slaughterhouse in 1887 (Bjørn, 1998). The cooperation development was not specific for Denmark, as besides the mentioned consumer cooperation in England, workers' cooperatives emerged in France, and credit cooperatives emerged in Germany (Prakash, 2003). However, the Danish agricultural cooperatives stand out as they in fact emerged early on the international scene and from a Danish perspective were cherished as an outcome of the above-mentioned liberation of tenants during the previous century, besides bringing substantial wealth to the farm holders and the country.

Also, the Danish workers' cooperatives deserve mentioning, as they and their counterpart, the Employers' Confederation, in 1899 reached the September Compromise, by which the Confederation accepted the workers' right to organise, while the managerial prerogative of the employers was accepted by the Confederation of Danish Trade Unions. The compromise established a centralised collective bargaining system with a peace obligation during the terms of the agreements, and an institutional resolution of disputes, with prior warning as a replacement for local negotiations and free right to strike. Disputes on wages and working conditions were thus arbitrated through the branches of the two confederations and a quasi-legal system, the Labour Court, established 1910. The September Compromise eventually implied mutual respect and consensus between these parties and this provided a basis for requesting labour-market-related political initiatives, e.g. the statutory act on the Labour Court, and later recurrent tripartite negotiations (Elvander, 2002; Due, 2000).

While in 1755 those in power invited the tenants into a new social position, in 1899 the parties fought their own courses. Contingent upon the events of previous century, the opposing positions were in Denmark eventually cast into a compromise, an institutional arrangement, which offered a flexible stability to the benefit of the parties and as well to the society at large.

To complete the taxonomy of cooperative associations, offered by Daman Prakash (2003), mention must also be made of service cooperatives, e.g. housing cooperatives. They emerged in Nordic countries around the turn of the 20th century, in the wake of industrialization and urbanisation. A recent comparative study states that '[i]n Denmark housing policy has been primarily directed towards rental housing, in particular in estates owned and managed by public housing associations, organized in small self-governed units where local tenants have a high degree of self-management' (Bengtsson, 2010). The workers' unions engaged for improved housing and obtained already in 1887 state subsidies for constructions, which were built and operated by housing associations. The state, and from the 1960s the municipalities, thereby supported the provision of decent housing to households of lesser means. The corresponding regulation implied a right for the municipalities to allocate a part of flats in housing cooperatives to families in need (Engberg, 2000).

In the present context, this option of social housing may be related to the impersonal procedure of foreclosure auction, cf. § 2.b, as the eviction of a family from its home could be objected from a charity perspective. The availability of a municipal social housing scheme may have prevented such objections.

The above brief notes on the cooperation movement attest effects of the self-reinforcement mechanism of the liberation path: The 'free peasants' no longer needed to submit their ideas and wait for those in power to take action. They could engage with fellows in the neighbourhood, develop a community spirit while drafting joint projects, and constrain risks by formalizing their mutual responsibility in articles of an association. In doing so they applied the principle of subsidiarity before the term was coined: The state was largely absent as regards the commercial associations, while the state engaged with the parties of the labour market in a Danish version of (neo-) corporatism.

#### **5.4 The act on conversion of fiefs into fee simple 1919. The Smallholder movement**

To be developed. Pushing for equal rights dilutes the privileges of lineage. The right of heirs to be involved in alienations, cf Danish code 1683, similarly gets diluted. The institution of family is thus weakened.

#### **5.5 Registration of real property rights and the 1926 codification**

Deeds of conveyance had to be announced at governing assemblies, the "things," already before the Danish Law of 1683. At that time, records were established at the courts. After a reading of the deed, extracts were made in chronological registers of conveyances and of mortgages, respectively. From 1738 on indexes relating names to the chronological entries were introduced and established at every court, and by 1805 it was required that recordings take place at the local courts (Buhl 1994, 19–22). A new cadastre was put into effect by 1844. The cadastral identifier of parcels was immediately applied also in conveyance and mortgage deeds, which implied that recordings of immovable property was coordinated in Denmark from the 1840s on, even when such recordings were performed by different authorities (for example, for purposes of taxation, agriculture, or justice) (Stubkjær, 2008). A reform of the land registration at the local courts was later accomplished by the act on Registration of Property (Tinglysningsloven) of 1926, while digitization of the registry with its document archives was performed in two phases: During the 1990s, the ledgers and archives were digitized, court by court. In the second phase from 2009, all land registry tasks were allocated to a single, specialized Land Registration Court and digital-only communication introduced

(Stubkjaer, et al. 2014).

