Danish Law, Part I

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DANISH LAW

LESTER B. ORFIELD*

PART I**

The Danes were the first Scandinavians to settle in America, the earliest authenticated arrival occurring in 1611. In 1639 Jonas Bronck and others settled along the Harlem River, later called "Bronx." Danes joined the Dutch in New York and the Swedish colony in Maryland and Pennsylvania, while still others joined the Moravian colonies in North Carolina and Pennsylvania. From 1820 to June 30, 1948, a total of 338,085 Danes came to the United States.1

Of the 443,815 Danes in the United States in 1940, 305,640 were native-born and 138,175 foreign-born. Of the foreign-born Danes, 19,726 were in California, 14,304 in New York, 13,869 in Illinois, and over 10,000 each in Iowa and Minnesota. A larger proportion of Danes have become naturalized than any other group, the percentage being 78.1 compared with 64.6 for all foreign-born.2

About one-half of the Danes in the United States own farms, and nearly 60 per cent are in agricultural pursuits. The first permanent farm settlement was in 1845 in Waukesha County near Milwaukee. Later, Danish farmers came to Minnesota, Iowa, Nebraska, Kansas and the Dakotas.

INTERNATIONAL RELATIONS

It has frequently been pointed out that Denmark is the oldest state in Europe. While the "Merovingians were still fragmenting the ruins of the Western Roman Empire along evanescent and uncertain lines—while Germany was still a seething mass of half-civilized tribal states—while England was a kaleidoscope of petty monarchies, Denmark was already a united nation, with a body of common traditions and experience."3 Until about three thousand years ago the Teutonic races were found only in the Old-Danish countries.4 The separation of the Scandinavian tribes from the

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*Professor of Law, Temple University. This article is dedicated to the memory of my Danish grandmother, Anna Enemark Bennett, and to her last surviving brother, Christian Enemark, of Princeton, Minnesota.

**The second and concluding portion of this article will appear in the Feb. 1951 issue.

2. How one Danish immigrant reacted to this country may be seen in Ris, THE MAKING OF AN AMERICAN (1908).
Germanic tribes occurred about seventeen hundred to two thousand years ago. The poem "Beowulf" dating from 700 refers to Denmark as an existing kingdom. By 800 most of Scandinavia had been colonized from Denmark.

In 449 Hengest, a Dane, at the head of a group of Jutes, Angles, other Danes, Saxons, Frisians and Franks, came to England. With his landing on the Isle of Thanet the historian Green states, "English history begins." The Jutes, who came from Jutland, conquered Kent. The Angles who came from Angel in Slesvig, conquered northeast Britain including East Anglia, Mercia and Northumberland, and gave England its name. The Saxons from Holstein conquered southern England.

Shortly before 810, Godfrey, the strong Danish king in Slesvig and grandfather of the first king of all Norway, fought Charlemagne in Frisian territory and later along the Elbe River. His successor, Hemming, made peace in 811. The Eider River was made the boundary line. Charlemagne was forced to grant Walcheren in fief to the Danes, who thus secured control of the mouth of the Rhine. Danish rule extended into southern Norway and into Skaane and other areas in southern Sweden. In 826 King Harold I secured the Weser territory, south of the Eider River, thus gaining a foothold in the Empire. In 845 Godfrey's son, Erik, sacked and burned Hamburg.

Later Danish invasions of England following those of 449 A.D. came over three centuries later. In 790 they came to Wessex and in 793 to Northumbria. From 840 to 854 they raided the east and south coasts. In 851 they captured London and Canterbury, and a period of settlement lasting from 851 to 897 began. The Danes dominated in southern and eastern England and vied with the Norwegians in northern England, the other settlers being predominantly Norwegian. It should be noted that the invasions before 900 were not by the Danish or Norwegian governments as there were no truly central governments for the entire nations in Denmark and Norway before 900.

In 845 Regner Lodbrog, ancestor of Danish and Swedish kings, took Rouen and conquered Paits. About 860 his sons made an eventful expedition to Spain, North Africa, Italy, and Greece. In 866 a Viking fleet sailed from

5. UNDSET, Return to the Future 246 (1942); PRATT, op. cit. supra ... note 3 at 29. The oldest history of Denmark written just before 1176 by Svend Aggesson contains an interesting account of a prehistoric conflict between the Danes and the Germans. It is quoted in UNDSET, op. cit. supra at 226-227.
6. STARCKE, op. cit. supra note 4, at 8-14.
7. DANSTRUP, A History of Denmark 15 (2d ed. 1949); LARSEN, A History of Norway 35 (1948); BØYSEN, A History of Norway 31 (1900). Danish kings prior to 800 A. D. are briefly discussed in SINDING, History of Scandinavia 44-49 (1858); BIRCH, Denmark in History 14-22 (1938).
8. De Montmorency, Danish Influence on English Law and Character, 40 L.Q. Rev. 324, 326-331 (1924); STARCKE, op. cit. supra note 4, at 14-34.
9. In 852 Danish vikings held possession of Dublin, but the Norwegians were more successful in Ireland. LARSEN, op. cit. supra note 7, at 40, 45.
10. LARSEN, op. cit. supra note 7, at 51.
France to Kent. It soon conquered York and the Danish “five-boroughs”, Lincoln, Derby, Nottingham, Stamford, and Leicester. The Danes later conquered East Anglia and Mercia and in 872 London. Most of England except Wessex was for a time in Danish hands and in 886 a large area was placed under the Danish rule known as the Danelaw, following a treaty made with King Alfred the Great. The Danelaw became one of the three great divisions of English law so recognized by the laws of Henry I.

In 891 the Danish kings were defeated after attacking Paris in 886 by the German king, Arnulf, at Louvain. From 892 to 896 the same Danish army sought to conquer England but were held in check by Alfred the Great. No further Danish attacks on England were made until 982. The Danes now turned their attention to France, and in 911 Rollo received Normandy as a fief from Charles the Simple.

Between 900 and 940 King Gorm the Old built the rampart of Dannevirke in Slesvig to protect Denmark from the Germans. He completed the unification of Denmark though each province retained its own law. He pressed a claim to Vestfold in Norway. About 920 he was defeated by the German Emperor and forced to permit Christianity in Denmark. In 941 his son Canute was killed on a viking expedition to England. The first Norwegian King, Harold the Fairhaired (872-930) married a Danish Princess, but the Danish claims to southern Norway were not surrendered. Eirik (930-934), the second Norwegian king, also married a Danish princess, Gunhild. After Eirik’s death, the Danish king, Harold Bluetooth (950-985) tried to place Gunhild’s son on the Norwegian throne, but succeeded only in 961. But when the latter assumed control over Viken claimed by the Danish king, Harold contrived to have him ousted in 970. Harold now entered Norway and retained eastern Norway, the Uplands and Viken, ruling through local Norwegian chiefs. The remainder of Norway was ruled by Haakon of Lade, as the jarl of the Danish king. Haakon eventually revolted and was able to defeat a Danish fleet in 994.

In 974 King Harold was compelled to reaffirm his vassalship to the Holy Roman Empire and to promise to introduce Christianity. In 983 he gave aid to an ousted Swedish king. He built a fortress at Jomsburg on the island of Rugen near Pomerania, which later became the starting point for viking raids.

King Harold, having consolidated Denmark and secured an overlord-
ship in Norway, began an attack on England in 982. His successor, Sweyn (985-1014) attacked England and in 991 the first tribute or Dane-geld was paid. In 994 he joined Olaf Tryggvason of Norway in attacking London and the second Dane-geld was paid. In 1000 the Danes supported by the sons of the prior Norwegian ruler, Haakon, and the Swedish king, defeated Olaf, who had refused to recognize Danish claims to Norway. As a result the Danes retained the Vik region to Baahus and the personal obligation of the two jarls of Lade. In 1002 the English paid a third Dane-geld to Denmark. Sweyn attempted to conquer England, was for many years its virtual ruler, and was recognized as king in 1014.

Following Sweyn's death his son Canute the Great (1018-1035) reasserted Danish rule over England and in 1024 threatened to enforce a claim to Norway. Olaf, king of Norway, allied himself with Sweden and attacked Denmark. In 1028 Canute was recognized as King of Norway. Canute sent his son Sweyn to rule there until 1035 when the Danes were expelled. Canute considered England the principal realm and resided there. He conquered much of the Baltic from the Wends, a Slavic race. Ruling over England, Denmark, Norway, southern Sweden, southern Scotland and the Baltic as far as Esthonia, he was probably the most powerful ruler in Europe. His sons Harold and Harthacanut ruled over England from 1035 to 1042, the last period of Danish rule in England.

The Danes made several important contributions to English law. First was the concept of personal freedom. Second was the concept of central taxation through the Dane-geld. Thirdly it supplied one of the three main bodies of English customary law—the Dane-law, the Mercian law, and the West Saxon law. The way was made easy for the establishment of the grand jury, as the Danes had a somewhat similar accusatorial group. The very word "law" is itself of Danish origin, the Danish word being "lov."

On the death of Harthacanut, King Magnus, the Good of Norway, succeeded under a treaty as King of Denmark in 1042 and reigned there until 1047. On Magnus' death his successor to the Norwegian throne, Harold the Hard, also claimed Denmark and waged war to that end for seventeen years. But Canute's nephew, Sweyn Estrithson (1047-1074) kept the Danish throne which Magnus had bequeathed to him. In 1066 Sweyn claimed the throne of England, and in 1067 attacked Norway. In 1085 the Danes sent a fleet to England which returned after merely taking some

19. De Montmorency, supra note 8; Starcke, op. cit. supra note 4.
22. Larsen, A History of Norway 113 (1948); Boyesen, A History of Norway 231, 234 (1900); Sinding, History of Scandinavia 75 (1858).
booty. This was the last viking attack on England. The Wends made many successful attacks on Denmark, continuing to do so for the next century and a half.

Denmark early became a transit-country. Denmark was the junction between the northern route from western Europe to the Baltic and the route starting in Central Europe on the Danube and proceeding via the Elbe, the Rhone and the Oder as far as Scandinavia. It was long the Danish external policy to command the foreign banks of these trade routes, their markets and seaports. On the North Sea this brought Denmark into conflict with England and the Netherlands. On the Skagerrack it brought her into conflict with Norway. On the Baltic it brought her into conflict with the Germans and the Swedes.

In 1101 following a war between Norway and Sweden a peace meeting was held at Konungahella. King Erik the Evergood (1095-1103) of Denmark participated as mediator. A treaty was signed constituting the first peace treaty of the three Scandinavian kings.

About the year 900 Henry the Fowler, Emperor of Germany, founded the margraviate of Slesvig. In 1026 Canute the Great induced the Emperor to renounce his claims to the margraviate, and his daughter married the son of the Emperor. About 1125 Canute Lavard secured Slesvig for the Danish crown, and became its duke or earl.

Following the murder of Canute Lavard in 1131 his friend, the German emperor, compelled the murderer who was heir to the Danish throne to do homage to the emperor as liege lord of Denmark, and a papal bull brought the Scandinavian countries under the archbishopric of Hamburg-Bremen. In 1134 King Erik Emune successfully aided a rival king of Norway. Something close to anarchy prevailed in Denmark just before Valdemar the Great (1157-1182) became king.

In 1162 Valdemar assisted a successful revolt against the King of Norway on a promise of receiving the Vik area, which was confirmed in 1171. He fought the Wends and in 1169 conquered Rugen, an island north of Germany, and founded Danzig. Under Canute (1182-1202) Danish forces invaded nearly all of Pomerania and Mecklenburg and conquered territory.

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25. Larsen, op. cit. supra note 22 at 115; Boyesen, op. cit. supra note 22, at 287; Birch, Denmark in History 48 (1938).
27. Id. at 89.
28. Id. at 93.
30. Larsen, op. cit supra note 22, at 137; Boyesen, op. cit. supra note 22, at 330.
31. For the next century the Norwegians sought Swedish friendship to offset the Danish strength.
32. Sinding, op. cit. supra note 22, at 97; Danstrup, op. cit. supra note 23 at 193.
in Esthonia. Holstein, Lubeck, Hamburg and Lauenburg had to submit to Denmark, and Schwerin acknowledged its vassalage.

