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## DANISH LAW

LESTER B. ORFIELD

## PART II\*

## LOCAL GOVERNMENT

In 1841 local government was reformed by introducing parish councils to which the peasants elected some representatives.<sup>233</sup> In turn the parish councils elected members of the county councils. The pastors were no longer to be chairmen of the parish councils, but continued to be members *ex officio*. The right to vote was extended to owners of but 1.4 acres. The councils were created to deal with school matters and poor relief; but road maintenance, public health, business and industrial licenses, and liquor licenses were also within their province.

The right to vote in local elections was long narrowly restricted. Under legislation of 1837 the six largest cities other than Copenhagen chose councilmen on a property basis permitting only seven per cent of the population to vote. Early in the nineteenth century rural communities began to vote for poor law and school officials. Following the 1849 Constitution municipal powers and local suffrage slowly broadened out. But as late as 1900, only twelve per cent of the people in Copenhagen, sixteen per cent in the larger cities, and eighteen per cent in the rural areas could vote. After 1900 municipal suffrage was greatly broadened, though not as broad as parliamentary suffrage. Municipal voters must have had residence in the city since January first of the preceding year; and must be taxpayers in the community. The local units have increasingly become administrative districts for carrying out national policies and for administering national laws. Section 89 of the Constitution provides that "the right of municipalities to manage their own affairs independently under control of the State shall be laid down by law."

Excluding the larger cities and towns Denmark is divided into 22 areas called *Amtter*.<sup>234</sup> In turn each Amt is made up of parishes (*Sogne kommuner*), about thirteen hundred in all. In addition there are about eighteen hundred ecclesiastical parishes (*sogner*). The Danish cities, which are outside of the jurisdiction of the Amt, are of two classes: (1) the capital, Copenhagen; and (2) *Kobstaderne* (the provincial towns) about eighty in number.

The chief official of the Amt is the *Amtmand* (governor). He is appointed for an indefinite term by the cabinet upon the recommendation of the Minister of the Interior. He presides over the *Amtsraad* (county

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233. DANSTRUP, A HISTORY OF DENMARK 96 (2d ed. 1949); HOVDE, THE SCANDINAVIAN COUNTRIES, 1720-1865 545, 569 (1948).

234. ARNESON, THE DEMOCRATIC MONARCHIES OF SCANDINAVIA 178-190 (2d ed. 1949).

council) and acts as the chief executive in all local administration. He also represents the national government in the administration of the general laws. He need not have been a resident of the Amt. He receives an annual salary of 12,000 kroner.

The county council is popularly elected by the list system of proportional representation. It meets regularly four times a year. It consists of from nine to fifteen members, always an odd number. Its members are elected for a four-year term at the same time as members of the parish council are chosen. It prepares a budget, levies taxes, makes appropriations, and supervises a small number of administrative officials. Members of the council serve without pay. It has much to do with the local police, but recently the national government has taken closer charge. It controls matters of public health, including the operation of hospitals. It handles the public roads. It supervises the parishes. It selects a county school board which has charge of educational funds.

The chief governmental agency of the parish is the parish council (*Sogneraadet*). Its members are chosen for a four-year term by proportional representation. It varies in size from five to nineteen members. The council selects a chairman (*Formand*) who is the chief parish official, and also selects a treasurer. Members of the council receive no pay, but the chairman and treasurer usually do. The council meets once a month.

The parish assesses the value of property for taxation purposes. It collects information as to the liability of its inhabitants to pay income taxes both national and local. It administers relief and social legislation. It participates with the national government in paying the costs of social insurance. It administers public education, which is in the hands of a five-member school commission appointed by the parish council. It builds and maintains local highways. It prepares the official list of those entitled to vote in all elections. It gathers population and vital statistics. It deals with fire prevention.

There are about eighty provincial towns outside the jurisdiction of the Amter and the county councils. They vary in population from one thousand to eighty thousand. Each town has a town council (*Byraadet*) of from seven to twenty-five members elected by proportional representation. The town council elects a chairman from its members who then becomes mayor (*Borgmester*). Up to 1919 the cabinet appointed the mayor. The town council selects a school board of from five to nine members to administer the local school system. They have much to do with administration of social welfare. Many cities own and operate hospitals, and help the poorer classes to build homes. Water, gas and electric utilities are publicly owned. Some have municipal heating plants.

The chief officer of the city government of Copenhagen is the *Over-*

*præsident* appointed by the cabinet at a salary of 12,000 kroner.<sup>235</sup> The legislative department is made up of two parts: (1) the *Borger-representation* (municipal council), made up of 55 members chosen for four years and presided over by the *Overborgmester* (chief mayor); and (2) the *Magistrat* (executive council) made up of five *Borgmesters* and five *Raad-mand* (councilors) chosen by the municipal council for eight-year terms, and the chief mayor. All are paid salaries. An ordinance must pass both groups, so that Copenhagen really has a bicameral city council.<sup>236</sup> If a measure passed by the municipal council is twice rejected by the Executive Council, the former may appeal to the Minister of the Interior who can validate the measure. No measure can be passed without the approval of the municipal council. Conflict seldom occurs as ten of the eleven members of the Executive Council are chosen by the Municipal Council. The *Overpræsident* has the power of suspensive veto. The veto stands only if upheld on appeal to the Minister of the Interior. The members of the Executive Council also have important administrative duties. The chief mayor and the five mayors are each in charge of one of the six sections into which the city administration is divided. The various municipal activities are: (1) education, (2) regulation of industry, (3) legacies and foundations, (4) police, (5) hospitals, (6) social welfare, (7) highways, (8) public health, and (9) publicly owned utilities.

In 1764 a municipal sanitation office was set up in Copenhagen to regulate the disposition of garbage and rubbish. Paving was made a public function in 1777. In 1863 Copenhagen reorganized her police force after the English model. By 1865 all the larger cities had made fire protection a municipal function. In 1867 Copenhagen set up a municipally owned gas plant. From 1860 to 1880 almost every city set up a public water supply system.<sup>237</sup>

### RELIGION

Christianity came into Denmark during the Viking period. King Harold I was baptized in 826, though largely as a diplomatic gesture to secure German territory. King Harold II was baptized in 974 and a much more sweeping Christianization ensued.<sup>238</sup> The complete introduction is generally ascribed to Canute the Great (1018-1035).<sup>239</sup> He appointed English bishops to counteract the influence of Hamburg and Bremen. Pope Gregory VII (1073-1085) suggested without success that the Danish king make his kingdom a papal fief.<sup>240</sup>

It was not until the twelfth century that the church really became in-

235. For a discussion of the government of Copenhagen under the 1840 and 1857 charters see HOVDE, *op. cit. supra* note 233, at 569-571.

236. In 1856 there was an official proposal for a unicameral city council. *Id.* at 570.

237. On municipal functions before 1865 see *Id.* at 718-736.

238. DANSTRUP, *op. cit. supra* note 233, at 19; SINDING, HISTORY OF SCANDINAVIA 60 (1858).

239. SINDING, *op. cit. supra* note 233, at 69.

240. WORMSER, THE LAW 186 (1949).

corporated into the Danish community. Shortly after 1100 a Danish archbishopric was created at Lund independent of Hamburg-Bremen, as the supreme authority over all the Scandinavian churches including the Norwegian and Swedish.<sup>241</sup> The first archbishop, Asser, organized the Danish church, and by the introduction of tithing made the church economically secure. King Niels (1104-1134) secured for the Church both tithes and ecclesiastical jurisdiction in matters concerning the clergy. It was through the Christian church that Denmark became culturally integrated with Europe.

In the reign of Valdemar the Great (1157-1182) there arose the first great conflict between the royal power and the Church.<sup>242</sup> Archbishop Eskil adhered to the ideas of Pope Gregory VII that the spiritual should be independent of the temporal power. Eskil strove for independence not only from the Hamburg-Bremen see but also from the Danish king. Consequently he was exiled for several years. On his return he came to an agreement with Valdemar and in 1170 anointed his son as king, thus helping to introduce the idea of hereditary kingship in Denmark. In turn Valdemar recognized a modified independence of the Church. Eskil prepared the first ecclesiastical code for Skaane.<sup>243</sup> In 1177 Eskil was again exiled, and Valdemar forced the clergy of Lund to recognize his foster-brother Absalon<sup>244</sup> as his successor. Following Valdemar's death Absalon was virtually a joint ruler over Denmark with Canute (1182-1202) even leading armies.<sup>245</sup> It was Absalon who wrote the first church law for all Denmark, and founded Copenhagen.

Although in most European nations the Church handled its own penal problems involving clergy, Valdemar Atterdag (1340-1375) prosecuted before a thing court clergymen alleged to have swindled a Copenhagen merchant.<sup>246</sup> About 1365 Valdemar secured from the Pope an arrangement making the Danish church a national self-contained church.<sup>247</sup> From now on there was a prescriptive right of the crown to nominate to church offices in some cases. There was also a power to remove from office. The Danish church was the only one in Europe not containing a single foreigner.

Next to Switzerland the Scandinavian nations were the first to embrace Lutheranism. An edict of 1527 permitted a choice between Catholicism and Lutheranism.<sup>248</sup> In 1536 a great assembly of Danish nobles abolished the offices of the Catholic bishops, handed their lands over to the king and the nobles, and set up the Lutheran State Church after the pattern of the North

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241. DANSTRUP, *op. cit. supra* note 233, at 21-22.

242. *Id.* at 23-24; SINDING, *op. cit. supra* note 238, at 93-96.

243. Hertzberg in A GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY 545 (1912).

244. Absalon has been called the greatest Scandinavian of the Middle Ages. SINDING, *op. cit. supra* note 238, at 104.

245. On Absalon see PRATT, THE THIRD KING 80-82, 108-110, 130-131 (1950).

246. *Id.* at 112.

247. *Id.* at 265-266.

248. SINDING, *op. cit. supra* note 238, at 202.

German Churches.<sup>249</sup> The clergy lost its political power, and the king and the nobles were supreme. The revenue of the king was increased threefold.

For long witchcraft was tried by an ecclesiastical tribunal. The burning alive of sorceresses was forbidden by Christian II (1513-1523), yet, as late as 1675 two were thus punished.<sup>250</sup>

The Lutheran Church at first showed little tolerance to other Protestant sects. Christian III (1534-1559) banished Calvinist refugees from Denmark.<sup>251</sup> Aliens could not settle in Denmark unless they passed an examination on the Creed. In 1698 Christian V refused permission to the French Huguenots to settle in Denmark though later his queen induced him to permit settlement in Copenhagen.<sup>252</sup>

A pietistic movement in conflict with orthodox Lutheranism sprang up about 1700.<sup>253</sup> The members met in small groups called conventicles. The orthodox church induced Frederick IV to forbid conventicles in 1706. Another conventicle Act was enacted in 1741. This act was used, though less rigorously than in Norway and Sweden, far into the nineteenth century to suppress religious dissent.<sup>254</sup> Sabbath ordinances of 1730 and 1735 forbade innocent pleasures. A decree provided for fining of pastors who preached longer than one hour. In 1736 the king decreed the rite of confirmation.<sup>255</sup> This had a great influence on education, as ability to read religious texts was a prerequisite.

About 1350 the Black Death came to all of Europe including Denmark. This was made a ground of persecution of Jews in many countries. In Denmark, however, a convocation of bishops called by the king "proclaimed that the Black Death could hardly be the work of the Jews in Denmark, since there were none; that it was not the work of the devil, but an ordinary virulent sickness, for which the remedy lay in fortitude and prayer."<sup>256</sup> About 1675 concessions were made to Jewish capitalists and manufacturers.<sup>257</sup> In 1788 the Danish government placed native Jews on almost the same plane of civil equality as other persons.<sup>258</sup> A law of 1814 seems to have given equal rights.<sup>259</sup> In 1832 when the royal commission on the establishment of consultative estates for Denmark reported, it recommended that Jews be accorded the same franchise and eligibility as other citizens.

