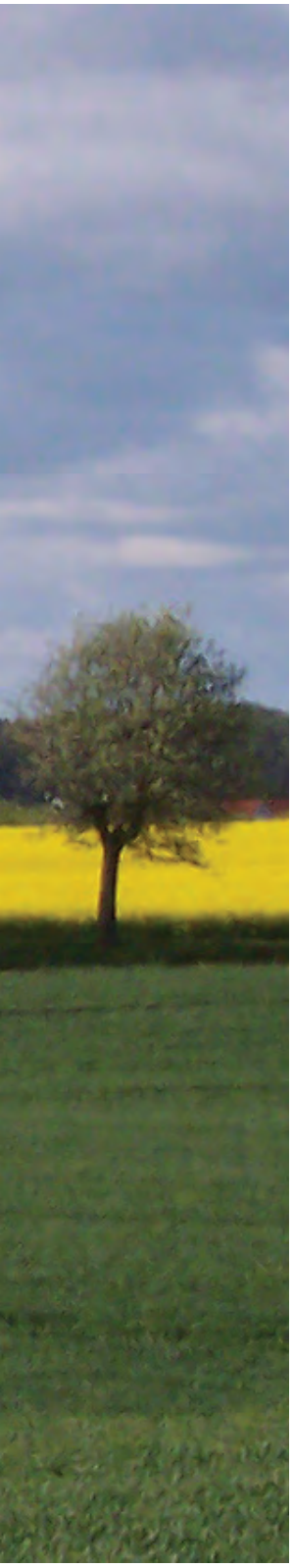
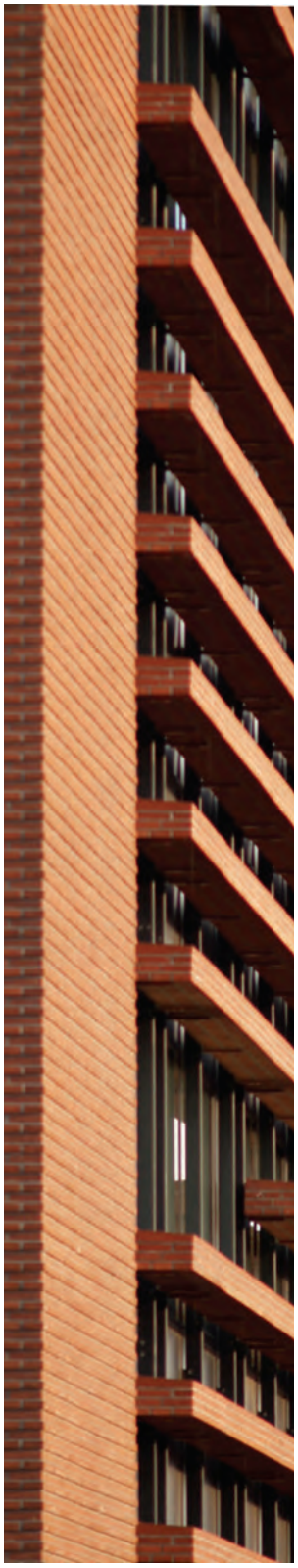
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Erik Stubkjær, Carsten Jahn Hansen, Esben Munk Sørensen, and Michael Tophøj Sørensen

1. Introduction

Urbanisation takes place all over the world, but practices vary considerably. China and Denmark are examples of cultures with different history and thus also different societal structures, problem perceptions, and guiding motivations. Moreover, the communication between the Chinese and the Danish positions is mediated through the English language, a language which reflects yet another culture, the Anglo-American, in the way it refers to reality and especially to institutional reality.

The occasion for overcoming the described communicative barrier was the visit by Vice Minister Mr. Gan Zangchun, and his delegation from the Ministry of Land and Resources, the People's Republic of China, at Aalborg University October 31st - November 1st 2010. The visit included a Workshop on 'Land Questions', November 1st at Aalborg University.

The notions which luckily appeared meaningful in both cultures were firstly the notion of 'the public interest' which according to the Danish constitution, section 73, may motivate the application of compulsory purchase. Next, that the provisions of the Planning Act assume that the means applied in spatial planning in fact aim at achieving this 'public interest', worded as a 'synthesi[s of] the interests of society':

> §1. This Act shall ensure that the overall planning synthesizes the interests of society with respect to land use and contributes to protecting the country's nature and environment, so that sustainable development of society with respect for people's living conditions and for the conservation of wildlife and vegetation is secured.