Valdemar Victorious (1202-1241) seized the cities of Hamburg and Lubeck. In 1214 Emperor Frederick II ceded to Denmark all land north of the Elbe and the Elde, and France sought a marriage with the widowed king. In 1219 in a crusade for Christianity Esthonia was conquered and inroads made on Livonia. The Mongols were thus prevented from breaking beyond the Baltic. Denmark in 1219 included Holstein, Ditmarsch, Lauenburg, Schwerin, Mecklenburg, Rugen, Pomerania, Osel, and parts of Prussia and Curland. Denmark was thus again an empire, to retain which a four-century struggle ensued. But in 1227, following a capture of the king while he was hunting, Denmark lost her north German conquests except Rugen and Esthonia, and the Eider River was again the boundary line.

Erik IV (1241-1250) gave Slesvig to his brother Abel. In 1252 when King Christopher I succeeded his brother Abel, Slesvig was lost to the Danish crown, as the dukedom passed to the descendants of Abel.

A military expedition was sent to Esthonia in 1249, and the Frisians were attacked in 1252. A brief war with Norway was fought in 1256 and 1257. The Norwegian fleet was so large as to inspire Denmark to make peace on Norway’s terms without venturing a battle. The son of the Norwegian king married the daughter of the Danish king. As the Danish king failed to pay the dowry, the Norwegian fleet attacked in Skaane in 1274. It was defeated, but Norwegian attacks continued for four decades. In 1275 Denmark intervened in a civil war in Sweden. In 1289 following the assassination of the Danish king, the assassins received refuge in Norway, and Norway declared war on Denmark. An armistice was signed in 1295. In 1309 the long war was ended by the Treaty of Copenhagen, Halland being ceded by Denmark to Norway. In 1310 Denmark aided the Swedish king against his rebellious brothers.

In the first half of the fourteenth century the Count of Holstein took over the Danish border province of Slesvig. Slesvig was now no longer under Danish administration. This was the first time Slesvig was given to the German Holstein. In 1315 there began the practice of mortgaging Danish provinces to north German princes. In 1319 Christopher II, to pay his accession debts, mortgaged Halland to Knud Porse, and in 1326 it was

32. Danstrup, op. cit. supra note 23 Sinding, op. cit. supra note 22, at 102-103.
34. Id. at 287-289.
35. Id. at 270; Sinding, op. cit. supra note 22, at 113.
36. Boyesen, op. cit. supra note 22, at 172; Larsen, op. cit. supra note 22, at 172; Birch, op. cit. supra note 25, at 80.
37. Sinding, op. cit. supra note 22, at 119.
38. Larsen, A HISTORY OF NORWAY 173 (1948); Sinding, History of Scandinavia 122 (1858); Birch, Denmark in History 86 (1938).
In 1326 King Valdemar of Slesvig ceded away much of Denmark, and in 1330 much the same occurred. In 1332 Count Johann of Ploen mortgaged Skæne and Blekinge to Sweden.

From 1332 to 1340 there was no king or regent or government in Denmark. The nobles who held most of Denmark were foreigners, chiefly German from Holstein and Mecklenburg who were under feudal obligations to the Emperor of the Holy Roman Empire. The Hanseatic League was growing dangerously strong.

Valdemar Atterdag (1340-1375) came to the throne with only northern Jutland under him. He had signed away Esthonia to Brandenburg in lieu of his sister's dower. In 1342-1344 he defeated King Magnus of Norway and Sweden. He regained Jutland and the islands. In 1346 Esthonia was sold to the Teutonic Order. In 1360 he secured Skæne, Holland and Blekinge by cession from Sweden. In 1361 he conquered Gotland including Visby, a member of the Hanseatic League. At the beginning of his reign Sweden had been more powerful than Denmark. Despite loss of a war with the Hanseatic League in 1370, Denmark lost no territory but had to grant liberty to trade with Denmark, protection by the courts, and reparations. An alliance made in 1356 with France contemplated a Danish invasion of England and assertion of claim to the English throne. While the English invasion never came off, Welsh and Scottish leaders made promises to help Valdemar, as did the old viking states of Sodor and Man.

Valdemar's daughter Margaret was married in 1363 to the King of Norway. When Valdemar died in 1375 Margaret's son Olav became King of Denmark. In 1380 he became King of Norway upon the death of his father. A dynastic union between Denmark and Norway was thus established which lasted until 1814. In 1385 Margaret had Olav proclaimed King of Sweden as the last descendant of the Swedish royal line, and prepared to attack the new German King Albert of Sweden. To achieve this she sacrificed Slesvig by granting it in 1386 to the Duke of Holstein as a hereditary fief. He had previously held it as conquered territory. Thus for a second
time Slesvig was given to the German princes in Holstein, the traditional foes of Denmark.

In 1387 Margaret succeeded as ruling queen, and conquered Sweden, and also regained Skaane. In 1388 she was the recognized ruler of Denmark Norway and Sweden. In 1392 she allied herself with Richard II of England.

At a conference held in Kalmar, Sweden, in 1397 Margaret proposed the passage of a federative law aimed to insure the union of the three nations under an elective king with the same lineage and allied in a common defense. The Kalmar charter never became law, but often served as a basis for discussion later. The Danish policy of centralization was incompatible with the wishes of Norway and Sweden to manage their own affairs. But Denmark, Norway and Sweden had the same king from 1388 to 1523, except for brief periods.

King Erik of Pomerania (1412-1439) carried on a twenty-years war with the Holstein dukes for possession of Slesvig, but the treaty of 1435 left the question unsettled. He also carried on an unsuccessful war when attacked by the Hanseatic cities in 1426. Revolts occurred in Norway and Sweden. In 1443 King Christopher of Bavaria (1439-1448) to secure military support granted Slesvig to the Holstein Duke Adolph as a hereditary fief. It has been pointed out that except Hans (1483-1513) and Christian II (1513-1523) "all the kings of the fifteenth and sixteenth centuries were Germans, not so much as able to speak Danish with their subjects."

From 1429 on, the Danish king levied a toll at Elsinore on every ship passing through the Sound. This was the Sound-toll, which ships of most nations paid until 1857. The Hanseatic League was forced to agree to the toll in the reign of Frederick II (1559-1588). During his reign the sound toll was no longer levied at a fixed rate per ship, but as a duty on the cargo, thus bringing in three times as much revenue. Following an unsuccessful war in 1645 Denmark had to exempt Swedes from the toll, and reduce the toll paid by Netherlands ships. The Sound-tolls were discontinued in 1857 under foreign pressure.

In 1448 the present Oldenburg dynasty came to the throne in Denmark. Christian I (1448-1481) was a nephew of Adolph, Count of Holstein. When the Count of Holstein died in 1460 the nobles of Slesvig and Holstein chose Christian as their prince as they desired the preservation of the union. Slesvig was a part of the Danish kingdom and Holstein was

48. DANSTRUP, op. cit. supra note 39, at 39; BOYESON, A HISTORY OF NORWAY 469 (1900); SINDING, op. cit. supra note 38, at 148.
49. LARSEN, op. cit. supra note 38, at 213; SINDING, op. cit. supra note 38, at 150-154.
50. SINDING, HISTORY OF SCANDINAVIA 160 (1858)
51. Id. at 214.
52. DANSTRUP, A HISTORY OF DENMARK 45 (2d ed. 1949)
53. Id. at 54.
54. Id. at 57; SINDING, op. cit. supra note 50, at 255, 261.
55. HYDE, INTERNATIONAL LAW 520 (2d ed. 1945); HOYDE, THE SCANDINAVIAN COUNTRIES, 1720-1865 233 (1948); HILL, DANISH SOUND DUES (1926).
56. DANSTRUP, op. cit. supra note 52, at 41; SINDING, op. cit. supra note 50, at 165.
German and held as a fief under the German emperor. Christian had to promise to keep Slesvig and Holstein united forever instead of incorporating Slesvig as a forfeited fief, thus creating difficulties four hundred years later. Each province was to have its own law and administration. Christian "succeeded in bringing under his rule a larger realm than any king in the North had held since the days of Canute the Great." In 1468 he mortgaged the Orkney and Shetland Islands to the Scottish king to provide a dowry for the marriage of his daughter Margaret to the Scottish king. To destroy the influence of the Hanseatic League, Denmark allied itself with England, Scotland, France and Burgundy. The Swedes were unwilling to accept the new dynasty and instead elected a Swedish lord as ruler. Christian was defeated in 1471 at Stockholm and did not press his claim further. Hans (1483-1513) invaded Sweden and was elected king of Sweden in 1497, but a successful revolt soon broke out. He was unsuccessful in 1500 in enforcing a claim to Ditmarsch, which the German emperor had given to Denmark in 1474. In 1512 he secured the first favorable peace treaty with the Hanseatic cities, and granted equal privileges to the Dutch and English cities. Denmark was so powerful as the key to the Baltic that Christian II (1513-1523) was able to marry Elizabeth, a sister of Emperor Charles V. Sweden revolted, Charles invaded in 1517 and in 1520 a blood bath ensued in Stockholm. In 1523 Gustaf Vasa was proclaimed king of Sweden, and thereafter no Danish king ever ruled in Sweden.

Because Norway had supported the deposed Christian II, and to secure estates for Danish nobles, Christian III signed a charter in 1536 under which Norway ceased to be a separate kingdom and was incorporated into Denmark. While this was not literally carried out, nevertheless the Norwegian Council of State disappeared, the only national office left was that of Chancellor, and the Norwegian dependencies such as Iceland and Greenland were brought directly under the Crown. A dispute with Sweden over the possession of the Island of Gotland was ended, and an alliance made in 1541. In 1544 Christian III provided for his three brothers by sharing Slesvig and Holstein with them, thus causing many later difficulties.

In 1559 the Danes conquered Ditmarsch and added it to Holstein. About the same time they purchased Curland and Osel, an island southwest of Esthonia, but declined Reval to avoid offense to the Russian Czar.

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58. Sinding, op. cit. supra note 50, at 171; Id. at 220.
59. Reid, The Place of Denmark in Scottish Foreign Policy, 1470-1540, 58 JURID. REV. 183 (1946).
60. Danstrup, op. cit. supra note 52, at 41; Larsen, op. cit. supra note 57, at 218-222.
61. Sinding, op. cit. supra note 50, at 220; Birch, Denmark in History 166 (1938).
64. Larsen, op. cit. supra note 57, at 249; Sinding, op. cit. supra note 50, at 231.

For a map of Scandinavia in 1560 see Danstrup, op. cit. supra note 52 at 52.
There was a war between Denmark and Sweden between 1563 and 1570. It was the most disastrous war that had ever been fought in the North. The war left Denmark still holding Osel and the area near Reval. But soon after the Russians captured most of the Danish bases in that area. Frederick II (1559-1588) continued the fatal division of Slesvig and Holstein made under Christian III.

The Danish period of expansion was over about 1600. Her policy now was to defend her former status as the key to the Baltic against the Swedish menace to Skaane and the German menace to Slesvig and Holstein.

It was in the reign of Christian IV (1588-1648) that Denmark acquired her first overseas colony, Tranquebar in India. An East India Company, like the English, was founded to whose shares officials and wealthy citizens were compelled to subscribe. The Danish West India-Guinea Company, founded in 1672, acquired St. Thomas, St. Jean and St. Croix, and to the state in 1755. In 1916 Denmark sold her West Indies Islands to the United States.

Early in the seventeenth century Sweden fought Poland and tried to prohibit all trade with Riga. The Swedish king assumed the title of "King of the Norwegian Laplanders" and levied taxes in Finmark. Denmark protested and soon was at war with Sweden. This was known as the Kalmar War (1611-1613) and was won by Denmark. Sweden gave up all claim to Finmark, Denmark gained Elfsborg in northern Sweden, and retained Gothenburg to secure Swedish indemnities. During the war Denmark forbade all shipping into Swedish ports. Holland and Lubeck agreed to defend their commerce by force of arms. Sweden joined in this agreement in 1614, but it never came into force. If it had, it would have been the first modern "armed neutrality."