249. DANSTRUP, *op. cit. supra* note 233, at 52.

250. SINDING, *HISTORY OF SCANDINAVIA* 216, 268 (1858).

251. *Id.* at 222, 244.

252. *Id.* at 308-309.

253. HOVDE, *THE SCANDINAVIAN COUNTRIES, 1720-1865* 97-100 (1948); SINDING, *op. cit. supra* note 250, at 334-336.

254. HOVDE, *op. cit. supra* note 253, at 312. From 1842 to 1849 there was compulsory baptism of infants, directed against Baptists. *Id.* at 314.

255. *Id.* at 592.

256. PRATT, *THE THIRD KING* 174 (1950).

257. DANSTRUP, *A HISTORY OF DENMARK* 70 (2d ed. 1949).

258. HOVDE, *op. cit. supra* note 253, at 696; SINDING, *op. cit. supra* note 250, at 403.

259. SOLOMON AND FISHER, *MEMORIAL OF THE CENTENNIAL LAW OF MARCH 29, 1814* (Copenhagen 1914); BIRCH, *DENMARK IN HISTORY* 297 (1938).

In 1943 the Danes assisted the six thousand Jews who remained in Denmark to escape to Sweden. A pastoral letter of the Danish bishops protested the persecution "because Christ was a Jew, because the persecution violates Christian ideals and love of mankind and because it violates the Danish sense of justice."<sup>260</sup>

The Constitution of 1849 established full religious freedom. A provision for the drawing up of a comprehensive church constitution remained a dead letter, and the Rigsdag passed legislation from time to time.<sup>261</sup> An 1862 statute permitted the layman to go to church wherever he might please; he could cross parish lines. In 1903 congregational councils for the election of parsons were established, and assistance was given to the free congregations.<sup>262</sup>

In Denmark today 98 per cent of the population is Lutheran in religion. Denmark has, however, a larger proportion of non-Protestants than either Norway or Sweden.<sup>263</sup> There are 23,000 Roman Catholics compared with 3500 to 6500 in Sweden and 300 in Norway. There are 6000 Jews compared with 6000 to 6500 in Sweden and 1400 in Norway. The State Lutheran Church is the most broadly inclusive organization outside the state itself.

#### EDUCATION

From about 1721 the government under the influence of pietism opened about 240 elementary schools on crown property on which the teachers could live and instruct the peasant children in Scriptures and reading.<sup>264</sup> In 1739 every young person was required to learn to read under a decree commanding the Danish landlords to follow the example set upon the royal estates; later decrees left the matter to the judgment of the landlords, hence no national system was established. A movement beginning in 1789 resulted in the Educational Reform of 1814.<sup>265</sup> Every child must be given instruction from his sixth to his fourteenth year. Rural schools were to be so close together that no child had more than a mile to go. Instruction was to comprise Scripture, reading, writing, arithmetic, gymnastics and some practical gardening.

The Great School Commission, operating from 1789 to 1814, had worked out the above mentioned reforms. It also abolished the Latin disputation at the University of Copenhagen. Between 1797 and 1802 a new plan requiring more attention to the vernacular and to utilitarian subjects was introduced experimentally in Copenhagen, Odense, and Oslo for the

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260. DANSTRUP, *op. cit. supra* note 257, at 186.

261. HOVDE, *op. cit. supra* note 253, at 345.

262. DANSTRUP, *op. cit. supra* note 257, at 128.

263. ARNESON, *THE DEMOCRATIC MONARCHIES OF SCANDINAVIA* 5 (2d ed. 1949); FRIIS, *SCANDINAVIA BETWEEN EAST AND WEST* 18 (1950); SCOTT, *THE UNITED STATES AND SCANDINAVIA* 10 (1950).

264. DANSTRUP, *op. cit. supra* note 257, at 73; HOVDE, *op. cit. supra* note 253, at 591.

265. DANSTRUP, *op. cit. supra* note 257, at 91; HOVDE, *op. cit. supra* note 257, at 596; *SOCIAL DENMARK* 345 (1947).

preparatory schools. A law of 1809 made the plan applicable in both Denmark and Norway. Denmark in 1791 was the first Scandinavian nation to establish a teachers' college. By 1814 Denmark had a comprehensive national school system, followed by Norway in 1827 and Sweden in 1842.

In 1844 the 1814 laws were revised for stricter enforcement; and Copenhagen appointed its first superintendent of schools. In 1848 the Danish statistician Bergsøe announced that all children of legal school age were actually in school, "a result which both England and France, not to mention all the south European countries, must view with envy."<sup>266</sup> In 1854 a Bureau of Education was established in the Ministry of Culture. In 1856 a new general school law was adopted. It embodied the latest ideas on pedagogy and sanitation of school buildings, and increased teachers' salaries and pensions. The problem of elementary public education was now solved, except that pauper children were segregated in pauper schools.

In 1850 a bill was introduced in the Rigsdag which recognized the Latin schools and the practical schools (*realskoler*) as equally valid, and terminated the reactionary influence exercised by the university through its entrance examination. In 1851 the preparatory schools were required to establish practical courses leading to the bachelor of arts degree. Denmark has carried out adult education farther than any other country. Between 1844 and 1864 about twenty folk schools were founded under the leadership of Grundtvig and Kristen Kold to instruct persons preferably from eighteen to twenty-five.<sup>267</sup> History, political science, and literature were the subjects emphasized, but there were no classes, recitation, examinations, grades or accreditation. The folk schools were privately owned, but later received public support.

In 1903 secondary schools were changed in the direction of a unified school with three senior branches, classical, modern, and mathematics and natural science.<sup>268</sup>

The present basic law on education is the National Education Act of 1937.<sup>269</sup> Compulsory instruction begins at seven and ends at fourteen. Elementary schools are of two types: urban and rural. The town school consists of a junior department for children between seven and eleven and a middle school for children between eleven and fifteen. The middle school is bifurcated: one branch giving a cultural education and the other a practical. The elementary public schools are supervised by local committees of education approved by the local councils. Schools are locally

266. Quoted by HOVDE, *op. cit. supra* note 253, at 603.

267. In Chapter VIII on "Adult Education", Stensland states in FRIIS, *SCANDINAVIA BETWEEN EAST AND WEST* 227 (1950) that "the folk schools in Denmark may be 'a way out' offered to modern community educators." He also states at p. 229 that if any Northerner be selected as the father of modern adult education it is Denmark's Grundtvig. See also MacKaye, Grundtvig and Kold, *XXX American-Scandinavian Review*, 229-239 (Sept. 1942).

268. DANSTRUP, *op. cit. supra* note 257, at 128.

269. SOCIAL DENMARK 345-399 (1947).



financed but receive aid from the national government. Ninety per cent of the children between seven and fourteen attend public schools, though private schools are permitted.

The national subsidy per pupil is the same as in the private school; but in the private school the remainder is privately paid, whereas in the case of the public school the locality pays.<sup>270</sup> The secondary schools consist of the middle school and the senior high school, the former covering a four-year course and the latter a three-year course. Upon graduation from the latter the student may enter college. Elementary education is free. A small charge may be made at the middle and senior high schools if the parents have a high income. There are universities at Copenhagen since 1479 and Aarhus since 1933 where instruction is free.

#### AGRICULTURE

During the period from 1241 to 1340 the new manorial lords gradually regained their powers in Denmark.<sup>271</sup> They were exempt from taxation, and to be certain of their military support the government had to exempt their tenants too. This caused grave inadequacy in royal finance. There was a strong incentive for freeholders to give up their estates and become tenants under the nobility. By the time of Christian II (1513-1523) the temporal and spiritual lords owned nearly three-fourths of all the land in Denmark; and only twenty per cent of the farmers were freeholders.<sup>272</sup> They monopolized the great offices of state, and limited admission to their class by patents slowing their lineage and exemption from taxation. In the reign of Christian II there were about 250 such families.

In 1702 the Danish monarchy abolished serfdom in the islands where alone in Denmark proper it existed.<sup>273</sup> But in 1701 there was established a militia system which bound the peasant to the place of his birth. The cultivators of the soil on the estates were tenants who occupied their land under varied regulations. Their position was only a little better than that of the German serfs and with respect to tenure often more precarious. Tenure for a term of years was common, at the end of which the owner might not renew if he did not so desire. Between 1660 and 1720 the estates had encroached increasingly until only a small fraction of the soil was freehold. As the king needed money, estate property was sold, but the land went to creditors and nobles even after 1764 when the Crown planned to sell in small parcels.

The most severe restrictions on the peasants occurred in 1733 when the system of a national militia was combined with the *Stavnsbaand*, pro-

270. *Id.* at 356.

271. DANSTRUP, *A HISTORY OF DENMARK* 32-34 (2d ed. 1949); PRATT, *THE THIRD KING* 69-73 (1950); J. BERCH, *DENMARK IN HISTORY* 131 (1938).

272. DANSTRUP, *op. cit. supra* note 271, at 43. Christian II had to grant a charter permitting the nobles to sentence and punish their peasants at their own discretion without the intercession of the courts. BOYESEN, *NORWAY* 483 (1900).

273. HOVDE, *THE SCANDINAVIAN COUNTRIES, 1720-1865* 61 (1948); SINDING, *HISTORY OF SCANDINAVIA* 324 (1858).

viding that between the ages of fourteen and thirty-six the peasants' sons should be bound as villeins to the estates on which they were born.<sup>274</sup> A few years later this was extended so as to cover the peasant from his fourth to his fortieth year. The medieval system of common tillage still survived. To make matters worse the number of estates increased. It was not until 1740 that a law freed the peasants from their obligation to assist their lords in hunting. The increase of rural population was facilitated by laws of 1769 and 1781 removing restrictions on parcellization of land.<sup>275</sup>

Largely through the efforts of Christian Colbjornsen (1749-1814) a Norwegian lawyer in the service of the Crown, the landlords were deprived in 1787 of their judicial authority over their tenants,<sup>276</sup> In 1788 the Stavnsbaand was abolished. At the same time the State started a Credit Bank to enable the peasants to free their land and move out from the villages. As a result most Danish farms had been separated by 1807. In 1837 cattle owners were made responsible for damage done on others' property. Only the crofters remained to be freed. About 1916 legislation confiscated about a third of the large landowners' estates for parcelling out into smaller holdings, which were allotted in a form of State copyhold.<sup>277</sup>

When at the close of the eighteenth century the land was being divided up into individual holdings, the government attempted to provide land for the crofters but only with small success.<sup>278</sup> The tendency was to give them little or no land and to increase labor obligations. In many places they were systematically peonized. As of 1843 and 1844 their status was somewhat better than that of the Norwegian and Swedish crofters. But proposals to improve their lot were not as yet enacted into law.

In 1835 the government submitted projects for further land reform to the Roskilde and Viborg assemblies.<sup>279</sup> Tenantry was still common and personal tenure obligations attached to much of the land so held. The government proposed to give the landlords greater freedom in dealing with their tenants, as larger enterprises were more efficient. The assemblies were opposed. At Viborg the peasants suggested the establishment of a public loan fund to assist tenants to purchase their holdings. There were discussions as to the hunting rights of landlords, the problem of the rural proletariat (*Husmaend*), and the redemption of personal service obligations by money payments.

In 1844 a decree was issued limiting the free hauling required as to public officials, and to some extent substituting money payments for the hauling re-

274. DANSTRUP, *op. cit. supra* note 271, at 75-76; HOVDE, *op. cit. supra* note 273, at 66; SINDING, *op. cit. supra* note 273, at 332, 356.

275. HOVDE, *op. cit. supra* note 273, at 286; SINDING, *op. cit. supra* note 273, at 379, 400.

276. DANSTRUP, *op. cit. supra* note 271, at 84; HOVDE, *op. cit. supra* note 273, at 276-282; SINDING, *op. cit. supra* note 273, at 400-403; STEENSTRUP, *DEN DANSKE BONDE OC FRIHEDEN* (Copenhagen, 1888).