The self-reinforcement mechanism may be seen in the fairly early coordination of registration of property units among different ministries. It may be interpreted as a continuation of the pragmatic 'practice of drawing on the best of available resources', cf. section x above. Application of the principle of subsidiarity may be identified in two settings: Already in the 1840s, it was suggested to establish indexes of cadastral identifiers in addition to the person indexes. However, the concerned act of 1845 left it to the discretion of the local court, whether cadastral indexes should be made, with the result that cadastral indexes were not fully established until the 1926 reform (Stubkjaer, 2008).

The second and more profound example regards the legal implications of recording in the land registry. The principles of the 1926 reform developed in dialogue with the German civil code, *Bürgerliches Gesetzbuch*, BGB, of 1900. The German legislation establishes that conveyance is effected, that is: property right transferred, when the conveyance deed is recorded in the land registry and, furthermore, requests that the parties of the deed are identified by a notary (§ 873). Thus, any change to real property rights needs to be registered in the Grundbuch in order to become effective. The Danish professor in charge of codifying the rules of transfer of rights in land, Fr. Vinding Kruse, did not want to rely on public involvement to that extent. He did acknowledge that publicity was an essential element of the conveyance process, partly to establish proof through witnesses, partly to inform the family 'who according to ancient law had a certain latent right in the land, besides the owner' (Kruse, 1923, p. 32, cf. pp. 34, 98, referring to Danish Code 5-1-9 and 5-3-1). However, too much thoroughness could be waste of time (p. 47). He referred to English law which favoured private *traditio* (p. 41f), but especially to Nordic law which recognized private transfer of rights, and yet in addition requested the documents be annotated concerning their reading (publicizing) in the court and subsequently recorded into the land registry (p. 53). He disliked the request that contracts need public assistance to become effective, as this 'weakens the citizen's self-activity and initiative'. Moreover, he refers to the Danish Code (5-1-1) which considers every citizen a man of his word. This means that a promise is committing, also without deeds and notaries (p. 69). Confidence in the recordings of the land registry depends on diligent procedures and scrutinizing of evidence, but 'regular practical wisdom' suggests that the issuer of a (conveyance) deed consider it obvious that the receiver want to secure his right through such recording. Contrary, the BGB requires that the issuer in addition to his declaration of intention to convey the property has to issue a specific declaration of intention that the transferred right be recorded in the land registry. According to Vinding Kruse, the said benefits of this extra demand are too hard-earned (p. 72-73).

Rephrasing the above in less legal terms, the idea is that the formal system shall support the citizens, not replace their legal powers. In the context of conveyancing this means that property rights are transferred from owner to buyer when the (unconditioned) deed is signed, that is: before recording. This establishes right 'inter partes'. As for 'third parties', e.g. a neighbour having a right of way over the property unit concerned, the conveyance has effect when recording is made (as in Germany). And the judge is investigating the documents to ascertain that the rights of 'third parties' are not violated by the documents submitted for recording. This is part of the crucial effect of land registries, cf. Arruñada (2012). The above details are reported to corroborate the claim that around the 1920s the principle of subsidiarity was deeply engrained in Danish practice, here in drafting the provisions for securing real property rights. The explicit purpose of Vinding Kruse's institutional arrangement was to give way to 'the citizen's self-activity and initiative', in theoretical terms: to give way to the self-reinforcement mechanism.

## 5.6 The construction boom 1960 -1980 and the extension of individual home ownership

Housing policies have to deal with strong inertia, in other terms: they may be more path dependent than other areas of policy. Main characteristics are the housing stock, tenure forms, parliamentary majority, and purchasing power of the consumers (Bengtsson, Ruonavaara, 2010). These characteristics are described in the following, as a basis for the usual reflection on self-reinforcement and subsidiarity.