During the Thirty Years War which began in 1618 both Denmark and Sweden issued general interdictions of commerce. As they declined in relative power the interests of trade grew stronger than those of military ad-

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65. Danstrup, op. cit. supra note 52, at 54; Sinding, op. cit. supra note 50, at 227.
67. Id. at 227, 239-240.
68. Danstrup, op. cit. supra note 52, at 7. Denmark occupied the central position first in Scandinavia, being succeeded by Sweden by the eighteenth century. On Danish neutrality policy from 1600 to 1814 see Scott, The United States and Scandinavia 205-211 (1950).
69. Danstrup, op. cit. supra note 52, at 56; Sinding, op. cit. supra note 50 at 266. A number of Danes, or perhaps Norwegians, settled in Bergen, New Jersey in 1624, as the first settlers of New Jersey. Sinding, op. cit. supra note 50, at 268.
70. Hove, The Scandinavian Countries, 1720-1865 38, 43 (1948).
71. See Hyde, International Law 359, 364-365, 382, 405, 432-433, 436 (2d ed. 1945); 1 Hackworth, Digest of International Law 422-426, 477-482, 556-557 (1940). For a recent case involving the application of the Danish law concerning the scope of appellate review of the facts in criminal cases see People of Virgin Islands v. Price 181 F. 2d 394 (3d Cir. 1950).
72. Sinding, op. cit. supra note 50, at 249-251; Danstrup, op. cit. supra note 52, at 56, 191.
73. Scott, The United States and Scandinavia 205 (1950).
vantage. In 1625 Denmark intervened unsuccessfully against the Emperor to defend the Protestant cause. Consequently by the Treaty of Lubeck in 1629 Denmark ceded Bremen, Verden and Schwerin to the Emperor. The strength of Sweden had been increasing, and in 1643 assisted by Holland, she began a war on Denmark. By the Treaty of Bromsebro of 1645 Denmark had to cede to Sweden the Norwegian provinces of Jemtland and Herjedal, and also Gotland and Osel, mortgage Halland for thirty years, and exempt Sweden from the Sound-toll.

In 1657 Denmark declared war on Sweden. The Swedes won and by the Treaty of Roskilde in 1658 Denmark had to cede Bornholm, Skaane, Halland, Blekinge, and the Norwegian provinces of Baahus and Trondhjem. After another war commenced by Sweden, Denmark with the aid of Holland was more successful and in 1660 by the Treaty of Copenhagen regained Bornholm and Trondhjem. The heroism of the Danish king in this war facilitated the establishment of absolute monarchy. Following a brief war with England peace was concluded in 1667. In 1675 the Scanian war was fought to regain the lost Swedish provinces. Due to French interference the Peace of Lund restored the status quo as of the date the war commenced.

A new war of the great powers began in 1689. Great Britain and Holland sought to defeat France by a total blockade. French privateers retaliated against the Dutch and English from Danish territorial waters. The Danes and Swedes finally took action to defend their trade. When the Dutch seized Danish ships sailing to France, the Danes confiscated Dutch ships in Denmark, and established joint Danish-Swedish convoys. The Dutch were forced to relent, and in 1691 Denmark and Sweden made an agreement for the first active armed neutrality. Holland and England persuaded Denmark to modify her demands, but the armed neutrality treaty was reinstated in 1693.

In 1699 Denmark made an alliance with Poland, Russia and Saxony against Sweden. In 1700 the Swedes landed in Zealand, and their fleet together with Dutch and English ships bombarded Copenhagen. Denmark sought to recapture the part of Slesvig held by the Duke of Gottorp, who was allied with Sweden. The war went against Denmark, and the Treaty

74. Id. at 206.
75. SINDING, op. cit. supra note 50, at 251-253; DANSTRUP, op. cit. supra note 52 at 57, 191.
78. LARSEN, op. cit. supra note 57, at 290; BIRCH, Id. at 230-234.
79. DANSTRUP, op. cit. supra note 52, at 70; SINDING, op. cit. supra note 50, at 297-300.
80. LARSEN, A HISTORY OF NORWAY 292-293 (1948).
of Travendal was made in 1700. In 1709, allied with Hanover, Poland, Prussia and Russia, Denmark again fought Sweden, this time successfully. By the Treaty of Fredericksburg of 1720 Sweden had to pay a sound-toll, and the ducal port of Slesvig was incorporated under the Danish crown. The treaty ended the longest, bloodiest and last war between the Scandinavian countries. By this time German legal procedure had been introduced into North Slesvig, and the German language prevailed in South Slesvig.

Denmark remained at peace for the balance of the century. Swedish dominance in the Baltic was now ended. To augment the revenues Denmark furnished 20,000 soldiers to Austria, England and Holstein in the War of the Spanish succession. In 1721 the second colonization of Greenland began with the founding of Godthaab on the western coast. In 1742 a new settlement was made at Frederickshaab. Greenland traffic now went out from Copenhagen instead of from Norway.

The marriage of the Duke of Gottorp to a daughter of Peter the Great of Russia made Russia a potential menace to Slesvig-Holstein from about 1725. In 1762 Czar Peter III, of Gottorp descent, came to the Russian throne, allied himself at once with Prussia and marched on Denmark. In 1763 Denmark renounced all future aggression against Sweden, and was promised a settlement of the Gottorp question under which the Gottorp part of Holstein was also to be included in Denmark. In 1773 a land exchange treaty was made with Russia under which the Gottorps relinquished all Slesvig and Holstein in exchange for Oldenburg and Delmenhurt in Germany. For the next century it was Danish policy to be on good terms with Russia, without causing too much offense to England.

Denmark cooperated with Sweden in maintaining an armed neutrality during the Seven Years' War. During the American Revolutionary War which developed into a world war, Denmark made a treaty with England to protect her trade in 1780. A few days later she signed the Armed Neutrality with Sweden, Holland and Russia. In October, 1780, the United Neutrality. In 1783 the United States negotiated its first commercial treaty with Denmark, a treaty serving as a model for later American treaties.

Denmark was the first Scandinavian country to display interest in the United

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82. Sinding, History of Scandinavia 310-312 (1858); Danstrup, A History of Denmark 71 (2d ed. 1949).
83. Sinding, op. cit. supra note 82, at 314, 321, 323-324. For a map of Scandinavia as of 1721 see Danstrup, op. cit. supra note 82, at 76.
84. Sinding, op. cit. supra note 82, at 323.
85. Larsen, op. cit. supra note 80, at 325. Christian IV (1588-1648) had tried to reopen the old Norwegian colony which was found to have disappeared. Id. at 281.
86. Sinding, op. cit. supra note 82, at 324, 344, 348, 350.
87. Id. at 350-352; Danstrup, op. cit supra note 82, at 74-75.
88. Sinding, op. cit. supra note 82, at 375; Danstrup, op. cit. supra note 82, at 82.
89. Scott, op. cit. supra note 81, at 206-207.
90. Danstrup, op. cit. supra note 82, at 83; Larsen, op. cit. supra note 80, at 348; Sinding, op. cit. supra note 82, at 375-376; Scott, op. cit. supra note 81, at 207-209.
91. Freis, Scandinavia Between East and West 341 (1950).
States. In 1780 John Quincy Adams wrote: “The north of Europe (excepting Denmark) think very little about us.”

In 1788 Denmark invaded Sweden successfully, but the war was ended after England interfered. Sweden had attacked Russia, and Denmark, under the terms of an earlier alliance, had come to her assistance. Following the French evolution in 1794 Sweden and Denmark made an agreement providing for armed support of their shipping and the closing of the Baltic to belligerent vessels. The Swedes approached the United States about acceding to the agreement, but the Danes thought this would not be helpful. Russia sided with Great Britain against France. The armed neutrality came to naught. In 1797 the Danish fleet defeated the Tripolitan fleet, and thus secured freedom to trade with Africa.

Shortly before 1800 the Scandinavian nations resumed their struggle for free trade. For them it was principally a conflict with Great Britain. The Russian Czar proposed a new armed neutrality which Denmark, Sweden and Russia accepted in 1800. The British bombarded Copenhagen, and a compromise arrangement was worked out. In 1807 the British again bombarded Copenhagen after the Danes had placed their fleet at Napoleon’s disposal for the purpose of a Continental blockade. Denmark now joined the war on Napoleon’s side, and fought Sweden from 1808 to 1809. In 1813 Russia offered Sweden its aid in depriving Denmark of Norway. Swedish, Russian, and Prussian troops invaded Denmark. Under the Treaty of Kiel in 1814 Denmark ceded Norway to Sweden and received in return Swedish Pomerania, later exchanged for the Duchy of Lauenburg. In 1815 the Congress of Vienna provided that Holstein be incorporated into the Germanic Confederation. In 1806. Denmark had incorporated Holstein into Denmark.

The Treaty of Kiel had stipulated that Norway take over a fair share of the Danish-Norwegian state debt. The Norwegians were reluctant to pay and the Swedish king supported them. The great powers backed the Danish claim, which was extremely fair to Norway, and in 1821 the Norwegian Storthing finally agreed to pay. As Denmark had joined France in depredations on American commerce she finally agreed in 1830 to pay $650,000 to the United States.

Beginning about 1830 the problem of Slesvig-Holstein was uppermost in Denmark. The Slesvig area had held a special position as a duchy since

92. Quoted by Scott, op. cit. supra note 81, at 76.
93. Sinding, op. cit. supra note 82, at 381.
94. Scott, op. cit. supra note 81, at 209.
95. Danstrup, op. cit. supra note 82, at 83-84; Larsen, op. cit. supra note 80, at 365-369; Sinding, op. cit. supra note 82, at 384-389; Scott, op. cit. supra note 81, at 210.
98. Scott, op. cit. supra note 81, at 77.
early times. In the late Middle Ages it had been united with the German Holstein under the nobles of Holstein, who bought estates in Slesvig. Neither Valdemar Atterdag nor Margaret were strong enough to bring it back. After the departure of Eric of Pomerania the cause was lost. German culture became stronger not only as to nobles and landowners, but also as to the clergy and the townspeople. In 1460 the Holstein nobility acknowledged the Danish king as their overlord so long as Slesvig and Holstein remained undivided. Christian III, however, shared them with his brothers in 1544 and inaugurated the period of divisions which lasted until 1720. The Protestant reformation accelerated the use of German in church services. There were long quarrels between the Danish kings and the Gottorp dukes. The Gottorp dukes supported the German culture while the Danish kings made no clear distinction. In 1720 the entire province of Slesvig was united under Danish administration. However, the officials were mostly German. In 1773 Gottorp-Holstein was also incorporated. As a result for the first time since 1544 both provinces were again united under the King of Denmark, who was their duke. But this in turn created a movement away from the kingdom, assisted by the nobility and the University of Kiel in Holstein.

In 1830 a Slesvig official published a pamphlet demanding a free constitution in Slesvig and Holstein and a joint government of the two duchies with only a personal union with the kingdom. In 1842 Orla Lehmann, a National Liberal, proposed that Slesvig be incorporated into the Kingdom, and German Holstein be separated from the Danish State, the Eider River to be the border. But the Danish Conservatives with the king and the government sought to preserve the tripartite unitary state. The National Liberals came to advocate a military alliance of the three Scandinavian countries against German aggression. In 1848 Denmark fought a war with the duchies, lasting three years. Prussian and Hanoverian troops aided the duchies.

The German claim was that Slesvig and Holstein were independently connected with Denmark only in personal union; that Slesvig and Holstein were inseparably united in a real union; and that the succession in the duchies followed the Salic Law. The Danish claim was that Slesvig was rightfully a province of Denmark since its incorporation in 1721; that neither law nor history justified an inseparable union between Slesvig and Holstein; and that in Slesvig, the succession was the same as in Denmark proper, where the Lex Regia of 1665 permitted it to pass through females.

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99. It was Danish at the beginning of its history. The Germans first entered in the Middle Ages. In the late Middle Ages its rulers and great landowners were Germans. Danish was spoken as far south as Angel until about 1825. See Steefel, The Schleswig-Holstein Question 4 (1932).

100. As to the legal effects of this incorporation see Ersler, Frederik IV Og Slesvag, En Historisk Fortolkning Af Arveflydningens Aftkommefra Af 1721 (1901).


War with Prussia and Austria finally came in 1864, and Denmark received no support from any other nations. As a result of the war Denmark lost a third of its territory and a million inhabitants out of total of two and half millions, including 200,000 Danes. Following World War I Denmark was the sole Scandinavian state represented at the peace conference. Provision was made for a plebiscite which resulted in the return of Northern Slesvig by a vote of 75,000 to 25,000. Central Slesvig voted to remain German.