277. DANSTRUP, *op. cit. supra* note 271, at 135.

278. HOVDE, *op. cit. supra* note 273, at 620, 622, 643.

279. *Id.* at 543-546, 643-644.

quired.<sup>280</sup> In 1850 the distinction between privileged and unprivileged lands in their obligation to bear the costs of maintaining roads, schools, churches, cemeteries, and the livery service was abolished. Compulsory service obligations were commuted into cash payments. In 1863 legislation abolished payment of tithes in kind. A decree of 1818 consolidated rural taxes and converted their payment from kind to silver. In 1850 land was equally taxed and tax privileges taken away. In 1854 a statute gave strong inducements to landlords to sell their lands to their hereditary tenants, though they were not required to do so. By 1850 fifty-eight per cent of Danish farms were held as freeholds. Denmark was the pioneer in Scandinavian agricultural legislation.

The status of farmers was greatly improved by the farmers' cooperatives first established in Denmark in 1882, after which the Norwegian and Swedish were later patterned.<sup>281</sup> In general, the rules of a dairy cooperative are as follows: (1) Membership is open to all farmers in the neighborhood. (2) The farmers are jointly liable. (3) Profits are to be distributed in proportion to the quantity of milk delivered. (4) Each farmer is to have one vote. (5) Each farmer is to deliver all his milk to the dairy, except that used on the farm.

In 1903 the old taxes on land were changed to modern property taxes and combined with general income and capital taxes, and the tithes were gradually commuted.<sup>282</sup>

At the turn of the nineteenth century the holders of the large estates were willing to let their workers have five-acre plots of their own in return for part-time work on the estates. In 1899 the Rigsdag passed an act offering state loans of ninety per cent of the cost of such small holdings.<sup>283</sup> In 1919 the program was broadened.<sup>284</sup> It was realized that larger farms of fifteen to thirty-five acres were desirable. The government therefore bought private lands for redivision, and used the old glebe lands also. A heavy tax was laid on landed estates unless they would surrender one-third of their land for compensation to the state. In 1919 following the ideas of Henry George, the holder paid no purchase price for his land, but rather an annual "ground-rent" of four per cent of the value of the lands as reappraised at periodic intervals. At first rents were made to fluctuate with farm commodity prices. Later a sliding scale was calculated each year based on the earning capacity of small farms. Detailed controls were embodied in legislation of 1933, 1938 and 1943.<sup>285</sup> It should be noted that three-fourths of

280. *Id.* at 282, 552.

281. FRIIS, SCANDINAVIA BETWEEN EAST AND WEST 204 (1950); SOCIAL DENMARK 454-462 (1947).

282. DANSTRUP, *op. cit. supra* note 271, at 128.

283. SCOTT, THE UNITED STATES AND SCANDINAVIA 178-181 (1950); SOCIAL DENMARK 328-330 (1947).

284. SOCIAL DENMARK 331-334 (1947); Munch-Petersen, *Main Features of Scandinavian Law*, 43 L.Q. REV. 366, 377 (1927).

285. SOCIAL DENMARK 332-336 (1947).

the small holdings, averaging twenty-five acres in size, were established without state aids.

Today about ninety-five per cent of the Danish farmers own their land. Legislation aids the farm laborer to become a land holder, and at the same time prevents the large estates from buying up smaller holdings.<sup>286</sup> Seventy-five per cent of the land is used for agriculture compared with eleven per cent in Sweden and three in Norway. The average Danish farm is larger than that in Sweden and Norway, being 38 acres in size. Steps are being taken to reclaim the heath of Jutland. In 1938 seventy-two per cent of Denmark's exports consisted of farm produce; her foreign trade per person was the highest in Europe.

#### CRIMINAL LAW

In the reign of Harold Hein (1074-1080) there was a great alteration in criminal procedure.<sup>287</sup> Previously criminal defendants had to prove their innocence by duel, or ordeal by fire. Under the new law a criminal defendant, where positive evidence was wanting, might clear himself by an oath, when certain impartial parties swore that they believed him innocent.

The criminal law of the thirteenth century is to be found in the Laws of King Valdemar Victorious (1202-1240).<sup>288</sup> The police power was weak. The state did not intervene except where it was a party directly in interest as in cases of murder, kidnapping and repeated theft. Whereas the law of other countries abolished private revenge by making the state the sole avenger, the Danish law sought to bring the victim and the wrongdoer into agreement, thus securing the peace. Hence penalties were mild, consisting chiefly of fines, most of which went to the victim. Introduction of Roman law was changing this approach in other European nations. Murder, treason and theft resulted in the penalty of hanging. Mayhem and kidnapping carried the penalty of imprisonment but the defendant could buy his freedom from the king provided he could obtain a pardon from the victim. The more serious criminal cases were prosecuted by the king's *embedsmand* or local sheriff, one for each herred. In other cases he could act only at the request of the plaintiff. In such cases the royal treasury received part of the fine if it were over three marks of silver. This was one of the main sources of royal income. The proceeding was in the thing courts, the primary assembly of each herred. When a case came up, they elected three, six or twelve of their fellows, depending on the gravity of the crime, to pronounce judgement. Thus a system of jury trial was introduced. The jurors were called *Nævninger* or "named men". If the jury were evenly divided six more were elected to it, until one side had a majority. In Jutland and Funen there was a special class of professional jurors and inquirers,

286. ARNISON, *THE DEMOCRATIC MONARCHIES OF SCANDINAVIA* 256 (2d ed. 1949); *SOCIAL DENMARK* 327-344 (1947).

287. SINDING, *op. cit. supra* note 273, at 80. See also ESMEIN, *A HISTORY OF CONTINENTAL CRIMINAL PROCEDURE* 34-36 (1913) as to early Danish procedure.

288. PRATT, *THE THIRD KING* 67-69 (1950).

eight to a herred, appointed by the king, known as *Saendemaend*. They constituted the juries in cases of murder, mayhem, kidnapping of women, boundary disputes, ownership of land and slander. Their judgment could be set aside by the assembled thing. The *embedsmand* could not make any decisions, but could only enforce them. If he had to levy on household goods, he must do it without public display. There was no ordeal by battle. While ordeal by the hot iron had existed in the old codes, Valdemar abolished it. As in England, compurgators, known men of the district could swear a man free from a charge. But in Danish law they were merely character witnesses. The accused still had to stand trial before the juries if the *embedsmand* thought there was a prima facie case against him, or in civil cases if there were compurgators on both sides.

The substantive criminal law of the thirteenth century was broad in scope, much as the modern.<sup>289</sup> In some cases vengeance by the victim was allowed. In others the defendant could buy off the victim. In still others the defendant was punished by a fine going to the king or by loss of his life. Outlawry was employed. The English law of the same period was much further advanced, the Danish resembling the earlier Anglo-Saxon. The law of negligence had not yet arisen. But Danish criminal procedure was ahead of the English. A presenting jury was in operation. The ordeal had been abolished, though wager of law was not. The royal justice in England was stronger.

Danish legislation from 1500 to 1550 reveals an increasing progress towards the conception that the end to be sought is the maintenance of public order and safety rather than private redress.<sup>290</sup> More severe penalties were provided for violent crimes such as murder, as there were wars and internal strife. The laws of Christian II (1513-1523) penalized with death all cases of deliberate homicide. Following the Reformation ecclesiastical jurisdiction was taken over by the state; this involved crimes such as adultery and seduction. Legislation in the seventeenth century provided for public prosecution of murderers.<sup>291</sup> Capital punishment was the penalty for deliberate murder (except by the nobility), rape and adultery. Accidental acts were no longer regarded as criminal. Witchcraft, vagrancy, incest and concealment of child-birth were now prosecuted by the State.

John Howard, a leading English penologist, found the Danish prisons dirty and offensive in 1781.<sup>292</sup> Because windows were kept shut, trials were carried on under unpleasant conditions. An article published in the Danish journal *Minerva* in 1796 described the Philadelphia system, and from that time forward American as well as English developments were closely fol-

289. KEAN, EARLY DANISH CRIMINAL LAW 19 J. COMP. LEGIS. & INT'L L. 253 (1937); VON BAR, A HISTORY OF CONTINENTAL CRIMINAL LAW 119-141 (1916) (based largely on STEMANN, DEN DANSKE RETSHISTORIE INDTIL KRISTIAN V's LOVE).

290. VON BAR, *op. cit. supra* note 289, at 291-297.

291. A seventeenth century murder prosecution is the subject of a novel by LEWIS, THE TRIAL OF SOREN QUIST (1947).

292. HOWARD, THE STATE OF PRISONS IN ENGLAND AND WALES, WITH PRELIMINARY OBSERVATIONS AND AN ACCOUNT OF SOME FOREIGN PRISONS 82 (1784).

lowed.<sup>293</sup> In 1797 there was founded in Odense the Society for the Rescue of Fallen Citizens. It favored prisons stressing social rehabilitation rather than retribution.

The reforming activities of the government set up in 1784 under Crown Prince Frederick extended to criminal law and the penal system.<sup>294</sup> Its legal expert, the Norwegian lawyer, Christian Colbjornsen, held advanced ideas. In 1789 two principles were enunciated: punishment as mild as compatible with public safety, and the object of punishment to be redemption of the offender. The last vestiges of torture were abolished. The Supreme Court declared mutilation and branding to be unseemly "in our times".

In 1790 the government separated the younger and first-time offenders in the "children's house" in Copenhagen from the more hardened offenders. In 1793 the first national prison law was promulgated. It prescribed minimum standards of sanitation and comfort, and made it obligatory upon officers to enforce them. The same year an ordinance on debtor prisoners ordered that they be accorded special consideration and must not be placed on the same basis as criminals. In 1836 a reform school for boys was established. Following a visit of Elizabeth Fry of England in 1841 a Prison Society was formed, and in 1842 the king appointed a commission to study the problem. The Danish leader was Professor C. N. David, who journeyed abroad to investigate prison conditions and in 1848 was appointed inspector-general of the prison system.

In 1800 police systems were inadequate and obsolete. In the reign of Christian VIII (1839-1848) the police did not confine itself to maintenance of good order, but sided with the reactionary authorities. In 1863 Copenhagen reorganized her police force after the British system, setting up a professional corps, including a detective squad, well equipped and paid.<sup>295</sup>

Scientific investigation of the theory of punishment for crime led to a series of modern codes of substantive criminal law on the initiative of A. S. Orsted in 1833, 1940 and 1841.<sup>296</sup> In 1850 a commission was appointed to prepare a draft of a complete criminal code. This draft served as the basis for the work of a new commission appointed in 1859. A new code thus prepared went into effect in 1866.

With respect to criminal procedure a code of 1819 more effectively established the inquisitorial powers.<sup>297</sup> The Danish constitutions of 1849

293. HOVDE, *THE SCANDINAVIAN COUNTRIES, 1720-1865* 699 (1948).

294. *Id.* at 700.

295. *Id.* at 721.

296. Hertzberg in *A GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY* 531, 563 (1912); VON BAR, *op. cit. supra* note 289, at 367-368.

297. Hertzberg, in *op. cit. supra* note 296, at 531, 563. For discussion of the differences between the accusatory and inquisitorial systems see ESMEIN, *A HISTORY OF CONTINENTAL CRIMINAL PROCEDURE* 3-12 (1913).

and 1866 provided for the introduction of the jury. During the nineteenth century the most important legislation occurred in 1845.<sup>298</sup>

The inquisitorial system of criminal procedure was not abolished until 1916. But that system was never practiced in its purest form and existed for less than a century and a half and even then a lawyer was appointed for the criminal defendant and paid for by the state unless he chose to select his own counsel.<sup>299</sup>

From 1916 to 1919 important changes, based in part on the law of England, France, Germany, Austria and Norway, were made in the entire judiciary system. The public was admitted, oral procedure replaced documentary or written proof, and in important criminal cases juries were provided.<sup>300</sup> In 1936 the courts were further democratized. The jury institution was supplanted with lay judges sitting on the bench together with the professional judges in the first and second instances.<sup>301</sup> Justice is speedy. "In Denmark the whole disposal of a case from its first beginning to the end generally does not take more than one or two months."<sup>302</sup>

The Penal Code of 1930-1933 was introduced by the Minister of Justice, C. T. Zahle. Taking account of the new concepts as to a treatment of criminals, it gives weight to the offender's mentality, environment and motives and provides punishment in proportion to its educative effect.<sup>303</sup> The age of responsibility was raised to fifteen. Juvenile prisons, planned to operate through the mediums of education and training, were introduced for offenders between fifteen and twenty-one. Capital punishment was abolished. The state was given authority to confine for an indefinite period dangerous criminals not amenable to correction.