The Planning Act stipulates regulation of land use for both private and public purposes, and includes compulsory purchase among planning instruments.

The present note aims at presenting supplementary information to the above facts. Generally, the actual implementation of legislation cannot be derived alone from the written legal text, e.g. the Planning Act. You have to supplement this reading with information on the context of spatial planning, both in political-administrative and geographical terms.

General context is rendered through the publication Spatial Planning in Denmark (2007) by the Ministry of the Environment. Notable is, that this publication mentions compulsory purchase/ expropriation only in the context of Rules for appeal (p. 32). Expropriation is thus not a major instrument in Danish spatial planning. The following develops on the above issues and contains the following sections:

2. The notion of 'the public interest'
3. Danish legislation on compulsory purchase
4. Application of compulsory purchase for spatial planning purposes
5. Acquisition of land for urban purposes
6. The questions and answers to the questions
7. Closing remark

2. The notion of 'the public interest'

The Danish Constitution applies the Danish term: 'Almenvellet' to invoke the compelling motivation needed to force an owner to surrender his or her vested interest in land. A quasi-official translation of the Danish Constitution renders this term as the 'public interest':

> § 73 (1) The right of property shall be inviolable. No person shall be ordered to surrender his property except where required in the public interest. It shall be done only as provided by statute and against full compensation.

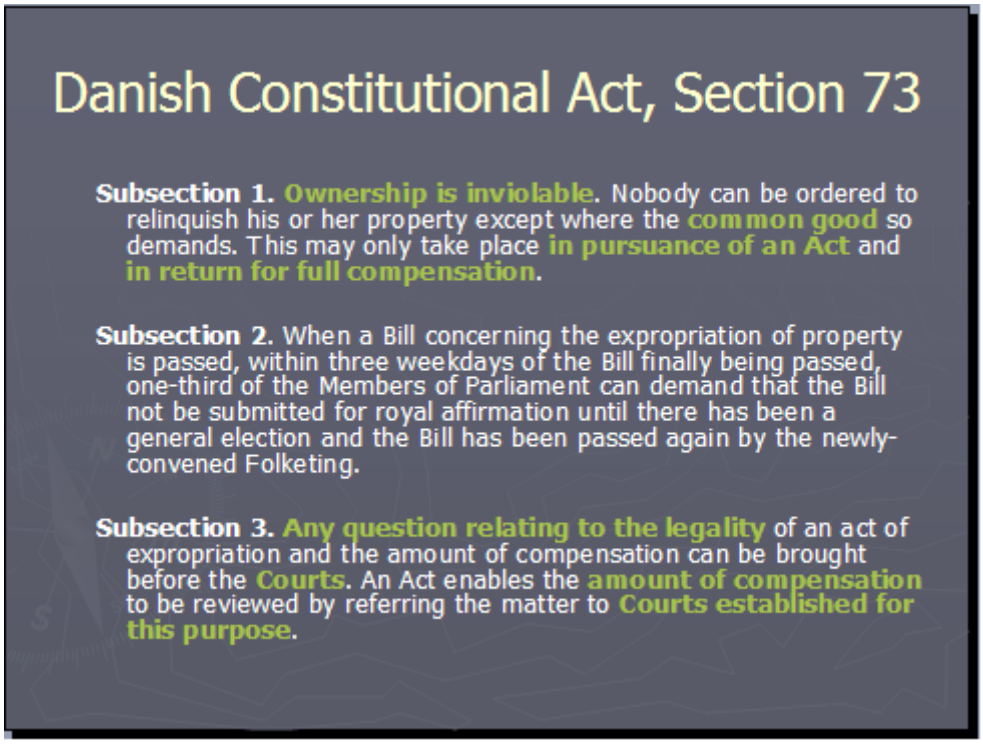


Figure 1: Slide from Michael Tophøj Sørensen's part of the presentation

The notion of 'public interest' and the related terms 'common good' and 'commonwealth' refers to a society which is structured through a sovereign power and aims at the felicity of all. As expressed by Jean Bodin (1576):