Following World War II 300,000 German refugees crowded into South Slesvig. In 1947 the Danish prime minister lost the confidence of the Liberal party because of his activist line in the South Slesvig question. Today the Danish government does not demand frontier revision or a plebiscite. There is a feeling that many of the Germans in South Slesvig seek annexation to avoid the burdens of having lost the war. The present German state of Slesvig-Holstein has a sizeable political party made up of refugees dangerously nazistie in character. It is Denmark’s present policy to safeguard the status of the Danes in South Slesvig and to seek some relief from the pressure of displaced Germans in the province.

In 1905 when Norway ended her union with Sweden her most outspoken friends were Denmark and England. Norway selected as her king Prince Carl of Denmark, brother of Christian X (1912-1947). In 1914 Denmark joined a neutrality entente with Norway and Sweden under which the war should not lead to hostilities between them. Norway, the chief beneficiary, was strongly backed up by Denmark and Sweden.

In 1918 Iceland became a free sovereign state in personal union with Denmark. The act of Parliament on this was valid until 1940, when Iceland served all connections with Denmark and became a republic in 1944. Denmark was invited to become a charter member of the League of

103. DANSTRUP, op. cit. supra note 101, at 120. For a full treatment of the subject with special reference to the years 1863 and 1864 see Steefel, op. cit. supra note 102.
104. DANSTRUP, op. cit. supra note 101, at 136.
105. There was also a problem as to refugees in Denmark proper. Kemble, Refugee Camps—A Special Dilemma in Denmark, 111 JUST. P. 624 (1947).
108. N. Y. Times, July 9, 1950. It was the first west German state to choose a former Nazi party member as its Minister-President. N. Y. Times, September 6, 1950.
110. Larsen, A HISTORY OF NORWAY 493 (1948); DANSTRUP, op. cit. supra note 101, at 131.
Nations. It hesitated the least of the Scandinavian countries, entering the League on March 3, 1920 by a unanimous vote of its parliament.\textsuperscript{118} It also supported the Permanent Court of International Justice and immediately recognized unconditionally the competence of the court in certain legal disputes, that is to say its compulsory jurisdiction. D. G. Nyholm, a Dane, was elected a member of the Court and served from 1922 to 1930. Born in 1858 he had previously served for 28 years as a member of the Superior Court at Copenhagen and a judge of the Mixed Court at Cairo.\textsuperscript{114}

A conflict between Denmark and Norway over Greenland was referred to the Permanent Court of International Justice which decided in 1933 that the Norwegian occupation of certain coastal tracts was invalid and that Denmark had sovereignty over the entire island.\textsuperscript{118}

The Danish ambassador to the United States, Henrik de Kauffmann, declared himself not bound to the coerced government in Denmark and in 1941 he made a treaty with the United States allowing the use of temporary bases in Greenland.\textsuperscript{118} Since the war negotiations between the United States and Denmark over a new agreement permitting the United States to retain its bases have been going on intermittently. During World War II Great Britain took the Faroe Islands and Iceland under temporary protection. The United States landed forces in Iceland in 1941.

Denmark like Norway became a charter member of the United Nations on its formation in June 1945. Denmark was chosen to have a representative in the Economic and Social Council. In March, 1950, prior to ratification by the Norwegian Storthing the Danish Parliament voted to join the Atlantic Pact.

In 1948 the Faroe Islands were given self-government in home affairs. They are represented in the Danish Rigsdag. The same year a commission was appointed for the economic opening of Greenland, Denmark's only colonial possession, and for the development of self-government within the framework of the Kingdom.\textsuperscript{117} The state monopoly of trade was ended in 1948.

**Custom, Case-Law and Codes**

Denmark resembles Norway and Sweden in never having developed a

\textsuperscript{113} Fris, op. cit. supra note 106, at 262.

\textsuperscript{114} Hudson, The Permanent Court of International Justice 248 (1934).


\textsuperscript{116} 5 Hackworth, Digest of International Law 467-470 (1943); Danstrup, op. cit. supra note 112, at 175. On the legal status of Denmark during World War II, see Scott, op. cit. supra note 111 at 248-258; Outze, Denmark During the German Occupation (1946); Satz, Enemy Legislation and Judgments in Denmark, 31 J. Comp. Legis. & Int. L. (3d ser.) pp. 1-3 (1949).

\textsuperscript{117} Danstrup, op. cit. supra note 10, at 161. On the history of Greenland see Scott, op. cit. supra note 111, at 22-26. In October 1950 it was announced that for the first time a council, courts and prisons would be set up in Greenland. N. Y. Times, Oct. 5, 1950.
DANISH LAW

case-law like that of England and the United States nor comprehensive codes like those of France and Germany. Much of its law is customary.118 Danish law gives more weight to custom than Swedish, but less than Norwegian law.119

Danish law has evolved independently of Roman law, and is essentially national in character.120 The other Scandinavian nations have been the chief outside influence, with Germany and England next. Danish law resembles German law only in the respect that both of them give much weight to the “theory of law,” that is to say, scientific discussions of the law which suggest solutions when positive legislation fails.121 To some extent Roman law has affected the Danish law of contracts and torts.122 That Danish law has not been submerged by the Germanic influence “is above all due to the prominent work of a single man—the Danish Blackstone, I might call him—Anders Sandoe Orsted, who in the beginning of the 19th century founded the entire Danish law on a national and quite realistic base.”123

As in other nations the Danish courts tend to follow earlier judicial decisions.124 The tendency to follow precedent is said to be stronger in Denmark than in Sweden.125

The earliest written forms of law in Denmark appeared in the twelfth century.126 The vigorous role of the Valdemars caused the Landsthings to fix and preserve the existing law in writing.127 The great provincial laws were now recorded. The laws of Skaane and of Zealand were drafted by private individuals. But the Jutland Code, the greatest of them all, was drafted by a royal committee, then passed by the Landsting at Viborg and finally issued by King Valdemar Victorious about 1240 at a meeting of the nobles.128 It is the oldest Danish civil code and remained in effect until

118. **Den Lille Salmonsen, Vol. X, p. 33 (Retssaderne); Kruse, Retslaæren; Levestad, Custom as a Type of Law in Norway I, 54 L. Q. Rev. 95 (1938).**


120. Skavang, Some Salient Traits of the History and Development of Scandinavian Law, 6 Seminar 60 (1948).

121. Munch-Peterson, Main Features of Scandinavian Law, 43 L. Q. Rev. 367 (1927).


123. Munch-Peterson, supra note 121, at 366, 367.


126. Id. at 533, 545.


128. The three laws are known as the Laws of King Valdemar Victorious (1202-1240). They were reduced to written statutes in the twelfth century. Pratt, The Third King 65-66 (1950). See also Holberg, King Valdemar Loj (Copenhagen, 1885); Thorsen, Danmarks Gamle Provindslove (Copenhagen, 1852-1853). The Jutland Code applied at first only to Jutland “was adopted later as the law for Zealand and Scania.” Birch, Denmark in History 68 (1938).
1683. The Jutland Code, together with "The Articles of Thord" containing a gloss of explanations, decisions, customs, and new rules, was ratified by the King and the Council of State in 1326 as official law. It was made applicable to all Denmark. Chancellor Nils Kaas instituted a revision made effective in 1590.

The Jutland Code is in the tradition of national legislation. That is to say there is no Imperial Law nor Roman law in it. There is, however, canon law in it. It has a famous preamble borrowed from the Church:

By law shall the land be built. Were every man content with what is his and granted to other men the same right, no law would be needed. Were the land without law he would have the most who could take the most; therefore law shall be made to meet the needs of all. It is the office of the King and chiefs who are in this country to guard the law and to do justice and save whosoever shall be put to duress, such as widows and children, without a guardian and pilgrims and foreigners and poor men who are most encroached upon.

Elsewhere in Europe the principle of status prevailed under which a man's duty to his fellows was regulated by his position in the state. There is no trace of status in the Laws of Valdemar. Everywhere else there were provisions for serfdom. The Danish laws did not provide for it. The Jutland Law declared: "No man may meddle with the law, and the king may not set it aside without the will of the land."

It is an interesting fact that the establishment of absolute monarchy which made the king independent of the Council of State and the "things" made it possible for the king to establish a uniform system of law for Denmark. In 1661 the king directed a commission to prepare a modern code. Commissions were also appointed in 1662 and 1666, but little progress was made. The king then commanded each member of the last commission to prepare his own synopsis for a code. Peder Lassen of the Supreme Court and Rasmus Vinding, Professor of History at the University of Copenhagen and a Supreme Court Justice, complied. Vinding's draft served as a basis for later drafts. Chancellor Peder Griffenfeld assisted in the work as did Peder Scavenius, Professor of Law and a member of the Supreme Court. There were revisions in 1672, 1675, 1680 and 1681. On January 3, 1682, it was adopted and ordered printed by the king. On April 15, 1683, "King Christian V's Danish Law" was proclaimed as the law of the land and ordered announced at the "Things", to become effective three months later.

129. HERTZBERG, op. cit. supra note 125, at 531, 545, 547.
130. HERTZBERG, op. cit. supra note 125, at 531, 548.
131. PRATT, op. cit. supra note 128, at 65. In Holstein just south of Slesvig there was going on a codification of tribal customs and a simultaneous reception of the Roman Law on a limited basis.
132. SINDING, HISTORY OF SCANDINAVIA 286, 293-295, 304 (1858); SECHEER, KING KRISTIAN V'S DANSE LOV; KOLDERUP-ROSENING, KRISTIAN V'S LOV; HERTZBERG, op. cit. supra note 125, at 531, 557-559, 562.
It contained six books: (1) Courts and Practice, (2) Ecclesiastical Regulations, (3) City, Rural and Family Relations, (4) Marine Law, (5) Obligations and Inheritances, and (6) Penal Code. The sources were the Danish legislation of the sixteenth and seventeenth centuries. There was but little resort to canonical, Roman and German law except such as had already been incorporated into Danish law. The law of evidence was radically changed. The Danish Code is the earliest of the modern Scandinavian codes, the Norwegian Code being adopted in 1687 and the Swedish in 1734. Parts of the Code are still the law of Denmark. The Code is simple, liberal and humane in spirit. In form, however, it is unsystematic, casuistic and omits important subjects, hence a wide scope for judicial interpretation was left.133 The Norwegian Code of 1687 is largely based upon it. In 1701 and 1710 vain attempts were made to introduce a code governing political affairs. Subsequent statutes and codes covering specialized phases of the law are discussed in other parts of this article.134

**THE KING**

The institution of kingship deserves full attention because it was the major centralizing influence in Denmark. Moreover it was largely through the king that the common people won relief from the nobility. The changing character of the kings has affected foreign policy and domestic prosperity. The Danish kingship has gone through three stages: (1) the period prior to the commencement of the absolute monarchy in 1660; (2) the period of absolute monarchy from 1660 to 1849, the date of the Danish Constitution; and (3) from 1849 to the present, as a constitutional and limited monarchy.

The Danish king was at first simply one of the great landowners, who led the army in war and officiated at sacrifices to the deities.135 His bodyguard, the hired *hird*, consisting of sons of prominent families, were paid out of his estates. The important kings at the beginning of the Viking Age around 800 were those of South Jutland. Harold I, by being baptized in 826, secured areas in Germany. Harold II (950-985) also permitted himself to be baptized, and more effectively, made the Danes Christians. He moved the capital from Leire to Roskilde, where it remained until Copenhagen became capital in 1440. The powers of the king were consolidated by the Viking armies; fortified camps were established for garrisoning of armies and new small political units—townships—were created which in league with the king broke the power of the clans.136

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133. Munch-Petersen, supra note 121, at 366; Leivestad, Custom as a Type of Law in Norway, 54 L. Q. Rev. 95, 98 (1938).
134. As to revision in the eighteenth and nineteenth centuries see Hertzberg, op. cit. supra note 125, at 531, 567.
The kings took advantage of the church to build up their powers among the nobles.\textsuperscript{137} To offset the influence of Hamburg and Bremen, Canute the Great appointed English bishops at Odense, Roskilde, and Lund. King Sweyn Estrithson (1047-1074) secured additional bishops for Denmark, and then won the bishops over to himself.\textsuperscript{138}

King Canute the Saint (1080-1086) sought to enforce the royal prerogatives.\textsuperscript{139} He levied a special tax on the farmers, asserted the royal rights of forest and waters and entertainment and conveyance. He was very harsh in collecting the fines that fell to the king for enforcing the judgments of the moots. Such enforcement involved the seizure of land. A revolt occurred in Jutland. Canute fled to Odense, the Landsthing refused to protect him, and he was killed in a church. His successor had him canonized and proclaimed that it was sacrilege to rebel against the king, the deputy of the Lord. This was the first time that such an idea had been voiced in Denmark, and the idea never became very popular, though it strengthened the alliance between the king and the church.