On June 1, 1945, two laws were passed to deal with the Danish quislings.<sup>304</sup> One law was a supplement to the Civil Penal Law of 1930. This law introduced the doctrines of retroactivity and reestablished the death penalty. The Danish Constitution, unlike the Norwegian, does not provide against retroactive penal laws, though in practice previously no such laws had been passed. The 1945 law penalized acts from April 9, 1940 to June 1, 1946. The other law was a supplement to the Law of Procedure

298. ESMEIN, *op. cit. supra* note 297, at 592, 604, 606; GOOS, *DEN DANSKE STRAFES PROCES* (Copenhagen 1880).

299. TEISEN, *The Danish Judicial Code* 65 U. PA. L. REV. 543 (1917). For a description of Danish criminal law before 1875 see GOOS, *DEN DANSKE STRAFFERET* (Copenhagen 1875); ESMEIN, *op. cit. supra* note 297, at 592-593, 604; VON BAR, *op. cit. supra* note 296, at 119-141, 291-301, 367-368.

300. DANSTRUP, *A HISTORY OF DENMARK* 135 (2d ed. 1949); TEISEN, *supra* note 299, at 543. Civil procedure is described *Id.* at 558-570. See also MUNCH-PETERSEN, *The Social Aspect of Procedure from a European Point of View*, 11 MINN. L. REV. 624 (1927); II DEN LILLE SALMONSEN, 597 (Civil processen); HURWITZ, *TVISTEMAAL*.

301. DANSTRUP, *op. cit. supra* note 300, at 160.

302. MUNCH-PETERSEN, *supra* note 300, at 624, 626.

303. DANSTRUP, *op. cit. supra* note 300, at 160. On present Danish criminal procedure see XI DEN LILLE SALMONSEN, 229 (Straffepoces); HURWITZ, *DEN DANSKE STRAFFERETS PLEJE*; KAMPMAHN, *Prisons and Punishment in Denmark*, 25 J. CRIM. L. 115 (1934).

304. GIVSKOV, *The Danish 'Purge-Laws'*, 38 J. CRIM. L. 447 (1948).

of 1919. To secure speed the lowest court judges could try cases, the tribunal to consist of a judge and two jurors. The right of appeal was restricted. On arrest the defendant is to be kept in custody until final decision. A law of August 28, 1945 penalized offensive collaboration in work and trade. A law of June 19, 1946 made the earlier laws less severe.

Persons accused of crime are given free legal services and incidental expenses irrespective of financial status.<sup>305</sup> Free representation by counsel is also provided, under certain circumstances in matrimonial matters. In 1885 the Danish bar association instituted legal aid (*Rets hjælp*) to provide legal advice.<sup>306</sup>

In the lowest courts the prosecution is represented by the chief of police or his deputy. In the superior courts and Supreme Court prosecution is by the State prosecutor, an appointive official, and his assistants.

The Department of Justice has existed since 1848 when Denmark set up a constitutional monarchy. It is in charge of law enforcement. It acts as legal adviser to the government and represents the government in all cases both criminal and civil.<sup>307</sup> The supervision and direction of the courts is in its hands. Judges are appointed by the king acting through the cabinet, but obviously the minister of justice is very influential. One of the key officials is the director of prisons, who has control of penal and correctional institutions and matters relating to parole and pardon. The system of state police is administered by the Department of Justice. Local police are supervised by the department. Within the department is the Council on Medical Jurisprudence (*Retslægeraadet*), which gives attention to the legal rights and duties of physicians and pharmacists. There is a similar agency (*Teaterraadet*) with regard to the theater industry. The office of film censor is in the department.

In 1888 Denmark passed a law providing compensation to the victims of erroneous criminal prosecutions. It was the most liberal European law on the subject.<sup>308</sup>

#### SOCIAL LEGISLATION

During the period from 1891 to 1933 Denmark developed its present social legislation. In 1933, under the leadership of K. K. Steincke, present Minister of Justice, Denmark codified its legislation by enacting the so-called "Social Reform." This contains the National Insurance Act, which includes regulations governing health insurance, disability insurance, and old-age pensions; the Industrial Accidents Act; the Labor Exchanges and Unemployment Insurance Act; and the Public Assistance Act, including

305. Schweinburg, *Legal Assistance Abroad*, 17 U. CHI. L. REV. 270, 291, n. 30 (1950).

306. Jessel, 'A Poor Man's Lawyer' in *Denmark*, 7 L. Q. REV. 176 (1891).

307. ARNESON, *THE DEMOCRATIC MONARCHIES OF SCANDINAVIA* 117 (2d ed. 1949).  
3 J. CRIM. L. 684, 693, 711-712 (1913); BORCHARD, *CONVICING THE INNOCENT* 384 (1932).

308. Borchard, *European Systems of State Indemnity for Errors of Criminal Justice*, 3 J. CRIM. L. 684, 693, 711-712 (1913); BORCHARD, *CONVICING THE INNOCENT* 384 (1932).



regulations for child welfare, the care of the insane, the crippled, the blind, the deaf, and other special groups, and ordinary public assistance.<sup>309</sup> Eighty-two per cent of social welfare expenditures are paid for by the national government and the municipalities. Large proportions of the expenditures of the plans traditionally regarded as insurance rather than assistance schemes are financed by the government. It seems fair to say of Danish social legislation "that the Danes are seldom satisfied with anything for long, because of a national instinct to improve what already exists and to forestall every possible future difficulty."<sup>310</sup> Mr. Justice Brandeis expressed to the author a keen admiration of Danish social legislation.

*Slavery.* In 1792 Denmark was the first European country to stop the slave trade in African negroes, which supplied her West Indian islands.<sup>311</sup> This was done at the instigation of Ernst Schimmelmann, the Minister of Finance. In 1840 a Danish law on the status of slaves in the Virgin Islands made provision for humane treatment, established their right to purchase their freedom, and permitted them one free day per week to earn purchase money. The actual emancipation of slaves occurred in 1848.

*Freedom of Occupation.* With the establishment of absolutism in 1660 the gild system was encouraged by the government. Eventually there was a reaction against the gild monopolies, and a rescript of 1761 sharply limited their privileges, as did also a decree of 1800.<sup>312</sup> In 1857 the Rigsdag established freedom of occupation.<sup>313</sup>

*Tariff.* Mercantilistic protectionism reached its climax in Denmark with the tariffs of 1762 and 1768. The former carried import prohibitions against over 150 commodities.<sup>314</sup> In 1797 it enacted the most liberal tariff law in all Europe.<sup>315</sup> The rates were reduced, most export duties abolished, and 750 items removed from the list of articles which could not be imported. The tariff of 1838 simplified schedules and lowered duties.<sup>316</sup> It subordinated protection to revenue, and launched Denmark on the way to free trade. The tariff of 1863 marked the triumph of free trade sentiment, and was the basis of Danish tariff legislation until 1908.

309. Cash benefits paid in the way of health insurance, unemployment insurance, old-age pensions, disability pensions, and industrial accident insurance as of 1949 are listed for Denmark, Norway and Sweden in table 16 in FRIIS, *SCANDINAVIA BETWEEN EAST AND WEST* 150-51 (1950). Danish benefits are adjusted annually according to changes in the cost-of-living index.

310. *Denmark*, ATLANTIC MONTHLY 4 (July, 1950).

311. LARSEN, *VIRGIN ISLANDS STORY* (1950); HOVDE, *THE SCANDINAVIAN COUNTRIES, 1720-1865* 695 (1948). On slavery in ancient and medieval times, see SINDING, *HISTORY OF SCANDINAVIA* 39-40 (1858); LARSEN, *A HISTORY OF NORWAY* 28, 78, 120, 131 (1948); and GJESSING, *EN FREMSTILLING AF TRÆLDOMMENS SANDSYNLIGE OPRINDELSE HOS NORDMÆNDENE* (Oslo, 1862); Ericksen, *Om traeldom i Norden*, VII *NORDISK UNIVERSITETS-TIDSKRIFT* nos. 3 and 4 (Copenhagen, 1861).

312. HOVDE, *THE SCANDINAVIAN COUNTRIES, 1720-1865* 22 (1948).

313. *Id.* at 237-240.

314. *Id.* at 23.

315. *Id.* at 43-46.

316. *Id.* at 232-233.

*Women.* The right of women to equality of education, work, and political activity was defended in the eighteenth century by Ludvig Holberg, Christian Falster, Frederik Eilschow, and the Sneedorffs.<sup>317</sup> The Danish feminist movement dates from 1850 when Mathilde Fibiger published "Tolv breve" (Twelve Letters), asserting the right of women to be individuals. In 1857 Pauline Worm published a novel of feminine revolt, "De fornuftige, en dansk roman" (Sensible People, a Danish Novel). Unmarried women were made independent of guardians in 1851.<sup>318</sup> Equal rights of inheritance were given to women the same year. A proposal in 1810 to combat prostitution by giving women opportunities to engage in trade and crafts was defeated by the gilds. Finally in 1857 a law established the right of an unmarried woman to earn her living in any craft or trade. Minor civil service posts were opened to them in the 1860's. After 1825 women of the upper social stratum were admitted more freely to university lecture courses, without, however, the privilege of taking examinations. The first intermediate school for girls was established in Copenhagen in 1851. In 1859 the Danish government established an examination for certifying women school teachers, but it was not until 1867 that women were placed on the same basis as men. In 1880 married women were given control of their earnings. In 1948 three women pastors were ordained in Denmark, the first in Scandinavia.

In 1907 women were given the right to vote for town and parish councils.<sup>319</sup> In 1915 they were given the right to vote for members of the Rigsdag.<sup>320</sup> Through liberal laws on marriage and divorce Danish women enjoy a maximum degree of personal freedom.<sup>321</sup> Absolute divorce may be obtained where there is mutual consent after a period of separation. Denmark was the first Scandinavian nation in which a woman served in the ministry. Miss Nina Bang was Minister of Education in 1924.

*Labor.* In 1835 royal decrees forbade Danish journeymen to reside in countries where labor was permitted to organize.<sup>322</sup> Gilds were abolished in 1862. The modern trade union movement dates back to about 1875.<sup>323</sup> The Danish Federation of Labor was established about fifty years ago. Until recently the Danish federation embraced a greater proportion of the eligible workers than the Norwegian and Swedish. The Danish federation differs from the Norwegian and Swedish in that they are federations of industrial

317. *Id.* at 684.

318. Hertzberg in a GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY 531, 565 (1912).

319. DANSTRUP, A HISTORY OF DENMARK 130 (2d ed. 1949).

320. *Id.* at 132.

321. HOVDE, *op. cit. supra* note 312, at 693. See also Munch-Petersen, *Main Features of Scandinavian Law*, 43 L.Q. REV. 366, 369, 373-377 (1927); Walton, *Scandinavian Law of Husband and Wife*, 9 J. COMP. LEGIS. & INT'L L. 263-264 (1927).

322. HOVDE, *op. cit. supra* note 312, at 625.

323. ARNISON, *THE DEMOCRATIC MONARCHIES OF SCANDINAVIA* 219 (2d ed. 1949). See Chapter IV, *The Labor Movement and Industrial Relations* by Walter Calenson in FRIIS, *SCANDINAVIA BETWEEN EAST AND WEST* (1950); and *SOCIAL DENMARK* 251-301 (1947).

unions. The Danish federation is less centralized than was the Norwegian and Swedish. While in the United States, acceptance of contract terms by union negotiations is equivalent to union ratification, in Denmark the requirements of a secret ballot on proposed agreements is the crucial stage in collective bargaining. But legislation has been enacted to prevent the rejection of agreements by compact minorities in the event of majority indifference. Section 10 of the Conciliation Act provides that a draft agreement is deemed rejected if more than fifty per cent of the votes are cast against it, provided that seventy-five per cent of those eligible to vote do so. The percentage necessary for rejection increases by one-half of one per cent for every percentage by which the recorded vote is below seventy-five per cent.