> A COMMONWEALTH may be defined as the rightly ordered government of a number of families, and of those things which are their common concern, by a sovereign power. .. .
> .. the commonwealth should have a territory which is large enough, and sufficiently fertile and well stocked, to feed and clothe its inhabitants.
> .. a commonwealth is not rightly ordered which neglects .. activities such as the administration of justice, the defence of the subject, [and] the provision of the necessary means of subsistence.
> .. The conditions of true felicity are one and the same for the commonwealth and the individual. The sovereign good of the commonwealth in general, and of each of its citizens in particular lies in the intellective and contemplative virtues, ..
>
> Abstracted from Six books of the Commonwealth; Book I, Chapter I

Notable is the request that the sovereign should be concerned with the provision of the necessary means of subsistence, the feeding and clothing of the inhabitants. The welfare states of Northern Europe are among the countries which may be apprehended as heirs of this vision. More specifically, the constitutional demand that surrender of property rights shall take place according to the 'statute and against full compensation'. We shall see in the next section how the present Danish administration of justice fulfils the Constitution's requirement that compulsory purchase must be preceded by statute law.

3. Danish legislation on compulsory purchase

Compulsory purchase, or, closer to Danish terminology: expropriation, is regulated in Denmark through two major rule sets: Act on the procedure for expropriation of real property (lov om fremgangsmåden ved ekspropriation vedrørende fast ejendom, cf. LBK nr 1161 af 20/11/2008), and chapter 5 on Expropriation and Valuation of the Public Roads Act (lov om offentlige veje, cf. LBK nr 893 af 09/09/2009). The provisions of the Public Roads Act allow the present municipalities to assess the scope of 'public interest'. The Expropriation Procedure Act presupposes the consent of an independent, judicial body (Danish: Ekspropriationskommissionen) before the minister of public works can approve the intervention, which often is confirmed through a specific statutory act.

The occasion for applying expropriation is predominantly the establishment or renewal of technical infrastructure: primarily roads, rail roads, telecommunication, and water supply. Thus, the yearly report of

the 'Ekspropriationskommission' for Jutland mentions 14 cases concerning roads and other traffic related issues, and 3 concerning rail roads (Årsrapport 2009). Moreover, the central government occasionally expropriates for emergency services, military purposes, and buildings for the judiciary and hospitals, etc., while municipalities may expropriate for public purposes: schools, homes for elderly, parks, etc.

4. Application of compulsory purchase for spatial planning purposes

The (spatial) Planning Act in section 47 grants the municipality authority to expropriate for urban planning purposes:

> §47. The municipal council may expropriate real property that is privately owned or private rights to real property when the expropriation is materially important in ensuring [the implementation of urban development in compliance with the municipal plan or in] realizing a local plan or town planning by-law.

The part of the clause in [..] was current law until it was dismissed by act no 512 of 12. June 2009 on restriction in access to expropriation.. . Thus, the scope of expropriation is now restricted in two ways: 1) the intended use of a land parcel must be specified in an approved, legally binding, detailed 'local plan' (Danish: lokalplan) and 2) the expropriation must be 'materially important' that is: must be an essential precondition for realisation of the intended purpose.