King Niels (1104-1134) by negotiation acquired the judicial fines imposed by the courts, the rights to ship-wrecks and treasure trove.\textsuperscript{140} In return he secured to the Church both tithes and ecclesiastical jurisdiction in matters concerning the clergy. This represented a weakening of the Landsthing.

In 1170 Archbishop Eskil anointed the son of Valdemar the Great as king.\textsuperscript{141} This was an attempt to introduce the concept of hereditary kingship in Denmark. About this time the nobility emerged as a separate upper class.\textsuperscript{142} At first personal, eventually it became hereditary.

The aim of the Valdemars was the same as that of Henry II in England. It was attained through the administration of justice and the organization of the army.\textsuperscript{143} Justice in the courts was to be administered by the king.

During the reign of Valdemar the Great (1157-1182) the royal administration was increased so as to include a chancery, a great royal household, and several provincial officials.\textsuperscript{144} Denmark had thus advanced to the status of a medieval European state. The writing of history flourished. Saxo, secretary of Absalon, wrote a great history of Denmark from the Mythical Age to the 1180's.

The wars in the thirteenth century resulted in a raising of taxes, which from then on were imposed on all cultivated lands by way of personal assessments.\textsuperscript{145} The only persons exempted were the clergy and the members of the royal hird who served the king in person. The cities paid regular taxes.

\textsuperscript{137} Id. at 19.
\textsuperscript{138} Id. at 20.
\textsuperscript{139} Id. at 21.
\textsuperscript{140} Id. at 22.
\textsuperscript{141} Id. at 24.
\textsuperscript{142} Sinding, History of Scandinavia 105 (1858). The other three classes were the clergy, burghers, and peasants.
\textsuperscript{143} Danstrup, A History of Denmark 28-29 (2d ed. 1949).
\textsuperscript{144} Id. at 30.
\textsuperscript{145} Id. at 26, 29.
After 1260 there were gathered around the king the large landowners, the king's officials, and the heads of the clergy. At first known as the Rigsmode (curia regis) they were later known as the Danehof. It accepted the king's suggestion about royal jurisdiction in certain cases, entirely dispensing with the Landsthings and the law. It did this with a view to restoring order after the civil wars. At the same time it safeguarded itself against new tariffs and arbitrary embargoes on exports, and obtained liberty for Lubeck, Rostock, and Wismar to trade freely with Denmark.

In 1282 during the reign of Erik Klipping (1259-1286) the Danehof assembled and the king for the first time was forced to sign a charter, called the Danish Magna Carta, defining his duties to the lords. The Danehof was to meet once a year as the supreme legislative body together with the king. Nobody could be held under arrest unless he had made a confession and judgment had been pronounced. Nobody could be judged more severely by the royal court than he would have been before the Landsthing courts. Thus Denmark got her first constitution recognizing a legislative assembly of lords beside the king. Sweden shortly afterwards set up a similar arrangement.

The Danehof was the first national parliament in Denmark. It took over many of the powers once exercised by the Landsthinger (the regional assemblies). There grew out of the Danehof a smaller body known as the Rigsraad (council of the kingdom) consisting of about thirty members. They served as close advisers to the king and also on the highest Danish court. They enforced the king's compact. They controlled the succession to the throne, and the making of a new compact with an incoming king.

In 1319 before becoming king, Christopher II was bound by a strict charter. He promised not to go to war without the consent of the nobles and clergy, not to give German officers any authority, and to govern together with a council which met annually. The latter, as the Council of State, was to be the Danish legislative assembly for the next 350 years. No priest might be brought before a secular court unless the church courts had released him. No taxes might be levied on church property. Nobles need not render services outside of Denmark. The right to tax was severely

146. Id. at 32. The weakness of the burgher class and the cities during the Middle Ages has been ascribed to the existence of the privileged Hanseatic League. op. cit. supra note 142, at 126.

147. DAnsTRUP, op. cit. supra note 143, at 34. Later kings likewise made such compacts (Haandfastninger). They amount to a series of constitutions for Denmark up to 1660. Up to 1536 these compacts provided that no important action be taken by the king without the consent of the nobility and the clergy and that the king should call an annual meeting of the best men of the kingdom.

148. ARENETH, The Democratic Monarchies of Scandinavia 21 (2d ed. 1949). It is pointed out that while the Landsthings were not needed in the fourteenth century, as late as 1400 they approved general and local laws. Hertzberg, The General Survey of Continental Legal History 531, 548, 564 (1912). They were abolished in 1805 and town courts created.

149. Hertzberg, op. cit. supra note 148, at 531, 548.

150. DAnsTRUP, op. cit. supra note 143, at 35; Pratt, The Third King 55 (1950); Sinning, op. cit. supra note 142, at 128.
limited. Royal courts were deprived of appellate jurisdiction, and appeals from them could be taken to a general court of the nation. The income from fines passed to local nobles instead of to the king. The power of the nobility and the clergy was never greater in Denmark.

Perhaps the greatest Danish king is Valdemar Atterdag (1340-1375). A well known American writer has said that Valdemar "made Denmark into the first modern state." The only charter to which he consented on ascending the throne was one to obey the Danish law. He had previously known Marsilio of Padua who advocated a government subject to law. Denmark had just had a period of eight years without a king or regent. Valdemar labored incessantly for a revival of the thing courts and restoration of the laws of Valdemar Victorious. The title of foged began to replace the older one for law officers. The foged presided over the “herred” courts. In addition the fogeds collected taxes, acted as commanders of the garrisons and superintendents of the local militia. They were the backbone of the King's Council. Nearly half of them were Germans. At the meeting of the Danehof in 1354 at Nyborg, Funen, it was decided to hold an annual meeting there each year. Appeals lay from the thing of the herred to the Landsting, and then to the king's drost or the king himself, and finally to the Danehof. In 1355 Valdemar called a conference at Roskilde “on how to improve the realm,” the first economic conference in western history. The main result was a national plan for water regulation. Grist mills and dams were constructed. Stone roads were built throughout the nation. In 1360 a charter defined and punished treason to the nation as distinguished from disloyalty to an individual. Valdemar's council was called Rigets Raad (nation's advisers) instead of Kongens Raad (King's advisers). It took the place of the Danehof which met only on extraordinary occasions, as in 1354, 1356, 1360, and 1375. Though it had no legal authority Valdemar relied heavily on it. In 1370 it was the council rather than the king which made a treaty of peace with the Hanseatic League. From this time on the council was increasingly important.

The position of the Danish nobility in the time of Valdemar Atterdag is of interest. While in all Europe except Scandinavia one became an earl, count or baron through heredity and had territorial ownership, the right to lead armies into battle, to decide cases at law, and to legislate, in Denmark the nobility had no title, hereditary or otherwise. Not all of them had wealth. Legislation was through the things and the King. In the Thing

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151. Pratt, op. cit. supra note 44, at 299.
152. For an interesting case in which the king appeared at the thing court and pleaded a case as an ordinary subject see Id. at 84, 112. While previous kings had their documents written in Latin he employed Danish.
153. The clash between Danish and German legal concepts is described in Pratt, The Third King 65-73 (1959).
154. Id. at 199, 216, 270-272.
155. Id. at 206.
156. Id. at 236-237.
157. Id. at 129.
a noble's vote carried no more weight than anyone else's. Members of the leading families simply had some training in military and political leadership and the opportunity to demonstrate ability in those fields. Even the crown was elective. In only four out of twenty-four reigns from 900 to 1340 had the eldest son succeeded the father.

Queen Margaret (1387-1412), the only ruling Danish queen, laid down the law that every Dane should have six securities for any violation of which he could claim the help of the royal fogeds—church-security, wife-security, house-security, plow-security, the security of his stead, and the security of his thing.\footnote{\textit{DANSTRUP}, \textit{op. cit. supra} note 143, at 43. From about 1300 the Landsting was presided over by a judge appointed by the king (Landsdommer). \textit{HERTZBERK}, \textit{op. cit. supra} note 148, at 531, 548.}

By the time of Christian II (1513-1523) the Landstings were no longer of importance.\footnote{\textit{LARSEN}, \textit{A HISTORY OF NORWAY} 218 (1948).} Many landowners had judicial power over the peasants who lived on their land. Aside from this, judicial authority was exercised by the royal officials. The Landstings came to an end because the free peasantry, on whom it had depended for their existence, no longer existed. The peasants were stripped of their rights to use the forests, villeinage changed from free copyhold to a form of adscription, and the villeins had to do labor services. The lords of the manors bound their tenants to the farms. Enclosure of common land took place on a large scale so that there might be more corn and cattle.

King Christian I (1448-1481), the first of the Oldenburg dynasty, gave to the Norwegian people their first charter guaranteeing the rights of the people and making the kingship elective rather than hereditary.\footnote{\textit{DANSTRUP}, \textit{op. cit. supra} note 160. \textit{SINDING}, \textit{HISTORY OF SCANDINAVIA} 166 (1858).} As to Denmark he simply gave a communication in writing to the Council of State declaring the kingship elective, and binding himself not to impose taxes nor declare war without the consent of the Council.\footnote{\textit{LARSEN}, \textit{op. cit. supra} note 160, at 228.} In 1468 he called the first national assembly of all classes in Danish history. As he assumed broad powers his son Hans (1481-1513) was bound by a very strict charter virtually placing the government in the hands of the Council.\footnote{\textit{SINDING}, \textit{op. cit. supra} note 161, at 196; \textit{LARSEN}, \textit{op. cit. supra} note 160, at 228.} The king agreed not to buy up any estates held by the nobles; and only the nobles could buy land exempted from taxation. If the king violated the charter, the people were authorized to use violent means against him. His son, Christian II (1513-1523), exercised broad powers and weakened the nobility and increased the power of the lower classes. He was supplanted by his uncle, Frederick I (1523-1533), who signed a charter repudiating the absolutist claims and strengthening the nobles.\footnote{\textit{SINDING}, \textit{op. cit. supra} note 161, at 196; \textit{LARSEN}, \textit{op. cit. supra} note 160, at 228.} The Council was to consist of nobles and clergy. No burgess could hold public office.

At the time of Christian II most provincial officials, the \textit{lords-lieutenant},\footnote{\textit{SINDING}, \textit{op. cit. supra} note 161, at 196; \textit{LARSEN}, \textit{op. cit. supra} note 160, at 228.}
were owners of estates. Their offices, however, were not hereditary as in most other countries. They received the profits. The king tried in vain to reduce their "fiefs" to areas of administration with the officer receiving a fixed sum and the remainder falling to the king. In the reign of Christian III (1534-1559), following the Reformation, the king was successful as to three-fourths of such "fiefs."

In 1521 there was much law making activity. Former mercantile laws were consolidated. Provisions were made for royal and local government in the towns; social relief, and the administration of justice in the country. The copyholders in Zealand were granted liberty to move. The clergy were prohibited from purchasing land. The religious organizations and the schools which had been exclusively operated by the Church were reformed.

In 1536 Christian III called together an assembly of twelve hundred nobles, burghers and peasants to destroy the powers of the Catholic clergy. Subsequently the Rigsraad continued on a check upon the king. But it no longer represented the clergy, was made up entirely of nobles, and was reduced in size to twenty members. A new compact with Christian III did not contain a prohibition against the king's seeking to make his son his successor nor any clause permitting popular revolt if the king violated his compact. This compact fixed the form of the Danish government for many years. The king could not be a despot, yet he had more powers than the nobles wished him to have. Denmark was now ruled by the king and the nobles.