The tenure form addressed here is individually owned, detached, one-family houses. While in 1960 33% of the Danish population resided in this tenure form, the share expanded through 36% in 1965 and 41% in 1970 to 42% in 1980 (Statistisk tiårsoversigt 1974, 1984). Purchasing power and political involvement in terms of tax deduction and land delivery count among the essential factors, but what mechanisms provided for this notable change? The trade unions organized from the turn of 20th century virtually all skilled workers, and could hence obtain a share of the surplus value for its members. In addition, a general improvement of the economy after 1950s increased the purchasing power also of blue collar workers and the middle class. Next, the mortgaging institutions provided loans at the conditions of the capital market (bypassing bank surcharges) which were robust across social strata as it was not generally dependent on the creditworthiness of the mortgagor, aside from whether or not the mortgagor had a stable income. This also made housing construction cheaper, as banks were prepared to supply young prospective homeowners with temporary loans that enabled them to complete the building process all at once, because the loan would be returned by the proceeds of the subsequent mortgage. Finally, the mortgage institutes introduced new mortgage types and the centre-left government supplemented by allowing for tax deduction of interest on mortgage debt and gave way to an inflation rate of 5-10% p.a. These factors together gave a notable part of the population sufficient purchasing power and incentive to become homeowners.

The provision of technical infrastructure for housing: water, roads, sewers, electricity, etc. show a mixed picture across the country. Sometimes, utility associations provided the service, sometimes the local government. Local government in terms of boroughs, counties and municipalities were increasingly assigned administrative tasks during the 20th century. In this context, urbanization and spatial planning problems motivated a rearrangement of local government structures and tasks through a municipal reform, carefully prepared and effective from 1970. Municipalities also facilitated land development, especially of less exiting tracts neglected by professional developers and land owners in the urban fringe. The principle of legality requests an explicit mandate from Parliament, but legal scholarship invented the notion of 'municipal power' (Da: kommunalfuldmagt) to allow the provision of such services for the common good.

The locational aspect of urban development was quite well managed through spatial planning. This was supported by the hyper cautious mortgage associations, who requested a certificate (from chartered surveyors, later from municipalities) that the intended construction was in due accord with public as well as private restrictions (spatial plans, easements, etc.). As the majority of people were dependent on mortgage loans, the same majority was forced to subscribe to mortgage conditions and thus to spatial planning measures. Also, spatial planning provisions included from 1967 the development of 12-year plans of the 'capaciousness' of areas designated for urban development, thereby testing the realism of planners' aspirations (Stubkjaer 2001).

Associations again constitute the dominant self-reinforcement mechanism, now in terms of

utility associations. They fit with Prakash's category of service cooperatives (2003). The practise of 'drawing on the best of available resources', cf. section x , was performed without direction from above, crown or parliament, but through simple cooperation among the parties involved: trade union and political party, mortgage associations and banks, chartered surveyors and planners, officials in central and in local government. Rules were complied with, but not in a formally rigorous way: For example, Parliament did not insist on their prerogative of enacting norms of behaviour, but accepted that the labour market managed its own affairs and that municipalities performed utility services without explicit mandate. Similarly, the technical, administrative, and legal components of the university education of chartered surveyors were moulded according to needs in Danish society, while remaining in dialogue with international research.

Subsidiarity was pursued through the decentralization of tasks and the municipal reform, but also through the just mentioned acceptance of leaving creation of norms and practices to 'lesser and subordinate organizations'.