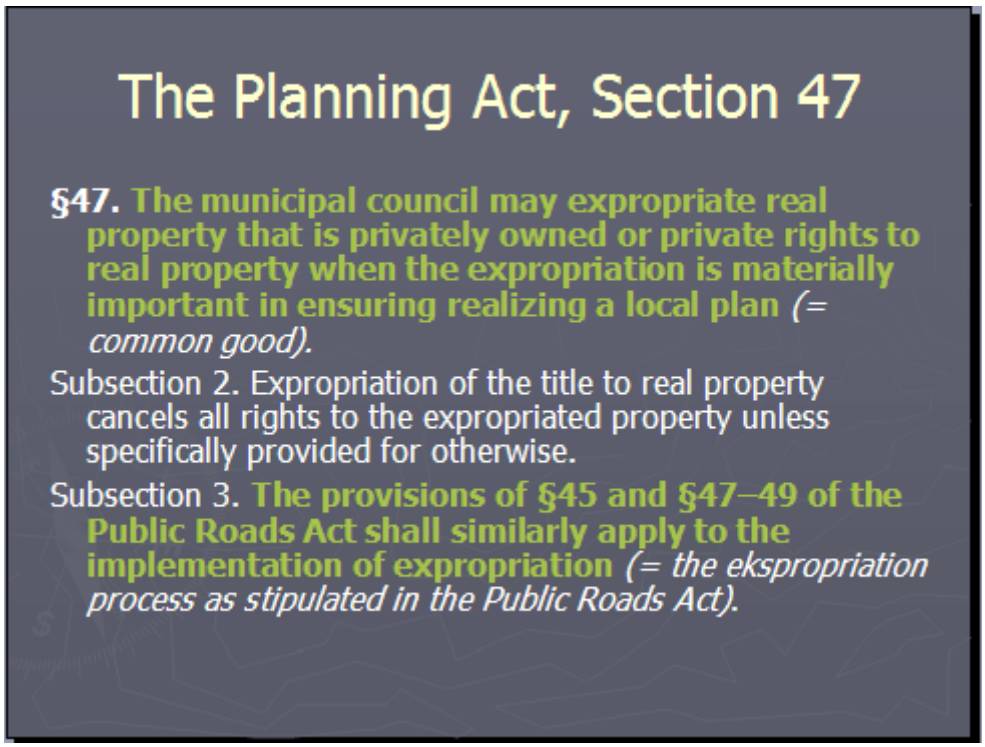


Figure 2: Slide from Michael Tophøj Sørensen's part of the presentation

The first restriction may be illustrated by the fact that during the 1970s the Social-Democratic (centre-left) party proposed statutory acts which intended to legalize compulsory purchase of land for more long-term planning purposes. However, the Parliament was reluctant to pass the proposal, but it was eventually passed as act no 123 of 1st April 1980 on expropriation for urban purposes. The recent change in law, by the liberal minister motivated as a 'maintenance service', implies that the present legal status holds that expropriation is possible only on condition of precedent approval of a 'local plan' through a participative (and lengthy) planning process. This is consistent with the view, as mentioned in the above Introduction, that the planning process 'synthesizes the interests of society'.

The second restriction means that expropriation is the final opportunity of enforcing the 'interests of society'. The enforcement of compulsory purchase is always a delicate matter, and the more unusual the purpose is, the more difficult it is to establish consensus, including political consensus, on the need of such measure. Politicians will think of consequences at the next election, and as a result in some cases refrain from pursuing the intended planning. A general Danish attitude to seek consensus, rather than to surrender to expert opinions, tends to make such outcome possible or likely.

The real effect of the provision of expropriation is thus that it strengthens the negotiating position of the municipality relative to a reluctant landowner. This view is consistent with the fact that expropriation measures are mentioned only in passing (2007) or not mentioned (2002) in the ministerial publication Spatial Planning in Denmark.

A legal review of the Danish expropriation practice is provided by professor Orla Friis Jensen (2008). Cases include a Supreme Court approval (U 1948.448 H) of an expropriation in favour of an entrepreneur, who intended to promptly realize a plan, while such effort was declined by the then owner. Other cases mentioned are establishment of a hotel at a seaside resort, a shopping centre, as well as area extension for a factory and a baffle around another (p. 36). The use of expropriation for long-term purposes is illustrated with appeals, the outcome of which generally instruct the municipalities to prepare a detailed plan as basis for expropriation. Finally, the article addresses the necessary conditions for a lawful expropriation, based on an approved detailed plan.

Another review of municipal expropriation practice during 2003 to 2007 is available in terms of an inquiry made by the Legal Adviser to the Danish Government, and published as an annex to the 2009 act. Among the 98 Danish municipalities, 31 responded to have applied

expropriation according to section 47. Of 106 expropriation cases, 19 were motivated with reference to general urban development and further 11 cases did not state the purpose explicitly. In 20 of the 106 cases a municipality expropriated for private enterprises or associations, including 13 cases for one and the same golf course and 5 cases for parking and road access.

The Nature Protection Board of Appeal (Danish: Naturklagenævnet) hears appeals concerning expropriation cases. It considered 8 cases where expropriation was motivated with reference to general urban development. In 4 cases the expropriation was lifted due to legal defects, and in 3 cases the expropriation was lifted as the complaints board found that expropriation ought to have been motivated with reference to a detailed plan, and not referring to general urban development. The complaints board consists of two judges from the Supreme Court and 7 members of Parliament.