In 1660 the king was proclaimed hereditary monarch and in 1661 absolute monarch. A war had just ended in which the king played an heroic role and the nobles were blamed for the defeat. Certain German and Danish court officials, help from the Netherlands, the support of the Bishop of Zealand and the burghers of Copenhagen—all were factors in bringing about the absolute monarchy. The king's secretary, Peder Schumacher, a German, drew up the King's Law (1665) setting up an absolute monarchy. The king was to be a Lutheran and keep the kingdom undivided. He was to be the supreme head and judge of the people, and independent of all laws except the King's Law itself and respect for rights of property. For any one to suggest a change in the law was made treason. The document itself expressly forbade any amendment. The king ruled under this law from 1660 to 1848 without a parliament or Estates Assembly as in Sweden.

164. DANSTRUP, op. cit. supra note 162, at 44.
165. Id. at 53.
166. Id. at 46; BIRCH, DENMARK IN HISTORY 152-153 (1938).
167. ARNESON, THE DEMOCRATIC MONARCHIES OF SCANDINAVIA 22 (2d ed. 1949); SINDING, op. cit. supra note 161, at 220.
In theory, the Danish-Norwegian absolutism was the most logically developed and complete divine-right absolutism in all Europe. But it "was for the most part patriarchal and benevolent in practice, and administration was in the hands of a bourgeois bureaucracy."

Following the establishment of an absolute monarchy in 1661, a new system of administration was set up by Hannibal Sehested. Administrative boards or departments (Kollegier) were established, and burghers were appointed to administrative posts side by side with the nobles. The colleges were: (1) the college of state to administer foreign affairs, maintain the new constitution, and interests of the crown; (2) the sacred college to make ecclesiastical appointments; (3) the college of justice to deal with the courts and the police; (4) the college of the treasury to administer financial and tax affairs; (5) the college of war to administer the army; and (6) the admiralty college to administer the navy. The signature of the king was necessary to put their decisions into effect. The Supreme Court as highest judicial tribunal was instituted with the king at the head.

Extremely important changes occurred in the period from 1770 to 1772 as the result of a coup d'état by the mad King's German physician, Johann Struensee. Administration was now reorganized after the Prussian model. Political and judicial authority was closely centralized, and Copenhagen lost its autonomy. A single consolidated municipal court was set up in Copenhagen. The religious sects outside of the Lutheran State Church were given greater freedom. The criminal law was made more humane and the death penalty restricted. Police were not freely to enter private homes or places of business. Torture to obtain confessions was abolished. Illegitimate children were given protection. Permanent pauper commissions were established. Tariffs were reduced. Censorship of the press was abolished. A second coup d'état in 1772 put an end to the Struensee Government and many of its reforms.

In 1776 a Citizenship Law was passed by the government and the nobility reserving state posts for people born in Denmark, Norway and Holstein. However, the German influence was not ended until 1848.

172. Damstrup, op. cit. supra note 162, at 80; Larsen, op. cit. supra note 160, at 343-345.
174. Censorship as to discussion of economic conditions was dropped in 1755. Id. at 18, 130. There had been strict regulations of the press through censors under Christian V (1670-1699). Sinding, op. cit. supra note 161, at 307. Strict censorship was restored in 1773. Id. at 378.
175. Damstrup, op. cit. supra note 162, at 82; Sinding, op. cit. supra note 161, at 378.
There was another era of liberal reform from 1784-1797. The criminal law was made more humane. Imprisonment was substituted for the death penalty as to many crimes. Torture in executions was abolished. There was more freedom of speech and press than in any other country. No such sweeping reforms were accomplished in any other country prior to the French Revolution.

The reaction after the Napoleonic Wars was not so extreme in Denmark as in Norway or Sweden. Absolutism continued, but the king delegated more powers than formerly. There was an effort to reorganize the system of administration to secure greater honesty and efficiency. The chief grievances were against the narrowly legalistic and subservient bureaucracy which the king had developed after 1800. In 1820 the king permitted the Danish students who had volunteered in his campaigns to form the Student Association. It gradually became the center of a liberal movement. Between 1815 and 1830 there was little change.

From 1830 on the Danish nobility performed no special function, and its interests were identical with those of other landlords. In 1830 the king began preparation to establish consultative assemblies of estates. The king felt compelled by the necessity of according to his Danish subjects privileges equal to those he knew must be extended to his German subjects. But he followed the Prussian system established in 1823 instead of the Norwegian Constitution. The formal provisions issued in 1834 provided for four assemblies: one for the islands to meet at Roskilde, one for Northern Jutland at Viborg, one for Slesvig to meet at the city of Slesvig, and one for Holstein at Itzehoe. There were to be three groups of voters: owners of city property, owners of rural estates, and owners of smaller rural properties. The assemblies could not legislate. The king pledged himself to consult them on all projects for ordinary laws, and granted them extensive powers to suggest changes in existing laws. Danish liberalism became articulate in this period. A group of university professors assumed the leadership: the jurist, P. G. Bang; the economist, C. H. David; the theologian, H. N. Clausen; and the botanist, J. Fr. Schouw. The first issue was over freedom of the press. In 1834 the king forbade his subjects to subscribe to the Norwegian newspaper Morgenbladet which favored the radicals and the peasants. A. S. Orsted, the attorney general, did his utmost to urge the king not to curb the press. In 1837 an ordinance curbing the press was issued supplementing that of 1799. The king met the demands of the Roskilde and Viborg assemblies for a published financial statement and a project for tariff reform tending towards free trade. In 1838 the Estate of Roskilde and

176. Larsen, op. cit. supra note 160, at 350-351; Danstrup, op. cit. supra note 162, at 84-85.
178. Id. at 510.
179. Id. at 519.
Viborg requested that they be united into a national assembly, but the king refused. Steen Blicher wrote favorably of the Norwegian Storthing. In 1839 when Christian VIII, who had been king of Norway in 1814, ascended the Danish throne, numerous petitions asked him to give Denmark a constitution similar to the one he helped to write for Norway. But the king refused, and merely stated his intent to undertake administrative and fiscal reforms. In 1847, the last year of his reign, he delegated to P. G. Bang, a moderate liberal, the assignment of preparing a first draft of a constitution. His death on January 20, 1848 prevented its consideration by him. In March 1848 King Frederick VII declared that he would regard himself henceforth as a constitutional monarch and would hold the ministry responsible for the formulation of policy.

**The Constitution**

The movement for a constitution was produced in a large degree by the Slesvig-Holstein question. The revolutionary wave in Europe also played a role. A constitutional national assembly was elected in 1848 by equal and universal suffrage for males of independent means. Largely on the basis of the Declaration of the Rights of Man in 1789 and the Belgian Constitution, D. G. Monrad, a famous Danish theologian often called the father of the Danish Constitution, proposed the creation of a bicameral Rigsdag, a Folketing (lower house) and a Landsting (upper house) with universal suffrage for both chambers. The desire of the Left for a unicameral parliament was ignored. Six months discussion resulted in a compromise. The Folketing was to be chosen for a three-year term by direct election by all males over thirty with their own household, the Landsting for an eight-year term by the same body of electors, but by indirect election. The Constitution was signed on June 5, 1849, which the Danes now celebrate as their Constitution Day. American institutions had been carefully studied. A constitutional monarchy was set up. Executive power is vested in the Crown and the ministers, legislative power in the Crown and Parliament, and judicial power in the courts. The ministers are chosen by the king. All men over thirty except domestic servants and apprentices could vote. Political and religious censorship are abolished. Anyone taken into custody must be placed before a judge within twenty-four hours. The police may not search a house except with a warrant. All privileges of nobility, title and rank are abolished. There is to be liberty to trade, free local government, separation of the courts from the administration, public and oral judicial

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181. Hovde, op. cit. supra note 180, at 544.
184. In 1580 there were 250 noble families and in 1660 less than 125. Bunch, Denmark in History 133 (1938). Today about 220 families are listed in the various ranks of the titled nobility. No special privileges go with the titles, which are of social importance only. Arneson, The Democratic Monarchies of Scandinavia 51 (2d ed. 1949).
procedure, juries in important cases, a Constitution for the Lutheran National Church, and transition to free ownership as to entailed estates and fee-ments. The 1849 Constitution "was a very radical one for its time."185

From 1849 to the present time Denmark has had six constitutions. Five of them were drafted between 1849 and 1866.186 The second, third, and fourth arose out of the Slesvig-Holstein conflict. The Danish king was monarch over Denmark, Slesvig and Holstein. The Danish realm or state included Denmark and Slesvig. The kingdom of Denmark did not include Slesvig or Holstein. Holstein was already a member of the German federation in 1849. The 1849 constitution was intended to apply to Slesvig, and served as the constitution for Denmark without the duchies until 1866. This constitution co-existed with the 1854, 1855, and 1863 constitutions. The 1854 constitution for the monarchy included Slesvig and Holstein, but did not affect the structure of the government for Denmark proper.187 The Constitution of 1855 also covered the monarchy. The monarchy was to be governed by a unicameral council, three-fourths of its members elected by the people and one-fourth chosen by the king. Proportional representation was to be used.188 The election in 1856 was the first in the world to use this system. In 1858 the constitution was declared not to apply to Holstein. The 1863 constitution endeavored to unite Slesvig more closely with Denmark.189 It set up a bicameral council alongside the bicameral rigsdag for the kingdom proper. Its adoption was the immediate cause of the war with Prussia and Austria.

The Constitution of 1866, which was in effect up to 1915, represented a compromise between the 1849 and 1863 constitutions.190 The Council ceased to exist. The Bill of Rights resembled that in the 1849 Constitution. But the provisions as to the election of the Landsting were very conservative. The Landsting was to be elected by the wealthy people in the cities and by the large farmers, and 12 members out of 66 were to be appointed by the Crown.

In 1870 the Liberal Left party was formed, advocating return to the 1849 constitution. In 1905 the new Radical Left party took the same position. It was only in 1914 that the Landsting, after its first dissolution alone

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187. Arneson, op. cit. supra note 184, at 25; Danstrup, op. cit. supra note 180, at 104; Steefel, op. cit. supra note 182, at 15.
188. C. G. Andrae invented it in the process of preparing the composition of the Rigsraad. Wiskinge, Vor Forfatnings Historie 113-114 (Copenhagen, 5th ed. 1928).
189. Arneson, op. cit. supra note 184, at 25-26; Danstrup, op. cit. supra note 180, at 108-109; Steefel, op. cit. supra note 182, at 70-78.
190. Arneson, op. cit. supra note 184, at 26; Danstrup, op. cit. supra note 180, at 121; Ilovne, op. cit. supra note 180, at 554-555.
under the 1866 Constitution, was ready to adopt a new Constitution. The 1915 Constitution provided universal suffrage for all men and women over 25 for the lower house, but a voting age of 35 for the upper house. Members of the Landsting nominated by the Crown were replaced by 19 members or one-fourth elected by the outgoing Landsting. The Constitution was amended in 1920 to provide for the incorporation of Northern Slesvig following a plebiscite. To be elected to the lower house one must be at least 25 and for the upper house at least 35. The lower house is elected for a four-year term and the upper house for eight. Proportional representation is used in electing the lower house and for choosing the electoral college which in turn elects members for the upper house. The cabinet is responsible to the lower house alone. The leader of the strongest party in the lower house is chosen prime minister.

Section Two of the Danish Constitution provides that the judicial power is in the courts (den dommende Magt er hos Domstolene). Other provisions as to the judiciary appear in articles 66 through 72. The structure and organization of the courts is left for the Rigsdag to deal with through legislation. The only tribunal specifically mentioned is the Rigsretten (Court for State Trials). It is a tribunal to hear charges against the cabinet ministers, and is almost never resorted to. The Constitution provides that its membership shall include all the judges who sit in the “highest court of the land.” This would seem to imply that at the head of the judiciary shall be a Supreme Court and that the Rigsretten is not a part of the regular judicial organization.

The organization and structure of the courts is fixed by legislation. The Constitution seems clearly to make the courts subject to legislation. The Rigsdag appears to have vast discretion to set up special tribunals. There is no doctrine of separation of powers as in the United States. The judiciary is hemmed in by legislation prescribing almost every detail of its functioning and structure. However, no judge may be removed from office until after proper notice and hearing. No judge may be transferred from one court to another except when there is a statutory reorganization. Under the Constitution any judge may be retired on full pay at the age of sixty-five.