Denmark goes further in government regulation of labor than Sweden and less than Norway. Danish legislation, however, has usually been enacted on the basis of joint agreement between the central organizations of labor and employers. There is a well developed system of government mediation. If the employer and trade union fail to reach agreement in bargaining over new contracts, a mediator comes into the picture. There are three principal mediators, one designated as chairman, and twelve associate mediators. Mediation proceedings are conducted by a single mediator. Both factions must attend mediation proceedings, and postpone direct economic action for a maximum period of one week at the request of the mediator. The mediator may frame a mediation proposal, which both sides are required to submit to their constituents. While the proposal is not binding, it is usually accepted; as to the public it represents a reasonable settlement. If the mediation fails, the parties are ordinarily free to resort to economic weapons.

In 1896 there was a centralization of employers' associations through the formation of the Employers' Association. In 1898 the workers followed suit by forming the Amalgamated Trade Unions. These two groups drew up the constitution of Danish labor law by the September Agreement of 1899.<sup>324</sup> This agreement, still in force today, defines the relations between employers and employees. Each party may decree labor stoppages. A strike or lockout must be voted by at least three-fourths of a competent assembly. Two notices must be given, fourteen and seven days before a stoppage; and a three-month notice for cancellation of a labor agreement. A right to organize is recognized, but also the right of an individual to refrain from joining. The employer is to have the right to allocate work. Foremen need not join a trade union.

At various times emergency legislation has provided that certain existing wage scales should continue for certain periods unless the parties agreed to changes. In 1936 a special arbitration board was given full powers by a special act to settle strikes of national importance. In view of the general satisfaction with the labor courts and mediation boards, Denmark is not

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324. SOCIAL DENMARK 254-256 (1947).

moving toward general compulsory arbitration. But during the Second World War the employers and workers asked for legislation to some extent resembling compulsory arbitration. In September 1940 the Danish government created the Labor and Conciliation Board to hear disputes over issues not covered by trade agreements and which could not be settled by negotiations between the employers and workers even with the help of the government conciliation service.<sup>325</sup> The employers, the workers and the government each have three representatives on the board, which may make a final decision in such disputes and also make recommendations to the government for further legislation or administrative provisions for maintaining industrial peace. Denmark has had less strikes than either Norway or Sweden.<sup>326</sup>

There are certain types of disputes which must be submitted to a public tribunal for a decision enforceable by the nation. These disputes have to do with rights arising under existing agreements between employers and workers. There may be no strike or lockout over disputed interpretations of collective agreements. Such disputes are tried by a permanently established labor court at the request of either party. A failure to accept the decision results in a liability for damages. In 1910 Denmark set up the Permanent Arbitration Court (*Den Faste Voldgiftsret*) made up of three members chosen by the employers and three by the workers.<sup>327</sup> One of each group of three must have legal training. The chairman of the court, who is selected by the six appointees, must also have legal training. No appeal lies from its decisions. From 1910 to 1943 it handled over three thousand cases.<sup>328</sup>

When disputes arise over matters not covered in the collective agreements or over renewal of such agreements, the labor court has no jurisdiction, and strikes may legally occur. Such disputes are handled by a mediation board which, however, can make no decision nor enforce any suggestion. The Danish mediating agency consists of three *Forligsmand* (conciliators) who hear cases individually or collectively. Few cases have come to this board.

*Workmen's Compensation.* Workmen's compensation was introduced by an act of 1898.<sup>329</sup> Under the law of 1933, Denmark has one of the most comprehensive systems in the world. Fishermen were included in 1900, seamen in 1905, and agricultural laborers and woodsmen in 1908. The

325. *Id.* at 266-268.

326. FRIIS, *op. cit. supra* note 323, at 134.

327. SOCIAL DENMARK 256-260 (1947).

328. The principles developed by the court are set forth in ILLUM, DEN KOLLEKTIVE ARBEJDRET (Copenhagen, 1939) and JENSEN, ARBEJDSRETEN I DANMARK (Copenhagen, 1946).

329. ARNESON, *op. cit. supra* note 323, at 219; SOCIAL DENMARK 76-89 (1947). On factory legislation see *id.* 283-301. The Holiday Act of 1938 gives a vacation with pay of one day for each month worked, payable at the beginning of the vacation. *Id.* at 400-405.

present law covers virtually every one working for another, including domestic servants. State and local employees are covered. Employers are compelled to carry liability insurance for all workers in a company approved by the Department of Social Affairs. If an employer fails to take out insurance, he is personally liable, and if he is unable to pay, all the approved accident insurance companies of the country are jointly liable. Since 1933 workers are also protected against occupational disease. During the first weeks the worker is taken care of through his sick club, in which all workers are compulsorily insured. If he dies, funeral expenses are paid and his family receive a cash payment. In case of permanent disability the worker receives a pension based on his usual earnings and the degree of incapacity. The pension may never be more than sixty per cent of his regular earnings. If the disability is less than fifty per cent he may be paid a lump sum, thus permitting him to start some enterprise for himself. The administration of the law is by a directorate of accident insurance (*direktoratet for ulykkeforsikringen*) in the Ministry of Social Affairs. The directorate is made up of representatives of employers and workers. Its decisions may be appealed to the Accident Insurance Council (*Ulykkeforsikringsraadet*). Its decision is final.

*Unemployment Insurance.* In 1907 the government began to make contributions to the unemployment benefit societies which were largely sponsored by the trade unions.<sup>330</sup> Today the basic feature of the Danish unemployment insurance system is these approved and state-aided societies. The funds of the societies come from contributions by members, the national treasury, and the municipality.<sup>331</sup> Employers do not contribute as this would be added to selling prices and therefore borne by the population as a whole. When a worker has difficulty in contributing, the municipality may assist him by paying half of his contribution. Ninety-five per cent of all workers in industry and transport are members of the societies.

After a short period of unemployment, usually six days, the worker is paid a cash allowance for a certain number of days, varying from ninety to two hundred days in any one fiscal year. The length of the waiting period and the amount of the allowance varies with different societies.<sup>332</sup> But no worker receives more than two-thirds of the average earnings of his trade. No benefits are paid to strikers, recipients of sick benefits or similar allowance, or those who unreasonably refuse to accept other work.

To cope with periods of extreme unemployment a State Unemployment Fund was set up. Employers contributed a fixed number of kroner per worker. Grants were made to the societies with the result that payments could be extended over much more of a fiscal year.

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330. ARNESON, *THE DEMOCRATIC MONARCHIES OF SCANDINAVIA* 223 (2d ed. 1949); FRIIS, *SCANDINAVIA BETWEEN EAST AND WEST* 146 (1950); SCOTT, *THE UNITED STATES AND SCANDINAVIA* 115 (1950); SOCIAL DENMARK 95-112 (1947).

331. SOCIAL DENMARK 108-112 (1947).

332. *Id.* at 105-108.

Administration and supervision is in the hands of the director of labor and other agencies in the Department of Labor. Representatives of the Societies and of the Rigsdag advise the director. Employment exchanges are set up to aid in bringing prospective employers and the unemployed together.

*Public Assistance—General Relief.* Prior to the Reformation much church property was devoted to poor relief.<sup>333</sup> Thereafter such property was diverted to other purposes. Legalized beggary became the most extensive form of relief. In 1755 the Danish government ordered city beggars placed in work-houses. In rural districts resident paupers incapable of work were taken care of by members of the parish in rotation. In Denmark parcelization of land spread the means of subsistence more evenly, hence conditions were better than in Norway and Sweden. In 1820 N. F. S. Grundtvig remarked that food was still found in the homes of the poor despite a financial crisis, and added that a country might be accounted rich "when few have too much and fewer too little."<sup>334</sup> In 1799 and 1803 Denmark revised her poor laws and established commissions for rural parishes and municipalities.<sup>335</sup> There was no change until 1867 at which time the poor commissioners were made elective instead of appointive. The poor laws of 1799 and 1803 established the duty of the local authorities to provide necessary assistance in cases of distress, as did the 1849 constitution. Modern social legislation began in Denmark in the 1890's.<sup>336</sup> The poor law of 1891 provided that when distress arose out of specified diseases or disability, relief could be given without the imposition of legal disability and without loss of the right to vote.<sup>337</sup> A law of the same year removed the care of the aged from the operation of the poor law.

In 1918 preparatory work for a radical revision of the poor laws was commenced. In 1933 the Public Assistance Act, a part of the Social Reform legislation, was enacted.<sup>338</sup> In 1900 fifty-two per cent of the costs resulting from social legislation involved public assistance, in 1930 thirty-four per cent, and in 1942 only twenty-five per cent. Public assistance is granted to those not aided by social insurance. It is administered through the Social Committee, a popularly elected local authority. Appeal lies to the county governor and then to the Minister of Social Affairs. Aid is of three kinds: Special Relief, Communal Relief, and Poor Relief. Special relief is granted to persons suffering transitory and unpredictable distress, and does not affect the legal status of the recipient.<sup>339</sup> Communal relief is extended in ordinary cases of need for maintenance, house rent, etc., and involves only an obliga-

333. HOVDE, *THE SCANDINAVIAN COUNTRIES, 1720-1865* 623 (1948); *SOCIAL DENMARK* 14-16 (1947).

334. Quoted by HOVDE, *op. cit. supra* note 333, at 625.

335. *SOCIAL DENMARK* 16-17 (1947).

336. See Chapter V, "Social Welfare" in FRIIS, *op. cit. supra* note 330; *SOCIAL DENMARK* 14-21 (1947).

337. *SOCIAL DENMARK* 18 (1947).

338. *Id.* at 113-136.

339. *Id.* at 124-127.

tion to repay; but if the distress is a result of laziness or extravagance, or is over a long period, the recipient loses the right to vote and to hold public office.<sup>340</sup> Poor relief is assistance to work-shy, neglectful persons, drunkards, vagabonds, etc., and entails the same loss as well as certain others, as denial of right to marry.<sup>341</sup> In some such cases the aid consists of institutional board and lodging. The amount of the assistance must be enough to maintain life, and to provide medical and nursing care in case of illness. Beginning in 1933 food rebate coupons have been issued to the needy.<sup>342</sup>

*Work Relief.* The Danes prefer work relief to direct or cash relief.<sup>343</sup> The public works program has not been as comprehensive as in Norway and Sweden. But there are provisions by law for both national and municipal projects. The wages paid must be lower than the prevailing wages in the open market but higher than unemployment benefits. Public subsidies may be given to private projects undertaken primarily to make new jobs. Local camps for men from eighteen to twenty-five may be subsidized by the national government, and several municipalities have set them up. Non-competitive work is done in such camps and there are educational and recreational advantages.

*Other Public Assistance.* Denmark was the first European country to provide aid to dependent children. In 1913 such aid was given to widows with low incomes.<sup>344</sup> Since 1933 it has been extended to widowers.

The laws as to child welfare were codified in the Public Assistance Act of 1933, which also covers other types of public assistance.<sup>345</sup> Following the earlier Norwegian model, child welfare work is handled locally by the child welfare committees of the municipalities. It includes supervision of orphans, illegitimates, and children whose parents receive public aid. The committees also supervise and guide parents and guardians where this appears necessary, and send children to public institutions when necessary. In some cases school children are provided with free meals. Maternity assistance may be provided. Public assistance costs are met one-third from the municipalities and two-thirds from an intermunicipal fund to which all municipalities contribute.

A final category of public assistance is known as special care. This is the relief given to lunatics, feeble-minded, epileptic, the crippled or deformed, the blind, and deaf-mutes.<sup>346</sup> These are provided for in the Public Assistance Act of 1933. Legislation of 1929, 1934 and 1935 provides for sterilization in certain cases.<sup>347</sup>

340. *Id.* at 127-128.