Concluding, it may be stated that expropriation for urban purposes exists in Denmark, but also that it has rather marginal importance for the realization of spatial planning objectives.

5. Acquisition of land for urban purposes

Denmark experienced a construction boom from the 1960s to the 1980s. Through this period, especially the big municipalities adopted a practice of land acquisition (Danish: kommunal jordpolitik). Drawing on mostly tacit knowledge of the authors, the practice may be summarized as follows: The municipality left much initiative to developers who usually look for development of more valuable, and thus expensive tracts within the urban fringe. However, the municipality acquired land with development potential from farmers, who were willing to sell for the price offered (see details below, questions 5 and 6). Moreover, the municipality arranged for the development of the purchased land with secondary roads, water provision and sewers, as well as cadastral subdivision. The subdivided parcels were sold at a price which reflected the cost of the original purchase of land plus the development cost. The municipal supply aimed at comparing the amount of private supply. The development pace was monitored through a Land Development Enquiry (Danish: Areal- og Byggemodningesundersøgelsen). The application of this planning instrument was extended from the Greater Copenhagen area to the whole country, and during the boom period repeated every 4 years (Stubkjær, 2001). Thus, developed parcels were generally available at reasonable prices, because of the removal of private monopoly situations and the fact that the price of municipally supplied parcels reflected actual development costs.

From early 1980s, where market prices dropped, this practice changed in the sense that municipalities were allowed to sell developed parcels at market price (CIS nr 9382 af 04/06/1982 om kommunale ejendoms-dispositioner). Moreover, prefectural approval of municipal purchase and alienation of real property according to the Municipal Statute Act (Danish: Styrelsesloven, sect 59) was abandoned.

The municipal interference in the urban land market was not brought about through explicit statutory acts. Generally, the Danish government, central as well as local, has to abide with explicit statutory legislation, but from the beginning of the 20th century, Danish municipalities obtained the option to pursue targets on their own initiative, in addition to what is statutorily specified as municipal tasks. This is a principle established through legal practice, referred to as Municipal power (Danish: 'Kommunalfuldmagten', cf. T S Nielsen, J N Larsen: Policies related to de-concentration of economic land-use in Denmark (2005). To the issue of municipal policies, see also: Municipal powers through economic means, in Sørensen, 1999, chapter 8, and Construction and Housing Policy in Copenhagen 1850 - 1930, by Bro, 2008 (both in Danish).

6. The questions and answers to the questions

With the above background information, we are now in a position to answer a number of raised questions.

1. About the scope of land acquisition

1. Whether the land can be acquisitioned for the public interests prescribed by the law? If yes, how to define the public interests? And what are the enumerative definitions of the public interests in the corresponding law?
    - Land can be acquisitioned for the public interest either by leaving the acquisition to developers, who operate within established spatial plans, or by municipal acquisition of land, mostly in the free market, and again within the same normative frame of spatial plans.
    - Public interests are thought to be accommodated through the planning process (cf. p. 21 in Spatial Planning in Denmark, 2007)
    - Sect 1 of the Planning Act, quoted at the outset above, may be indicative of how public interest is defined.
2. Whether the scope of land acquisition had been adjusted in accordance with the social-economic development?

- Yes, the Land Development Enquiry, cf. section 5 above, monitored the capaciousness of area, reserved for development in recurrent spatial plans, and Statistics Denmark monitored the municipalities' occasionally over-optimistic forecasts of increase in population.

2. About the legal procedure of land acquisition

3. Which department/section will be the one to initiate the procedure of land acquisition? And how many steps do the entire procedure of land acquisition need?
    - Municipal acquisition of land occurs according to the principle of 'Municipal power', cf. section 5 above, which leave it to the discretion of the individual municipality to organize the acquisition
4. In which step will the land owner be notified that his land will be acquisitioned? What is the mode of the notification? What are the contents of the notification to the land owner?
    - Presumably, the ordinary practice of conveyance of title is applied
5. Which organization has the right to approve the land acquisition? With regard to the different land use types or different land sizes, are there any differences among the different organizations at different levels that have the approval rights?
6. During the land acquisition process, what contents will be examined by the organization that has the approval right?
    - Until 1981, municipal purchase, sale, and lease of real property had to be approved by the prefecture concerned. The prefecture had to establish that the disposition was motivated through planning and compliant with legislation and administrative norms, including that individual companies were not supported or neighbouring municipalities offended. The purchase price should in principle match the property tax assessment. The sales price should reflect the specific expenditures of the municipality, see Sørensen, section 8.4; quoting Heide-Jørgensen 1994
7. What is the restriction for the time limit of land acquisition approval? Normally, how long does it takes from the beginning of land acquisition to the land user obtaining the land?
    - The time span depends on market cycles; it may be illustrated by the fact, that a buyer of a parcel, developed by the municipality, normally has to have the house built within three years.