The research reported by Bengtsson and Ruonavaara (2010) regards path dependence in housing in the Nordic countries. Referring to Mahoney's definition of path dependency (2000), they propose a weaker conceptualization which leaves out the specification of a critical juncture, among others. They find common phases of cooperative housing in the Nordic countries: Firstly, an establishment phase which took place from the turn of the 20th century to the end of the Second World War. During this phase the independent non-profit housing association model were established, and very differently in each of the Nordic countries. In the construction phase, from 1945 to the beginning of the 1970s, the sector expanded as the main instrument for housing provision, with the aim of meeting the increased demand for housing for the generations that came after the war. The management phase started in the beginning of the 1970s. During this phase it became clear that the sector also fulfilled more of a social role by providing housing for more marginalized groups in society. Finally the retrenchment phase began in Denmark in 2001, when the newly elected liberal-conservative government wanted to fundamentally change the sector. Danish evidence concerning these phases is provided by Lotte Jensen (2006), while Birgitta Gomez Nielsen researches the retrenchment phase, where the new government introduced a Danish version of Margaret Thatcher's idea of "right to buy" in cooperative housing (Nielsen, 2010). A further encounter with this research is deferred here, except for noting the question whether the reference to Thatcher indicates an end of the Danish path of liberation of human resources, which was documented in detail above.

## 6. Discussion

Have the events shaping real property rights in Denmark been rephrased according to Mahoney's characteristics of path dependence? The critical juncture, the preceding contingent events, and a subsequent chain of dependent events have indeed been identified. A critical question would be, whether the described self-reinforcing mechanisms sufficiently determine this chain of subsequent events. Counterfactual analysis (cf. Mahoney, 2000, 513, 530; Bengtsson, 2010, 196, 198) performed in some detail presupposes a diving into historical records, which is deferred here. Available observations are firstly that renderings of the industrial conflict at the turn of the 20th century frequently include reflections whether the outcome might have resulted in a more radical, left-wing political action. Secondly, mention is made of the above-noted strong influence of liberal ideas after the 1990s. Relating these observations to the discussion of the critical juncture (section ), it appears that the options at the time of the 18th century critical juncture were present throughout the period discussed.

The absolutist Prussian regime, which deferred abolition of serfdom, was later represented by Marxist dictatorship, and vice versa, the arguments in favour of enclosure evolved with liberalism and discussions around the Washington Consensus. Until the Thatcher-Regan politics of the 1980s and the fall of the Berlin wall, which perhaps marks a new critical juncture, the Danish path maintained its specific dynamism. Its characteristics were 1. the invitation by those in power to dialogue with those, who would otherwise be oppressed, 2. the individual direction of human resources towards local problem solving for the benefit of the engaged individuals and the wider society as well, and 3. the tacit understanding among those in charge that administrative troubles and bottlenecks ought to be relieved when the needed additional efforts were marginal.

Referring to Randall Collins, Mahoney categorizes institutional reproduction in terms of utilitarian, functional, power, and legitimation explanations. The functional and the legitimation explanation fit the Danish evidence. Institutions were reproduced because they served a function for the overall system, namely the Danish society and “the sustained flourishing of the country”. Furthermore, the legitimation explanation holds that institutions are reproduced because actors believe it is morally just or appropriate. As Stubkjær (2008) attests, the reproduction of institutions did occur in a spirit of 'God, king and fatherland' well into the 20th century. Presently, reference to religious and transcendent world views are largely replaced with reference to fundamental human rights, equality, etc., while 'flourishing' is interpreted within an economic worldview and expressed in monetary value, cf. the notion of the competition state (Konkurrencestaten).

Mahoney's characteristics concerning self-reinforcement were supplemented through an application of the principle of subsidiarity. The principle was not sharply defined, and a study of the principles offered by Nell-Breuning (1952) was deferred. However, the institutional arrangements described seem to comply with the principle in multiple ways.

## 7. Conclusion

Danish historical evidence has been presented according the conceptualization of path dependency offered by James Mahoney (2000). The focus has been on events with bearing on the institution of real property rights. The events unfold over more than three hundred years and are described in some detail, occasionally drawing on primary sources. The main contribution is a fairly complete application of Mahoney's scheme, as critical juncture, preceding contingent events, and a subsequent chain of dependent events were identified, the strength of the self-reinforcing mechanisms was assessed, and the functional and the legitimation types of institutional reproduction were motivated.

The research thus confirms the viability of Mahoney's scheme, and in addition describes how applications of the principle of subsidiarity could be discovered in a multitude of the described Danish institutional arrangements.

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