341. *Id.* at 128-130. Prior to 1933 about one-third of those receiving general relief were penalized. In 1942 only six per cent were penalized.

342. *Id.* at 133-136.

343. ARNESON, *op. cit. supra* note 330, at 235; SOCIAL DENMARK 301-327 (1947). The number of unemployed from 1940 to 1944 are listed in *id.* at 320.

344. SOCIAL DENMARK 184-188 (1947).

345. ARNESON, *op. cit. supra* note 330, at 253; SOCIAL DENMARK 136-188 (1947).

346. SOCIAL DENMARK 188-214 (1947).

347. *Id.* at 194-195, 202.

*Family Welfare.* In 1935 an executive order was issued appointing the Danish Government Population Committee, to deal with the problem of a lowered birth rate, though the birth rate was higher than in Norway and Sweden.<sup>348</sup> In 1948 the Danish Government Youth Committee submitted proposals for marriage loans. It recommended the lending of amounts up to 3,000 kroner, fixed in relation to the amount of savings and the income of the couple during the previous two years. The couples would pay one per cent interest, and the government would pay the rest of the interest and guarantee repayment of the loans.

Abortion is legal for medical reasons, that is to say, when indicated by considerations of heredity such as insanity or imbecility or when there is danger to the mother's life and health due to exhaustion, chronic malnutrition, attempted suicide, or other acts of despair.<sup>349</sup> It may be performed if the child was conceived under violence or threat of violence. In 1939 a semi-official case-work agency, the Maternity Aid Association was established to give free personal advice to pregnant women and mothers.<sup>350</sup> All pregnant women are entitled to three free health examinations by a doctor and seven by a midwife. Two-thirds of all confinements take place in the home.

Legislation of 1888 provides that when the father of an illegitimate child fails to support it, the mother may draw advances from the public, which may then collect from the father.<sup>351</sup> The 1888 act is the earliest of the modern Danish social legislation, though the Poor Law and the Old Age Relief Act of 1891 because of their greater importance are normally so regarded. The present Danish law stresses the right to proper support and education rather than the right to inherit.

Since 1937 Denmark has made grants to municipalities that appoint public nurses. Without charge the nurse examines all children at regular intervals during the first year. Under a 1945 law parents are entitled to have all children under seven examined free by a physician three times during the child's first year and later once a year. Free school lunches in elementary schools are provided. Since 1948 all children whose parents so desire are entitled to meals. Danish farmers offer free vacations to school children of city families with small incomes, and the state pays transportation costs. Since 1949 home help services have been provided free to mothers of small children with small means. Preschool institutions have been set up to care for at small fees the children of parents both of whom are employed outside of the home. The most important device for equalizing the cost of children is the tax rebate. Children's allowances are now under discussion. At the present time grants of 370 to 600 kroner per year are given to children of

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348. FRIIS, *op. cit. supra* note 330, at 159; SOCIAL DENMARK 437-439 (1947).

349. FRIIS, *op. cit. supra* note 330, at 162; SOCIAL DENMARK 165-168 (1947).

350. SOCIAL DENMARK 170-178 (1947).

351. *Id.* at 179-184; Munch-Petersen, *Main Features of Scandinavian Law*, 43 L. Q. REV. 366, 376-377 (1927).



widows and widowers having limited incomes. Unmarried, separated or divorced mothers are entitled to payment by the government of the father's contribution when the father is slow in paying.

No child under fourteen may be employed except in agriculture, forestry, on ships, or in the fishing industry.<sup>352</sup> No one under eighteen, except under exceptional circumstances, may be employed at night or for longer hours than adults in the same trade.

*Old Age Pensions.* In 1891 Denmark established an old age pension system under which the localities decided as to the individual needs of the aged.<sup>353</sup> Denmark was the first European nation to do this. The Act of 1922 provided that all persons past sixty-five had the right to such a pension, varying according to the income of the recipient. But the most important act is the National Insurance Act of 1933. It fixed an annual basic pension for persons past sixty-five, with variations according to marital status, geographical location, and amount of private income. The pension is paid only to persons of limited means, hence half of those 65 or more receive no pensions. In 1937 the age limit was lowered to sixty.<sup>354</sup> Payments may be increased if the cost of living increases. If the recipient delays in applying the amount is proportionately increased. The individual makes no contribution to the system. But he is required to take out sickness and permanent disability insurance, or if ineligible for them, to show that he has applied. The funds for pensions are paid four-sevenths by the national treasury and three-sevenths by the locality. In 1942 one-fourth of the total expenditures for social services was for such pensions. Administration is in the hands of the social welfare committees appointed by municipal councils. Up to 1942 about five hundred old peoples' homes were erected for aged persons unable to live alone.<sup>355</sup> Since 1937 the government has erected homes for old age pensioners able to live without special care.<sup>356</sup>

*Medical Care.* Copenhagen was provided with a public physician in 1531, but the office was not in full function before 1630.<sup>357</sup> By 1750 a few provincial towns had public physicians. By 1800 there was one such physician for each province and each city. A Danish decree of 1740 placed affairs of medicine and public health under the *Collegium Medicum*. In 1803 all such functions were centralized in a Royal Bureau of Health. The bureau drew up instructions for the public physicians and midwives, recommended certain regulations, recommended candidates for state medical offices, and conducted examinations for licenses. The duties of public physicians were well-established by 1750. The first census was taken in 1769.

352. ARNESON, *THE DEMOCRATIC MONARCHIES OF SCANDINAVIA* 218 (2d ed. 1949); *SOCIAL DENMARK* 298-299 (1947).

353. ARNESON, *op. cit. supra* note 352, at 241; FRIIS, *SCANDINAVIA BETWEEN EAST AND WEST* 146 (1950); *SOCIAL DENMARK* 52-76 (1947).

354. As to the amounts paid see *SOCIAL DENMARK* 64-67 (1947).

355. *Id.* at 70-72.

356. *Id.* at 72-74.

357. HOVDE, *THE SCANDINAVIAN COUNTRIES, 1720-1865* 576 (1948).

Although *laissez faire* ultimately became dominant in economic affairs almost no one favored abolition of public physicians. By 1865 Denmark had developed its system of public health administration farther than almost any other nation. Samuel Laing, a Scotchman, wrote in 1852: "Our sanitary-condition politicians may envy Denmark such a complete medical arrangement for the health of the people."<sup>358</sup>

Freedom of trade in drugs was not permitted after 1700. Druggists had to take a state examination and licenses to sell drugs were monopolistic. Druggists were subject to the supervision of the public physicians. In 1842 Denmark forbade the sale of licenses to sell drugs by possessors of licenses.

The confiscation of church properties during the Protestant Reformation resulted in a great decline of the hospitals. The Danish king erected the first public hospital in 1755. Lying-in hospitals for illegitimately pregnant women grew up from 1775 to 1800. In 1806 the Danish king placed the duties of providing general hospitals on the country and city councils.<sup>359</sup> After 1830 several new hospitals were founded, almost always by private enterprise. Examinations for licenses to practice dentistry were not decreed until 1873. Denmark in 1810 made vaccination against smallpox legally mandatory, being one of the first countries to do so. Denmark was a pioneer in combatting venereal diseases; after 1788 hospitalization and medicine might be had at public expense. Beginning in 1853 decisive steps were taken to eliminate Asiatic cholera. From 1801 to 1869 the Danish death rate diminished, being lower even than the Swedish rate. Denmark had developed a system "so extensive as to justify the appellation of state medicine."<sup>360</sup> Epidemic legislation proper dates from 1882. From 1921 to 1940 there was not a single death from Asiatic cholera and only three from smallpox. The present legislation covers typhoid, diphtheria, scarlet fever, infantile paralysis and meningitis. All Danes are entitled to free hospital treatment of infectious diseases.<sup>361</sup> In 1937 Denmark and Sweden had the lowest typhoid mortality in the world. Venereal diseases have been virtually eliminated. Denmark ranks second only to New Zealand in tuberculosis mortality. In Copenhagen school children receive free dental inspection and treatment twice a year.<sup>362</sup>

*Health Insurance.* Denmark has had private and voluntary health insurance through group health associations or sick clubs (*Sygekasser*) for several decades.<sup>363</sup> The national treasury began to subsidize them in 1892. In such clubs only those with the income of a skilled worker or less are

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358. Quoted in *id.* at 580.

359. SOCIAL DENMARK 241-250 (1947).

360. HOVDE, *op. cit. supra* note 357, at 588. See also SOCIAL DENMARK 215-250 (1947).

361. SOCIAL DENMARK 215-216 (1947).

362. *Id.* at 230.

363. ARNESON, *op. cit. supra* note 352, at 245; FRIIS, *op. cit. supra* note 352, at 146, 155; SCOTT, THE UNITED STATES AND SCANDINAVIA 113-115 (1950); SOCIAL DENMARK 33-52 (1947).

eligible. Ninety per cent of the population over fourteen are members. In 1933 the National Insurance Act in effect made health insurance compulsory. Every person between twenty-one and sixty must contribute to one of the 1600 approved sick clubs. The clubs are operated locally through leaders chosen by the insured, subject to some state supervision. Persons with higher incomes are provided for by special sections of the clubs, or may join a benefit society controlled by the state. The state subsidies are given only as to persons in the workers' income class. No one has a right to old age or disability pensions unless he belongs to a sick club. Ill persons are furnished medical attendance by general practitioners and specialists and hospital treatment and an allowance during illness up to six months. The total fee of the doctor is paid directly by the insurance system. Maternity benefits are paid, and since 1940 funeral assistance.<sup>364</sup> The national treasury contributes for all this to the sick clubs a small amount per member. But most of the income is derived from premiums paid by the members.<sup>365</sup> The municipalities provide certain subsidies. Almost all hospitals are operated by the local or national governments, hence the rates are very low. In many cases the municipality furnishes free transportation of the ill person to the physician or hospital.

The societies enter into contracts with physicians. In urban areas they are paid fixed annual fees, per member; in rural areas they are paid fixed fees per consultation. Doctors may also retain their private practices.<sup>366</sup> Unlike the Norwegian and Swedish systems, the Danish involves the choice of a family doctor for long periods. He may refer the patient to a specialist who later gives an account of the treatment to the family doctor. This secures a double advantage: there is no excessive resort to specialists; and the general doctor gets a more thorough knowledge of his patients. Denmark has a higher percentage of doctors to population than Norway and Sweden. In hospitals the work is done by full-time staff physicians. Medicines are sold below cost. The societies pay three-fourths of the cost of medicines. In 97 per cent of the cases dental treatment is provided, though artificial teeth are not provided.<sup>367</sup> Today free hospitalization and free or below-cost medical attention are unquestioned. "It is the general concensus, in the medical profession as well as among the public, that these services

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364. Female factory workers are entitled to a daily cash benefit of six to seven kroner from four to eight weeks. All expectant mothers with incomes below the limit for membership in the health clubs receive gratis half a liter of milk a day for six months before childbirth and a liter a day for six months after childbirth. FRIIS, *op. cit. supra* note 352, at 161.

365. For the total sick-club and public expenditure in 1942, see SOCIAL DENMARK 50 (1947).

366. See ARMSTRONG, *THE HEALTH INSURANCE DOCTOR: HIS ROLE IN ENGLAND, DENMARK AND FRANCE* (1939).

367. SOCIAL DENMARK 46 (1947).

are abused to only a very small degree."<sup>368</sup> Next to Holland, Denmark has the lowest mortality rate in Europe.<sup>369</sup>

*Disability Insurance.* Since 1922 all citizens in good health must carry disability insurance.<sup>370</sup> Chronic invalids are cared for under the Public Assistance Act. The annual premium for disability insurance is a little over seven kroner. The employer also contributes six kroner a year for each worker. About one-half of the cost is paid by the national government and one-seventh by the municipality. The amount of disability benefits is determined on the same basis as old age pensions, except in case of severe disability. In 1946 about one per cent of the population received such pensions. The system is administered by the Disability Insurance Court (*Invalid forsikringsretten*) in the Department of Social Affairs. Its decision as to the degree of disability is final. No benefit is paid until the capacity to work has been reduced at least one-third.