If the Danish courts have the power to declare statutes unconstitutional,

191. An English translation of the Constitution is obtainable from the Danish Embassy. It also may be found in Peaslee, 1 Constitutions of Nations, 644-653 (1950). The outstanding treatise on the Danish Constitutional Law is Berlin, Den Danske Statsforfatningsret (1943).

192. The political parties have now reached a preliminary agreement to revise the constitution to lower the age limits. Friss, op. cit. supra note 185, at 5.

193. However, all legislation must be approved by the upper house. Though the Social Democrats gained control as early as 1924 in the lower house it was not until 1936 that they gained control in the upper house, and then by only one vote. Arneson, op. cit. supra note 184, at 55.
thus far they have never exercised it. The Constitution provides that there shall be no expropriation of private property except for a public purpose and after the payment of fair compensation. A statute of this kind has been attacked only once (in 1919) and the statute was upheld. Protection of constitutional rights thus hinges on the attitude of the Rigsdag. Thus far the Rigsdag has shown no disposition to violate the civil and political liberties of the individual. Judicial review of constitutionality in actual practice is even more nonexistent in Denmark than it is in Norway.

Mention has been made of the constitutional guaranty against expropriation of private property. Other constitutional rights are: (1) religious liberty, (2) freedom of the press, (3) freedom of assembly, (4) the right to form associations, (5) the right to engage in economic activity, (6) freedom from unreasonable searches and seizures, (7) the right of a criminal defendant to a speedy trial, and (8) the right to appeal to a higher court. The amending process of the Danish Constitution is rather a difficult one. The proposed amendment must pass both houses of the Rigsdag. This must be followed by a dissolution of the Rigsdag and a general election. The amendment must be passed by the new Rigsdag. Finally it must be submitted to a popular referendum. It passes only if it receives a majority of those participating in the referendum and at least 45 per cent of all those eligible to vote. A new proposed constitutional law was passed by the Rigsdag in March, 1939, but failed to receive approval by the required referendum of May 23, 1939. The proposed new constitution would have lowered the franchise age and granted suffrage to all Danes domiciled in the country who are twenty-three years of age or over. The Landsthing was to be abolished and the use of the referendum increased. The Rigsdag was to consist of the Folkething and Rigsting and would comprise together 210 members, a majority to be elected from among candidates nominated in the various constituencies and a minority to be taken from a national list to be made public prior to the general election. A public meeting in 1945 demanded constitutional amendments abolishing the upper chamber and lowering the voting age to twenty-one.

The Rigsdag

The Constitution provides that the size of the lower house (the Folketing) is to be fixed by law, but that it shall not exceed 152. The present elective laws fix the size at 151.194 For this purpose the nation is divided into 105 constituencies, and these are grouped together into 24 electoral districts. From each electoral district as many members are chosen as there are constituencies within the district. This provides for 105 members. In addition there are 44 supplementary mandates apportioned among the

194. Id. at 153. Compare Teisen, Power to Declare Legislation Unconstitutional in Denmark, 10 A.B.A.J. 792 (1924).
195. ARNESON, op. cit. supra note 184, at 74.
ious parties and electoral districts. The list system of proportional representation is used.

Under the Constitution there may be as many as 78 members in the upper house (the Landsting). By statute the present number is 76. All are chosen indirectly for an eight-year term. One-fourth are elected every eighth year by proportional representation by the outgoing Landsting. Of the remaining seats one-half are filled every four years by the electoral colleges chosen in each of the seven Landsting districts by proportional representation. The electoral colleges in turn choose the Landsting members to which each district is entitled by proportional representation.

Interest in election to the Rigsdag is keen. In the last Danish elections prior to 1950, 86 per cent of the electorate voted. For many years there was a sharp conflict between the Right and the Left as to which house of the Rigsdag should prevail in case of conflict and from which house should the ministry be chosen. The Constitution was silent. Until 1901 the king chose his cabinet according to the majority in the upper house. The Left advocated the English system under which the ministry must be in harmony with the lower house. The Left had a majority as early as 1875. In 1884 it had 69 seats to the Right's 19. But the Right government did not resign until 1901 when the Left had 76 seats, the Social Democrats 14, and the Right only 8. For the first time a cabinet was chosen because it represented the majority in the lower house. Full parliamentary government is thus only a half century old in Denmark. The first resignation of a prime minister because of a vote of lack of confidence occurred in 1909.

The abolition of the upper house is favored by the Social Democrats and the Radical Left parties. Its retention is favored by the Conservative and Liberal Left parties.

The first Social Democrat government came into power in 1924 under the leadership of Thorvald Stauning. After a short period for the Conservative party (1926-1929), the Social Democrats again came into power in 1929, and kept control until 1943 when martial law was declared by the Germans. The Liberal Lefts, a conservative party, were in power from 1945 to 1947. In 1947 the Social Democrats again came into power under the premiership of Hans Hedtoft. At the same time the number of Communist members in the lower house dropped from eighteen to nine. The Social Democrats, unlike those in Norway and Sweden, have never had a majority, although they have been the largest single party, excluding coalitions, since 1924. The present Social Democratic government has not

196. Id. at 77.
197. Fрис, op. cit. supra note 185, at 10.
198. Danstrup, op. cit. supra note 180, at 127-128; Arneson, op. cit. supra note 184, at 54; Frрис, op. cit. supra note 185, at 4.
199. Arneson, op. cit. supra note 184, at 56.
had the permanent support of one or more of the other parties, but secures support for each measure in its program as it comes up. Socialist ideas play a less important role in the Danish Social Democratic party than they do in Norway. Following World War I the Norwegian Labor party had a strong revolutionary tendency and was for a short time a member of the Communist International. There were no such deviations in Denmark. The Danish government is less involved in economic enterprise than the other Scandinavian governments. In 1948 the government use of resources was only ten per cent of the disposable product compared with over twenty-five in Norway. 202 Denmark has not adopted the complete controls of Soviet Russia, nor direct nationalization of industry as in Great Britain. She has, however, shifted from short-term to long-term government planning. 203 Freedom of religion, speech and press, protection of civil liberties and property rights all indicate that Denmark is a thoroughly democratic country although the "Danes worry openly . . . that foreigners will confuse their highly organized social-democratic government with totalitarianism." 204 The September 1950 election increased the strength of the conservative parties, left the Social Democratic party as it was, weakened the Agrarian party and reduced the Communist party from nine to seven members in the lower chamber. 205 The Social Democrats have 59 out of 151 members in the lower chamber or 39 per cent of the members, whereas in Norway's single chamber parliament they have 57 per cent, and in Sweden they have 56 per cent of the first chamber and 49 per cent of the second and larger chamber.

Political leadership in Denmark is very stable, especially in the Social Democratic party. Thorvald Stauning was undisputed leader of that party from 1910 to 1942. Since that time it has been headed by Hans Hedtoft. No parliamentary regime in Europe, except that of England, has been as stable as that of Denmark, where the average government tenure during the period between the two World Wars was five years. 206 In Norway and Sweden such period was about two years.

No legislation may be enacted in Denmark without favorable and separate action by both houses of the Rigsdag. Action on finance bills must originate in the lower house. All other bills may originate in either house. Members of the lower house may be elected irrespective of where they live in Denmark. Members of the upper house, except those chosen by the upper house itself, must live in the election districts from which they are chosen. Members of both chambers are paid at the rate of 6000 to 9000 kroner a year depending on how far they live from Copenhagen. 207 Under the Con-

203. Id. at 194-196. None of the Scandinavian socialist parties is as doctrinaire and Marxian as in France and Italy. N. Y. TIMES, June 25, 1950.
204. Denmark, ATLANTIC MONTHLY 8 (July 1950).
207. AARHUS, op. cit. supra note 201, at 83. On Danish legislative organization and procedure see BERLIN, DEN Danske Statsforsamlingens Ret (1943).
stitution they are inviolate. They may not be arrested during a session without the consent of the house, nor be held accountable for what they say as part of their duties. Each house is the determiner of qualifications and elections of its members, and sets up rules of legislative procedure. Annual sessions are held commencing the first Tuesday in October. The cabinet may call a special session at any time. At the beginning of the session each house chooses a speaker and one or more vice speakers. The speaker may vote and participate in debate. Each house has an ample secretarial staff.

The Constitution makes provisions for joint sessions in two cases. The first is the opening session to hear a speech from the throne or the prime minister. The second is that arising in the event of the death of the king without heirs, in which event the joint session selects a king and prescribes the rules of succession.

Each house has several standing committees, five in the lower house and four in the upper. There is also a single joint standing committee to select the officers who represent the entire Rigsdag. In both houses there are standing committees on (1) Rules and Procedure, (2) Petitions and Memorials, (3) Elections, and (4) Finance. The lower house has in addition a standing committee on salaries and compensation in the public service. Special committees are set up to consider certain legislative topic. All committees are chosen by proportional representation. The speaker is usually a member of the Committee on Rules and Procedure.

Mention should also be made of government committees whose work precedes the introduction of bills. These committees are normally appointed by the government at the request of the Rigsdag or on its own initiative. They are made up of experts, representatives of political parties and of organizations specially concerned. As the Danish committee has a broader representation of interested groups and government authorities than the Swedish, its report is not sent out for criticism before the cabinet acts, as is the case in Sweden.

The two houses jointly choose the Board of State Auditors (Statsrevisorer) and the Council on Compensation in the Public Service (Lonningsraadet). The former, four in number, check the income and expenditures of the treasury at the close of the fiscal year. The latter, consisting of eight members, two appointed by the cabinet, two by the minister of finance, and four by the two houses, investigates the salaries and working conditions of government employees.

The Rigsdag, in addition to engaging in the constitutional amending process, deals with ordinary, finance, and provisional laws. The enactment of ordinary laws will be discussed first. Under the Constitution no law may be enacted unless it is dealt with (behandlet) three separate times in each

208. ARNESON, op. cit. supra note 201, at 85.
209. FRITS, op. cit. supra note 206, at 11-12.
210. ARNESON, op. cit. supra note 201, at 86.
house. It does not, however, specify as to the amount of time which must elapse between each reading. But the rules of each house provide for three distinct and separate readings. There is no such requirement in Norway and Sweden. Although a bill may be introduced by a private member, most bills are introduced by cabinet ministers.

Upon first reading a bill is discussed usually as to its general purpose. In the lower house no one except ministers may speak more than twice except with the consent of the house. In the upper house there is no limit on debate. When the debate is over a vote is taken on whether the bill should pass to second reading and if so whether it should be sent to a committee. Usually a bill is sent to a special committee between first and second reading. Though each house meets in public, the committee meets in secret.

Second reading usually occurs only after at least two days have elapsed since the first reading. If the bill was sent to a committee even more time will elapse. On second reading the bill is taken up paragraph by paragraph. germane amendments are permitted. On third reading only the ministry and members of the committee handling the bill may propose amendments. When the third reading is over, the bill is now ready for passage. A majority of the membership of the house is required.

After passage in its original form by the other house, the bill goes to the king for approval. But if it is amended it must go back to the house of origin for approval. If the two houses disagree, the bill may be sent to a special committee at the request of either house. If both houses accept the final form, the bill is then transmitted by the prime minister to the king. The king has not exercised the power of veto since 1865. Thus it is a fixed custom for the king to sign all laws enacted by the Rigsdag. The statutes are published in the Lovtidende (Law Journal) issued by the government.

The procedure as to finance laws is similar, except as required by two constitutional provisions. A finance bill can be passed in the first instance only by the lower house. The annual finance bill must be introduced at the beginning of a session. Thus there can be full discussion before March 31, the end of the fiscal year. In case of disagreement between the two houses, temporary appropriations may be made. The budget must be passed annually.

Under Section 25 of the Constitution in cases of necessity and when the Rigsdag is not in session, provisional (foreloebige) laws may be promulgated by the government. A provisional act must not be in violation of the Constitution. But it may even repeal ordinary laws already enacted. Finance laws may be passed only by the Rigsdag, hence may not be the subject of provisional laws. As soon as the Rigsdag convenes provisional laws must be presented to it. If either house disapproves it ceases to be operative. If it is not passed by both houses it ceases to operate when the Rigsdag adjourns.