8. Whether does it need for approval about the land reserved temporally for the purpose of rushing to deal with an emergency and rescuing the disaster? Which department will be in charge of it?

    - After the local government reform in 2007, the most likely answer is that municipalities are in charge.

3. About the compensation of land acquisition

9. Does land acquisition compensated according to the original land use purpose or the newly land use purpose? Whether has the calculation standard been stipulated by the corresponding Law?

    - Basically, compensation in case of expropriation amounts to the market value of land (with buildings), which is used according to planning measures. Area in the rural zone (cf. Spatial Planning in Denmark, 2007, p. 26), which lie very close to an expanding urban zone may be compensated with a higher amount than agricultural land use warrants.

10. Whether the monetary compensation is the only form for land acquisition? Does Denmark have other forms for the compensation?

    - If land for urban purposes is acquired through expropriation, monetary compensation is the only form of compensation. If land is acquired for major roads and highways, the principles of land consolidation are applied to reduce the structural damage inflicted on the farms concerned. In such cases, acquired land is (perhaps partly) compensated with other land.

11. With regard to the land acquisition compensation, does the bargaining/negotiation been done between the governmental organization with land owner or between the land user with the land owner directly?

    - The expropriation committee deals with the owner, but rights recorded in the land registry are compensated as well. Thus, compensations for rights of lessees and of mortgagees are meted out specifically, cf. V. Eyben, 1978, p 110f.

4. About the settlement of land acquisition conflict or dispute

12. When the dispute happens whether the land acquisition can be implemented or not, which departments or authorities should be raised the application by both parties for settling the disputes or hearing of witnesses? Or go to the court directly? What is the general procedure?

- An owner may appeal a municipal decision regarding acquisition of land pursuant to the Planning Act, section 47, to the Nature Protection Board of Appeal, cf. Planning Act, section 58.
- The appeal is to be submitted in writing before 4 weeks after the announcement of the municipal decision (sect 60, clause 1). The appeal is addressed to the municipality concerned, which forwards it to the Nature Protection Board of Appeal, supplemented with the municipality's decision and the material which was applied during the case (sect. 60, clause 2). An orderly submitted appeal has delaying effect (sect 60, clause 4). The Board may decide all questions and may change a municipal decision if it contradicts applicable law or if the Board finds the decision unreasonable or inappropriate. The rulings of the Board are communicated to the municipality, which is obliged to inform the appellant (sect 60, clause 5). The ruling of the Board may be appealed to the courts. Such legal proceeding must be initiated within 6 months after the Board renders a decision (sect 62).

13. When the dispute happens related to the compensation, how to solve the problems? What is the settlement procedure's difference between the compensation disputes with the land acquisition scale's disputes?
    - Expropriation for urban purposes is performed pursuant to the legal procedure for expropriation of land for public roads (Public Roads Act, chapter 5). According to this rule set, dispute on compensation is managed by Assessment Committees (Danish: Taksationskommissioner), the decision of which may be appealed to the Supreme Assessment Committee (Overtaksationskommissionen), and finally to the High Courts (Landsretterne).
14. Before the settlement of compensation dispute, whether the land user can decide to implement using the land based on the land acquisition decision?
    - Provided the land acquisition decision is not appealed, or the appeal case(s) are concluded, one may opine that a compensation dispute needs not halt the implementation of the new land use according to the decision

7. Closing remark

Land is a scarce resource, thus every society is concerned in the proper use of land. However, the understanding of what is 'proper use', and especially the modes of achieving this goal, is contingent

upon basic notions like state, individual, citizen, values, and property rights. The above notes on how in Denmark we presently acquire land for urban purposes constitute but a glimpse of these history-bound institutional matters.

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