Public health laws are administered by the National Health Service (*Sundhetstyrelsen*) in the Department of the Interior. Every Amt has a trained publicly paid physician, as has Copenhagen, under the National Health Service. Sanitation, child health, prevention of epidemics, and public hospitals are all embraced in a nation-wide program. Socialized medicine is advancing rapidly in Denmark, particularly in conjunction with social insurance. But there is still much private practice and there are many private clinics.

*Housing.* In 1887 and 1898 the Rigsdag stimulated the organizing of many building associations which took advantage of government loans to builders.<sup>371</sup> Subsequently the government gave subsidies to municipal and private building projects as well as to the cooperative associations founded as early as 1865. The subsidies consisted of grants and loans at low interest rates. Legislation of 1933 made a large sum available for building loans. Loans may be made to municipalities and cooperative societies up to 97 per cent of the total cost and to private owners up to seventy per cent. The municipal governments also furnish aid. Copenhagen has not only recognized housing cooperatives, but has developed a building program of its own. In the 1920's about one-half of housing was being constructed by the city and the cooperatives. Today one-fifth of the population of Copenhagen lives in such buildings. Spacing standards are better than in Norway and Sweden. Beginning in 1938 rent subsidies have been granted to less well-to-do families having three or more children under sixteen. The subsidy

368. FRIIS, *op. cit. supra* note 352, at 158. American critics of the Scandinavian systems say, "In contravention of plain fact, that they exemplify the deterioration of medical science when it gets into public hands," Hovde in *id.* at 341.

369. SOCIAL DENMARK I (1947).

370. *Id.* at 55-70. The principal causes of disability are set forth for the period from 1933 to 1942 in *id.* at 61.

371. ARNESON, *THE DEMOCRATIC MONARCHIES OF SCANDINAVIA* 259 (2d ed. 1949). See also Chapter VI "Housing" by Abrams in FRIIS, *SCANDINAVIA BETWEEN EAST AND WEST* (1950); SOCIAL DENMARK 416-448 (1947).

varies from thirty percent of the cost for families with three children to sixty per cent for families with six or more children. Slum clearance is carried on by local authorities, but the national government furnishes subsidies in the form of grants and loans. Danish cities have in some instances encouraged "garden cities," a form of suburban resettlement, by furnishing the ground rent free of charge, or laying out and subsidizing model suburban units. In 1949 a commission of United States Senators visited Denmark, and returned convinced that the Danish approach held the answer to the housing problem of America's middle income group. The most notable aspects are: (1) housing cooperatives, (2) planning and house design, (3) housing for the elderly, (4) aid to large families, and (5) land policies.<sup>372</sup> In 1937 government grants were made for the housing of old age pensioners able to care for themselves. Danish cities systematically increase their landholdings both within and without their city limits. Copenhagen owns more than one-third of the total area available for building within its city limits. Copenhagen's building law of 1939 allows for more freedom in planning, and facilitated the building of balconies.<sup>373</sup>

*Liquor Control.* There was a temperance movement in the Scandinavian countries beginning about 1830. Prior thereto a royal ordinance forbade households to distill brandy, thus reducing the use of liquor among the peasantry. There was, however, no prohibition against purchase. The use of liquor was not as extensive as in Norway and Sweden.<sup>374</sup> This may explain the fact that the temperance movement was weakest in Denmark. However, in 1882 "the consumption of spirits was greater than in any other country."<sup>375</sup>

The control of intoxicants is approached by heavy taxes on alcoholic drinks.<sup>376</sup> There are also regulations concerning their sale. The number of places of sale is limited by law. Denmark's per capita alcohol consumption is one of the lowest in the world. From 1891 to 1940 it fell from 8.70 litres of pure alcohol per capita to 2.20.

#### UNIFORM SCANDINAVIAN LAWS

There has long been cooperation between the Scandinavian nations in law-making just as there has between the States of the United States and the members of the British Commonwealth of Nations. Indeed the Danish Ambassador to the United States has recently pointed out that in some aspects the laws of the Scandinavian nations are closer to each other than the laws of American states.<sup>377</sup> When the three Scandinavian nations emerged more than a thousand years ago, they conceived of their vernacular

372. FRIIS, *op. cit. supra* note 371, at 178.

373. SOCIAL DENMARK 72-74 (1947).

374. HØVDE, THE SCANDINAVIAN COUNTRIES, 1720-1865 664 (1948).

375. SOCIAL DENMARK 237 (1947).

376. ARNESON, *op. cit. supra* note 371, at 272; SOCIAL DENMARK 237-241 (1947).

377. Speech by Henrik de Kaufmann reported in Nordisk Tidende, Aug. 3, 1950.

as one single language, the "Danish tongue," spoken as late as 700 A. D.<sup>378</sup> The old Icelandic code accorded to "heirs of Danish tongue" a privileged position in comparison to that of other aliens. A Swedish provincial code of 1200 provided for a higher penalty for the manslaughter of a Dane or Norwegian than for the killing of an Englishman or German. Denmark and Norway were united from 1380 to 1814, and all three Scandinavian nations from 1388 to 1523. There were unions between Norway and Sweden from 1814 to 1905, and Denmark and Iceland from 1918 to 1944. Iceland was once a part of Norway and later until 1918 a part of Denmark.

Many Inter-Scandinavian conventions have been adopted.<sup>379</sup> In 1874 a Scandinavian monetary connection was adopted, making Scandinavian coins and notes legal tender in all three countries. In 1880 the Inter-Scandinavian Bank Draft Act was enacted after study by a joint committee of the three parliaments. Other common codifications are the Maritime Act of 1892, the Check Act of 1897, the Sale of Goods Act of 1907, the Contracts Act of 1917, the Act of 1922 as to Minors and Guardians, Marriage Law of 1922 to 1925 and many laws with respect to trademarks, insurance, trade registers, commercial agents, selling on the installment plan, promissory notes, adoption, property, and air traffic. Finland and Iceland have participated in the past three decades.

All five nations have coordinated their family law concerning marriage and divorce and the legal effects of marriage and adoption. There has been partial coordination as to minority and tutelage and legacy. Basic principles of criminal law have been worked out as to juvenile delinquency, alcoholism, and abortion. Denmark and Sweden have almost identical laws of citizenship. The common law of the countries is much alike due to the close political relations for centuries. Danish law affected Norwegian and Icelandic law, while Swedish law affected Finnish law. The uniform codes are not treaties, hence each nation is free to change. Forums for negotiations are the periodical joint sessions of the ministers of Justice, the Scandinavian Inter-Parliamentary Union and the Scandinavian Jurists Conventions which have met since 1872.

With respect to social security legislation the aim is reciprocity rather than coordination. Nationals of one Scandinavian country residing in another should receive the same benefits as the local citizens even if the recipient had paid part of his contribution in his own country. Reciprocity has been attained as to industrial accident insurance and health and unemployment insurance, but not before 1950 as to old age and disability insur-

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378. SCOTT, *THE UNITED STATES AND SCANDINAVIA* 6 (1950). The languages separated in the Viking Period (800-1100). The Danes were "a long time considered the main people" and for several centuries played the most important part. SINDING, *HISTORY OF SCANDINAVIA* 27 (1858).

379. Hertzberg in *A GENERAL SURVEY OF CONTINENTAL HISTORY* 531, 564-565, 568 (1912); Leistikow in *FRIIS, op. cit. supra* note 371, at 307-324; Munch-Petersen, *Main Features of Scandinavian Law*, 43 *L.Q. REV.* 366 (1937); Leivestad, *Custom as a Type of Law in Norway I*, 54 *L.Q. REV.* 95, 101 (1938); Bugge, *The Scandinavian Uniform Laws*, 26 *TIDSKRIFT FOR RETVIDENSKAB* 80 (1914).

ance. In 1919 the three Scandinavian nations signed a reciprocity convention as to industrial accident insurance. In 1937 all five nations concluded a new convention extending its scope to workers not resident in the nation where injured. In 1926 Denmark signed a health insurance convention with Norway, enabling members of a health insurance society in one country to transfer to a similar society in the other regardless of age or health. Denmark concluded similar conventions with Sweden in 1939 and 1947. Denmark signed a similar convention with Iceland in 1939, revised in 1948. In Denmark resident foreigners are eligible for membership in unemployment insurance societies. In 1946 representatives of Danish and Swedish societies made an agreement permitting transfer of members of the societies of one nation to those of the other, and similar arrangements are being prepared with Norway. Since World War II a convention ratified by Denmark and Sweden concerning exchange of labor did away with the rule that foreigners could accept employment only with the consent of the government.<sup>380</sup> Conferences on workmen's safety were held in 1928, 1937 and 1948, and a commission is now outlining regulations for safety devices for machinery and tools.

Major criminals are subject to extradition. A bill is now in preparation making it possible to recover fines and execute short-term prison sentences imposed by a court of one nation in all the other nations. Special arrangements were made as to quislings. In civil procedure, judgments of one nation may be executed in another. A Danish convention with Sweden, concluded in 1861, was later adhered to by Norway. A convention on bankruptcy became effective in 1935.<sup>381</sup>

#### LEGAL EDUCATION AND ADMISSION TO THE BAR

King Eric of Pomerania (1412-1439) obtained the consent of the Pope to found a university, but the University of Copenhagen was not established until 1479.<sup>382</sup> Previously Danish students attended the University of Paris where a special college for Danes was founded about 1200. The University had a law faculty from the very beginning, but only a single law professor until 1657. For lack of funds the University did not really become active until 1539 at which time church funds acquired through the Protestant Reformation were made available. In 1539 it was made compulsory to give lectures on the Institutes of Justinian.<sup>383</sup> The new University Charter of 1732 made comprehensive provision for the study of law, which, under the influence of the Dutch and German schools of natural law, was receiving

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380. Under the Scandinavian Pauper Convention of 1928, Scandinavian nationals acquire the right to public assistance (general relief) on certain conditions if they have lived in Denmark for ten years. *SOCIAL DENMARK* 120 (1947).

381. Holm-Nielsen, *The Scandinavian Conventions on Bankruptcy and Arrangements Outside Bankruptcy*, 18 *J. COMP. LEG. & INT'L. L.* 262-265 (1936).

382. Sinding, *op. cit.*, *supra* note 378, at 159, 170, 224.

383. But the regulation provided expressly that "we are not following Roman law in these kingdoms, but have our own laws."

more attention. Law was now regarded as second only to theology. For the first time Danish law itself was taught. Andreas Hojer (1690-1739) a German historian and physician, assumed one of the newly created law professorships and "achieved results that entitled him to be called the father of modern Danish jurisprudence."<sup>384</sup>

A royal order of 1735 set up the bar under official sanction. One of 1736 for the first time required examinations of judges and attorneys.<sup>385</sup> To be a judge, government employee or practitioner (except in the lowest courts) one must pass a civil service examination in law (*Den juridiske Embedseksamen*). Before taking this examination the applicant must have a Bachelor of Arts degree and pass an examination in philosophy at the University. The University studies are entirely theoretical except that a course in Accounting must be taken.<sup>386</sup> The civil service examinations are given by University professors, with practitioners and judges as assistant examiners. There are two parts to the examination. The first is oral and comes after two years of study and covers: (1) the main features of Danish private law, (2) Danish constitutional and public international law, (3) history of Danish law, and (4) political economy and statistics. The second part of the examination comes three or four years later and is both oral and written. It covers (1) Danish private law as to persons, family, inheritance, general principles of law, commercial law and conflict of laws, (2) Danish private law as to property, contracts, torts and admiralty law, (3) Danish criminal law, (4) Danish procedural law, and (5) the main features of Roman law.