211. The Rigsdagtidende (Parliamentary Journal) published daily during sessions contains verbatim reports of proceedings in each house.
Denmark employs the system of provisional legislation more than Norway and Sweden.

The most important treaties, such as treaties of peace, alliance, cession of territory, and commercial treaties require ratification by the Rigsdag. Only the Rigsdag may approve a declaration of war. In 1923 a law established a joint Commission (Navn) on foreign affairs consisting of sixteen members chosen annually from the two houses. It may make recommendations to the Rigsdag and the ministry. It meets at the request of the ministry or of six of its own members. It operates even when the Rigsdag is not in session.

The members of the ministry or cabinet need not be members of either house.212 Usually they are members of the lower house from the controlling party or coalition of parties. A minister may speak in either house but may vote only in his own house. Every member of the Rigsdag has the right of interpellation as to any minister. An interpellation does not lead to the fall of the ministry.

The ministry may call and adjourn special sessions at any time. It may adjourn a regular session but not for more than two months and not more than once in the session except with the consent of the Rigsdag. The king, acting through his ministers, may dissolve the lower house, and then decide when the next election shall be held, provided that this be done within the four-year term. It is much more difficult, however, to dissolve the upper house. It may be dissolved only if the lower house passes a bill which the upper house fails to pass and if after a regular lower house election, the new lower house passes the same measure again and the upper house again fails to pass it. Furthermore, the intervening election to the lower house must be the regular one at the end of the four-year period. Thus the upper house may be dissolved only once in four years for failure to agree with the lower house. A constitutional amendment abolishing the upper house was proposed in the 1930's, but failed to receive the support of 45 per cent of the eligible voters.

Lobbying in the objectionable sense does not appear to exist in Denmark.218 In this respect she resembles Norway and Sweden.

Under the Constitution the Court for State Trials (Rigsretten) may try cases involving official conduct of members of the ministry. It is made up of the Supreme Court and of an equal number of members of the upper house chosen by the upper house for a four-year term. The king or the lower house may make accusations. There is no appeal. One convicted may not be pardoned unless the lower house gives its consent. It has seldom been used, and never since 1909.

212. ARNESON, op. cit. supra note 201, at 89.
213. ARNESON, op. cit. supra note 201, at 111.
The organization of government and a judicial system seems to have proceeded as follows. The districts from which a group rode out in a body to carry on a war soon united into herreder (hundreds and wapentakes). The freemen of the herred assembled to pass on matters of common concern at the herredsting (folk moot). The herreder gathered together into larger districts known as land or shires. Each land held a landsthing (shire moot). The five most important landsthings were held at Viborg in northern Jutland, Urnehoved in southern Jutland, Odense on the island of Funen, Ringsted on the island of Zealand, and Lund in Skaane (now a part of Sweden). The Landsthing decided on what should be law, passed judgment on law suits, decided on campaigns, and elected their leader, the king. Though Denmark was unified about 900, each province had its own law. As one writer has stated:

In Scandinavia the development of law precedes the establishment of the state. Farther back in time than we can know, the chieftains and freemen met in periodic 'Law things' to decide cases and to formulate rules of conduct. The things were district meetings of the farmer-freemen who brought the force of public opinion to bear upon criminals, and which slowly built up bodies of law which were carefully phrased and just as carefully preserved. In ordinary civil disputes the thing often acted as a court of conciliation or arbitration, getting the opposing parties to agree on a reasonable settlement.

The position of law-man which existed in Norway and Sweden did not so clearly exist in Denmark. If it did it had no official character, and resembled the early Norwegian and Icelandic lawman.

In the age of the Valdemars from the twelfth through the fourteenth centuries authority tended to pass from the Landsthings to the king or the bishops. Much the same occurred in Sweden, whereas in Norway the things persisted longer. The development of the Danehof and the Council of State following 1284 involved assumption of legislative functions; the Council of State also became the supreme judicial tribunal in the fourteenth century.

214. Danstrup, op. cit. supra note 200, at 14; Sinding, History of Scandinavia 37-40 (1858). For the history of Danish law see the encyclopedia III Den Lille Salmonsens 77, article by Stig Juul of the University of Copenhagen; Jorgensen, Dansk Retshistorie (1947); Hertzberg, A General Survey of Continental Legal History 531-576 (1912).

215. There was also a court intervening between that of the “herred” and of the “land,” termed the “Syssel-thing.” Hertzberg, op. cit. supra note 214, at 531, 540.

216. The Lands were said originally to be Jutland, Funen, Zealand, Laaland, Skaane, Halland, Blekinge, and Bornholm. Hertzberg, op. cit. supra note 214, at 533, 545.

217. Scott, op. cit. supra note 202, at 47. The Danish king exercised greater authority at the Landthings than did the Swedish. Hertzberg, op. cit. supra note 214, at 531, 541; Danstrup, op. cit. supra note 200, at 29.

218. Hertzberg, op. cit. supra note 214, at 533-537.

219. Danstrup, op. cit. supra note 200, at 28, 32.

220. Hertzberg, op. cit. supra note 214, at 531, 542, 548. But proposed statutes long continued to be submitted to the Land-thing for adoption.
ial functions and declared the customary law of their areas. The inferior
courts were the things of the herred and syssel of the by (village) and the
birke (market). The actual judicial authority gradually passed to the Foged,
a royal official who presided over the herred and village courts. In the four-
teenth century the Landsthing was presided over by a judge appointed by
the king (Landsdommer) who soon in effect exercised the judicial authority.

The Supreme Court of Denmark was set up in 1660 in the same year
as the absolute monarchy was created. In 1690 an instruction to the Court
ordered that the Court should always ask the king for his opinion in doubt-
ful and difficult cases, as he nominally was the supreme judge himself. This
ordinance was repealed in 1753 to secure the independence of the
court. A prohibition of 1690 against the quotation of precedents by lawyers
was not abolished until 1771. There were reorganizations of the court in
1771, 1774 and 1854. During the reign of Christian VI (1730-1746) legal
procedure was improved by a new regulation of the Supreme Court.

The highest court in Denmark today is the Supreme Court (Højester-
etten). It consists of a president and twelve judges. At least nine judges
must sit, and superior court judges may be called if less are present. Its
members, as well as lower court judges, are appointed for life by the cab-
inet. The president receives 15,000 kroner a year and the other members
12,000 kroner. The Supreme Court holds three regular sessions annually.
The first and shortest session begins after New Year's Day and continues
for six weeks; the second and longest begins in March and runs into June;
the third begins in October and runs until Christmas. Special sessions dur-
ing the summer and early fall are frequent. While in session it sits daily
except Saturday and Sunday from nine in the morning until two in the
afternoon. Opinions are brief, seldom exceeding two printed pages. It
is not the practice to cite earlier decisions or legal treatises, nor to discuss
any points except those at issue. The statement of facts is made as brief
as possible.

Next below the Supreme Court are the two intermediate appellate
courts, called Landsretter (the provincial courts). These courts replaced
the Landsthings which were abolished in 1805. The Western Superior

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221. Leivestad, Custom as a Source of Law in Norway I. 54 L.Q. Rev. 95, 112
(1938).
222. Sinding, op. cit. supra note 214, at 337.
223. As to the qualifications required of judges see Teisen, The Danish Judicial Code,
224. The Social Democratic party now in power as well as other Danish parties do
not propose popular election of judges or limitation on their tenure of office. Haynes,
Selection and Tenure of Judges 182 (1944).
225. Teisen, How they Decide Cases on Appeal in Denmark, 76 Cent. L.J. 185
(1913).
226. The various Danish courts are described by Teisen, supra note 223, at 543, 546-
548; Arnson, The Democratic Monarchies of Scandinavia 152-159 (2d ed. 1949);
III, Den Lille Salmonsens, 343-344 (Dommaend-Domstol).
Court sitting at Viborg acts for Jutland. The Eastern Superior Court sitting at Copenhagen acts for the islands. Non-jury cases are tried at Viborg and Copenhagen. Each court holds sessions in other cities to hear jury cases. The Western District Court consists of a president and fourteen other members. The Eastern District Court consists of a president and twenty-three other members. The presidents are paid 12,000 kroner a year and the other members 9,600 kroner.

The Superior Courts (Landsrettene) hear both criminal and civil appeals from the lower courts. In addition they have original jurisdiction over important civil cases and all criminal cases requiring a jury trial. At least three judges must sit on all cases. The superior court is the only court in which a jury is employed, as is the situation in Norway. The jury is never used in civil cases. The jury consists of twelve members as compared with ten in Norway. They are chosen by lot from a carefully selected list of names drawn up annually in each of the areas in which the court sits. The prosecution and the criminal defendant may each object to not more than four names as the jurors are drawn. The law requires a jury for all serious offenses, including political crimes. For a conviction eight or more jurors must concur, compared with seven out of ten in Norway. In case of conviction the court may order a new trial if it feels that the jury has based its verdict on insufficient evidence. But at the new trial there must be another set of judges and jurors. The most severe sentence is life imprisonment, capital punishment having been abolished in 1933. In many criminal cases coming up on appeal from the lower courts, three lay judges without legal training participate on an equal basis with the regular district judges both as to determination of guilt and fixing the penalty.228

Double appeals are not usually allowed.229 When the appeal is from the lower court to the superior court, the decision of the latter is final. But on the initiative of the Supreme Court or upon a motion of the Minister of Justice, a case begun in the lower court and appealed to the superior court may be taken up to the Supreme Court. Such procedure is rare. Almost all the cases in the Supreme Court originate in the district courts.

There are about one hundred lower courts (Underrettene). Each has jurisdiction over a circuit (Kreds). Usually there is a single judge, but in a few districts two or three. When there is more than one judge, cases are distributed by subject-matter; for example, criminal cases will go to one judge, civil to another. These courts have both criminal and civil jurisdiction. The criminal jurisdiction is as to cases of a minor nature not requiring trial by jury. The civil jurisdiction is as to cases involving small amounts of money.

228. The Danish legal profession rather disfavors the use of lay judges. The courts as a whole are held in high esteem. Haynes, Selection and Tenure of Judges 183 (1944). "A court consisting solely of lay judges would be considered in Denmark a retrograde step in legal culture, and the possibility of using lay judges to do more than assist our legal judges is out of the question." Munch-Petersen, The Social Aspect of Procedure From a European Point of View, 11 Minn. L. Rev. 624, 633 (1927).

229. Teisen, supra note 223, at 543, 566-567.
domestic relations, illegitimacy, and the like. As there is an ample number of judges the use of masters, examiners, etc., is unknown.

Although Copenhagen contains almost a fourth of the population of Denmark, there is only one lower court organization, Byretten, (the town court) established in 1771.230 This court consists of a president and twenty-two other judges. It is divided into about twenty sections according to types of cases; about half the sections handle criminal cases. The president receives 12,000 kroner a year, and the other members from 7800 to 8700 kroner according to length of service.

The law sets up a procedure for reconciliation between the parties so as to make formal court procedure unnecessary.231 This procedure may be in charge of the regular judge himself, as it usually is in the cities, or may be handled by a reconciliation commission as it usually is in the rural areas. In 1922 more than 75,000 law suits were disposed of by conciliation. The American experiments have been inspired by the Danish and Norwegian precedents. Conciliation procedure was first set up by an edict of Christian VII in 1795 which was finally supplanted by the 1916 Code. It has been thought that the new use of lay judges will make the conciliation procedure less essential.232

In addition to the regular courts thus far discussed there are a number of special courts. The most important one is the Maritime and Commercial Court (So-of Handelsretten), sitting in Copenhagen. It has jurisdiction over maritime and commercial controversies arising in Copenhagen; cases arising elsewhere in Denmark may be tried by it if the parties consent. It is made up of two lawyers and a panel of persons engaged in maritime affairs. An appeal from it may be taken directly to the Supreme Court. A second important special tribunal is the Permanent Arbitration Court for settling disputes involving collective agreements between employers and workers. Matters involving the clergy are handled by the ecclesiastical courts. There is no separate set of administrative courts as in some Continental nations, including Sweden.

232. Munch-Petersen, supra note 228, at 624, 634.