There is no requirement that the applicant attend the law school. The curriculum includes lectures, case discussion,<sup>387</sup> and seminars. Practitioners teach a course covering legal documents, and other practical problems arising in practice.<sup>388</sup> The library includes statutes, judicial decisions, textbooks and foreign legal literature. The doctor's degree in law is rarely given and is more difficult to obtain than in Germany. A candidate must write a satisfactory thesis and defend it publicly, and gets a right to teach. During 1946 to 1947 there were 2079 law students at the University of Copenhagen and 210 at the University of Aarhus.<sup>389</sup>

Attorneys are commissioned by the Minister of Justice.<sup>390</sup> There is admission to the lowest courts, to the Superior Courts, and to the Supreme

384. HOVDE, *op. cit. supra* note 374, at 124.

385. Hertzberg, *op. cit. supra* note 379, at 533, 563. Previously lower court judges had been laymen; and higher judges nobles trained in Roman and canon law.

386. Munch-Petersen, *The System of Legal Education in Denmark*, J. OF PUB. TEACHERS OF LAW 31-32 (1928); DEN LILLE SALMONSEN, 429 (*juridisk embedseksamen*).

387. In the Scandinavian nations the case method is used only as supplementary to lectures. Munch-Petersen, *The Social Aspect of Procedure from a European Point of View*, 11 MINN. L. REV. 624, 633 (1927).

388. For a criticism of law office study as over against theoretical studies see Munch-Petersen, *supra* note 387, at 624, 631-633.

389. FACTS ABOUT DENMARK 30 (Copenhagen, 1949).

390. On the Danish bar see X DEN LILLE SALMONSEN 294 (*Sagforer*).



Court.<sup>391</sup> All attorneys belong to the Society of Attorneys which is governed by a Lawyers Council with wide disciplinary powers.<sup>392</sup> Attorneys, like the judges, occupy an independent position, as they are not admitted by the courts, and cannot be suspended or disbarred except following a criminal prosecution. The high qualifications demanded of both judges and attorneys result in excellent decorum on the part of both. There is no division of the bar into barristers and solicitors as in England.

#### JURISPRUDENCE AND LEGAL HISTORY

A leading student of the Scandinavian countries has pointed out that "the Danes are more inclined by national character to cold, intellectual criticism than the two sister nations. The country is small and compact; business and agriculture require prudence for success; headlong adventures imitating spectacular foreign successes cannot safely be risked; and in all Danish thought there is a strong strain of peasant skepticism and conservatism. The Dane is therefore, even more than the Swede or the Norwegian, an ingrained individualist, who shies away from every extravagance of claim and expression."<sup>393</sup>

Niels Hemmingsen, professor of theology at the University of Copenhagen about 1560-1580, produced a pandect on natural law, which was read all over the continent. This was an investigation of law based on natural principles to find out "how far reason will reach without the prophetic and apostolic word." This was before the time of Grotius. "Hemmingsen thus became one of the founders of modern *jurisprudence*."<sup>394</sup>

The Danish code of 1683 expressly refers to the Decalogue and the "Law of God." Beginning in 1539 Roman law was taught at the University of Copenhagen Law School. Natural law as distinguished from divine law was taught early in the eighteenth century by Professors Reitzer and Andreas Hojer.<sup>395</sup> Ludvig Holberg (1684-1754), a native of Bergen, Norway, father of modern Danish and Norwegian literature and the first thoroughly modern Scandinavian philosopher, had studied at Oxford and learned natural law in Germany. He presented a system of natural law similar to Pufendorff and Thomasius.<sup>396</sup> He was a defender of absolute monarchy based on the rationalistic theory of Hobbes. It was the aim of

391. Teisen, *The Danish Judicial Code*, 65 U. PA. L. REV. 543, 547, 551-554 (1917).

392. *Id.* at 543, 554-555.

393. HOVDE, *THE SCANDINAVIAN COUNTRIES, 1720-1865* 374 (1948). The great physicist, Hans Orsted, liked his fellow Danes for their "kind and calm, active, well-poised character equally far from the two extreme vices—arrogance and humility," DANSTRUP, *A HISTORY OF DENMARK* 113 (2d ed. 1949).

394. DANSTRUP, *op. cit. supra* note 393, at 58. See also SINDING, *HISTORY OF SCANDINAVIA* 243-244 (1858).

395. HOVDE, *op. cit. supra* note 393, at 92. See HOJER, *IDEA JURISCONSULTI DANICI* (1736) translated by SOMMER under the title, *FORESTILLING PAA EN DANSK JURIST* (1737).

396. HOLBERG, *INTRODUKTION TIL NATUR—OG FOLKERETTEN* (Copenhagen, 1716 and 1763). See DANSTRUP, *op. cit. supra* note 293, at 77; SINDING, *op. cit. supra* note 394, at 339-341; LARSEN, *A HISTORY OF NORWAY* 339-341 (1948).

J. B. Dons,<sup>397</sup> L. Norregaard,<sup>398</sup> and J. F. W. Schlegel<sup>399</sup> to bring the basic truths of the Law of Nature into actual operation in the life of the law. Norregaard would apply natural law even where it conflicted with positive law, but Schlegel would use it only where the law was silent and uncertain.<sup>400</sup> It was not until the time of Orsted that natural law was abandoned.

Tyge Rothe (1731-1795) wrote *Nordens Statsforfating* (Scandinavian Constitutional Law) in 1782, pointing to Norway as the true home of freedom and independence.<sup>401</sup> The Norwegian peasant, unlike the Danish, had preserved his social integrity. He proclaimed agricultural reform as the sole means of national regeneration.

Professor Martin Hubner of the University of Copenhagen developed significant concepts of international law during the American Revolutionary War.<sup>402</sup> His position with respect to the English blockade policy was that the oceans were free and that the flag covered the cargo. That is to say, neutrals were free to carry cargo except war contraband, and neutral trade could be prevented only to harbors effectively blockaded. In 1856 these rules became established international law through the Declaration of Paris.

The abandonment of natural law as authoritative and basic in the development of positive law was affected by Anders Sandoe Orsted.<sup>403</sup> A Danish historian refers to his work as "the finest Denmark has known in the domains of justice and legal philosophy."<sup>404</sup> He understood natural law as including merely such general ideas as have arisen from time to time within the field of law, especially customary law.<sup>405</sup> He developed an historical approach to the law similar to that of Savigny and assisted the Norwegian scholar, Anton Schweigaard, in developing an historical approach to Norwegian law.<sup>406</sup>

Orsted engaged in an interesting philosophical controversy with Franz Howitz (1789-1826) who attacked punishment of insane criminals.<sup>407</sup> Howitz criticized the tendency of lawyers to refuse to distinguish between degrees of insanity, and attributed it to their acceptance of Kant's doctrine

397. DONS, *FORELAESNINGER OVER DEN DANSKE OG NORSKE LOV* (Copenhagen, 1781).

398. NORREGAARD, *NATUR—OG FOLKERET* (Copenhagen, 1776) and *FORELAESNINGER* (Copenhagen, 1797).

399. SCHLEGEL, *NATURRETTENS FORSTE GRUNDSAETNINGER* (1805) and *JURIDISK RETSENCYKLOPAEDI* (Copenhagen, 1825).

400. For reference to other leaders in Danish philosophy of law see Hertzberg, in *A GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY*, 531, 570-573 (1912).

401. HOVDE, *op. cit. supra* note 393, at 144.

402. DANSTRUP, *op. cit. supra* note 393, at 83.

403. Hertzberg, *op. cit. supra* note 400, at 531, 572.

404. DANSTRUP, *op. cit. supra* note 393, at 92. Viewing him as the greatest Scandinavian jurist, see Teisen, *Power to Declare Legislation Unconstitutional in Denmark*, 10 *A.B.A.J.* 792 (1924).

405. *EUNOMIA, SAMLING AF AFHANDLINGER, HENHORENDE TIL MORALFILOSOFIEN, STATSFILOSOFIEN OG DEN DANSK-NORSKE LOVYNDIGHED* (Copenhagen, 1815-1822).

406. HOVDE, *op. cit. supra* note 393, at 362-364, 371.

407. *Id.* at 362-363, 698.

of the freedom of the will. Instead he stressed the physiological causes of insanity and advocated that physicians be called in regularly by the courts to make psychiatric examinations of offenders.<sup>408</sup> Orsted assailed Howitz as a rank materialist. Howitz ranks with Niels Treschow,<sup>409</sup> (1751-1833), professor at the University of Copenhagen, in Scandinavian philosophy, in denouncing speculation and defending the scientific method. The punitive system of treating the insane disappeared in the 1830's.

Orsted, following Treschow, applied the idea of evolution to legal theory.<sup>410</sup> Since the process of evolution continually creates variations, no classification can be wholly accurate or permanent, particularly in ethics. Humaneness and tolerance are therefore necessary.

One of the leading Danish legal scholars of today is Professor Alf Ross of the University of Copenhagen. His views "bear a close relationship to American legal realism."<sup>411</sup> He is the author of a leading general treatise on international law.<sup>412</sup> Together with Hal Koch he has made the most comprehensive survey of Scandinavian democracy.<sup>413</sup> Other recent outstanding Danish legal scholars, whose publications are listed in the bibliography at the end of this article are: Poul Andersen, Knud K. Berlin, H. Holm-Nielsen, Stephan Hurwitz, Vinding Kruse and H. Munch-Petersen.

The first Danish printing office was established in 1482.<sup>414</sup> In 1514 there was published the great history of Denmark up to 1180 which had been written by Saxo.<sup>415</sup> During the reign of Christian IV (1588-1648) Arild Huitfeldt, the Danish chancellor, wrote a modern history of Denmark as seen through the eyes of the nobility. This history was a quarto edition of four thousand pages and contained a large number of documents from the National Archives. In 1652 Christian O. Weylle published a glossary or short review of early Danish legal history.<sup>416</sup> Christian Stubaeus, who had access to manuscripts destroyed in the fire of 1728, preserved much of value.<sup>417</sup> Ludvig Holberg presented a fairly complete account of early legal history a half a century later.<sup>418</sup>

One of the best Danish legal histories is by Peder Kofod-Ancher.<sup>419</sup>

408. Holberg took a similar position. *Id.* at 698.

409. *Id.* at 357-360-372.

410. *Id.* at 370. See Orsted, *Over graendserne mellem theorie og praxis i saedelaeren*, I *EUNOMIA*, 94-145 (1815).

411. Hall, Book Review of ROSS, *TOWARDS A REALISTIC JURISPRUDENCE*, (Copenhagen, 1946), 63 *HARV. L. REV.* 18 (1949).

412. A *TEXTBOOK OF INTERNATIONAL LAW*, reviewed 43 *AM. J. INT'L LAW* 197 (1949), 10 *CAMB. L. J.* 305 (1949), 44 *ILL. L. REV.* 416 (1949) and 26 *CAN. B. REV.* 1150 (1948).

413. *NORDISK DEMOKRATI* (Copenhagen, 1949).

414. SINDING, *HISTORY OF SCANDINAVIA* 215 (1858).

415. DANSTRUP, *A HISTORY OF DENMARK* 30, 60 (2d ed. 1949).

416. On the literature of Danish legal history see Hertzberg in a *GENERAL SURVEY OF CONTINENTAL LEGAL HISTORY* 531, 574-576 (1912).

417. STUBAEUS, *DE LEGE ET LEGATORIBUS DANORUM* (Copenhagen, 1716-1719).

418. HOLBERG, *DANMARKS OG NORGES GEISTLIGE OG VERLDSLIGE STAT* (Copenhagen, 1762).

419. KOFOD-ANCHER, *DANSK LOVHISTORIE* (Copenhagen, 1769-1776).

Another is by J. F. W. Schlegel.<sup>420</sup> A useful compendium was prepared in 1822 and 1823 by J. L. A. Kolderup-Rosenvinge.<sup>421</sup> Important criticisms were made by J. E. Larsen.<sup>422</sup> In 1871 Christian L. E. Stemmann published a history of Danish law up to 1683.<sup>423</sup> In 1878 Konrad Von Maurer, a German scholar, published a general survey.<sup>424</sup> In 1896 H. Matzen published a study.<sup>425</sup> S. Wiskinge published a history of the Danish Constitution in 1928.<sup>426</sup> In 1947 Paul J. Jorgensen published a history of Danish law up to 1650.<sup>427</sup>

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