Mystery of CapitalCRev 2/18/08 11:13 AM Page i

The Mystery of Capital and the Construction of Social Reality

Mystery of CapitalCRev 2/18/08 11:13 AM Page ii

Mystery of CapitalCRev 2/18/08 11:13 AM Page iii

The Mystery of Capital and the Construction of Social Reality

Edited by

Barry Smith
David Mark
Isaac Ehrlich



OPEN COURT
Chicago and La Salle, Illinois

Mystery of CapitalCRev 2/18/08 11:13 AM Page iv

To order books from Open Court, call toll-free 1-800-815-2280, or visit our website at www.opencourtbooks.com.

Open Court Publishing Company is a division of Carus Publishing Company.

Copyright © 2008 by Carus Publishing Company

First printing 2008

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of the publisher, Open Court Publishing Company, a division of Carus Publishing Company, 315 Fifth Street, P.O. Box 300, Peru, Illinois 61354-0300.

Printed and bound in the United States of America.

Library of Congress Cataloging-in-Publication Data

Mystery of CapitalCRev 2/18/08 11:13 AM Page v

Contents

Introduction xi

1. **What I Do, and How Philosophy Has Helped Me**
   Hernando de Soto 00

2. **Social Ontology and Political Power**
   John Searle 00

3. **Searle and de Soto: The New Ontology of the Social World**
   Barry Smith 00

4. **The Construction of Social Reality: Searle, de Soto, and Disney**
   Jeremy Shearmur 00

5. **How Philosophy and Science May Interact: A Case Study of Works by John Searle and Hernando de Soto**
   Ingvar Johansson 00

6. **Language and Institutions in Searle's *The Constructionof Social Reality***
   Iosef Moural 00

Mystery of CapitalCRev 2/18/08 11:13 AM Page vi

7. **The Mystery of Human Capital as Engine of Growth, or Why the U.S. became the Economic Superpower in the Twentieth Century**
Isaac Ehrlich 00

8. **Allocation and Misallocation of Human Capital: Some Lessons from Japan and Russia**
Serguey Braguinsky 00

9. **On the Essential Nature of Human Capital**
Gloria Zúñiga y Postigo 00

10. **Property Law for Development Policy and Institutional Theory: Problems of Structure, Choice, and Change**
Errol Meidinger 00

11. **The Institutionalization of Real Property Rights: The Case of Denmark**
Erik Stubkjær 00

12. **A Case for Simple Laws**
Andrew U. Frank 00
Postscript by Carlos Alejandro Cabrera Del Valle 00

13. **Sovereigns, Squatters, and Property Rights: From Guano Islands to the Moon**
David R. Koepsell 00

14. **The Property Rights Prescription and Urban Migrant vs. Rural Customary Land Tenure in the Developing World**
Jon D. Unruh 00

15. **Geographic Regions as Brute Facts, Social Facts, and Institutional Facts**
Daniel R. Montello 00

Mystery of CapitalCRev 2/18/08 11:13 AM Page vii

16. **Collective Intentionality, Documentation, and Real Estate**
Dan Fitzpatrick 00

17. **Real Institutions, and Really Legitimate Institutions**
Eric Palmer 00

Contributors 00

Index 00

Mystery of CapitalCRev 2/18/08 11:13 AM Page 229

The Institutionalization of Real Property Rights: The Case of Denmark

11

Erik Stubkjær

1. Introduction

In *The Mystery of Capital*, Hernando de Soto raises the question of why capitalism triumphs in the West and fails everywhere else. He points to "the legal property system, [which] became the staircase that took [presently developed] nations from the universe of assets in their natural state to the conceptual universe of capital, where assets can be viewed in their full potential" (2000, 43–44). De Soto answers this question, in large part, by pointing to the fact that most of the assets in successful Western nations have been integrated into one formal legal property system, resulting in what amounts to a single *formal representation system* for property. While this integration and formalization of capital in Western nations occurred slowly and rather unreflectively over the course of several hundred years, the question of just how it came into being has become an urgent one since the end of the cold war, because we now live in a world where capitalism appears to be the only serious option for development (2000, 44, 46, 57). However, such legal property systems are a complex phenomenon. As de Soto points out, realizing the full economic potential of property demands "an implicit legal infrastructure hidden deep within the . . . property system—of which ownership is but the tip of the iceberg." The problem, according to de Soto, is that "[t]he Western nations have so successfully integrated their poor into their economies . . . they have lost even the memory of how it was done, how the creation of capital began,"

Thanks go to my wife, M.A. in Nordic Philology and Cinema, Lone Stubkjær, born Friisberg, who through decades of marriage opened my eyes to literary and theological issues. The Rt. Revd. Henrik Christiansen, Aalborg diocese, pointed out the Danish Conventicler Order of 1741, and commented on a version of the note. Andrew Spear kindly improved the English of the author. Translations into English are made by the author.

Mystery of CapitalCRev 2/18/08 11:13 AM Page 230

and, to remedy the problems the world is currently facing, "[t]hat history must be recovered" (2000, 7, 8, 9).

The following offers such a historical inquiry regarding one of the smaller Western countries: Denmark. This inquiry takes the form both of a recovering of the "hidden infrastructure" underlying current Danish property law and an account of how our present property system came into being. In this chapter, I analyze both the general and economic histories of this issue from the point of view of a geodetic engineer, and this analysis will in turn lead to a new understanding of the role played by mortgaging in Danish property law after the 1960s, as detailed in section 5. However, before setting out on the retelling of an aspect of Danish history, I remind that the events of history can be understood and related to one another in many ways. Thus some methodological issues are addressed in section 2.

De Soto considers formalized property systems to be "controlled environments to reduce transaction costs." He states further, "By representing economic aspects of the things we own and assembling them into categories that our mind can easily grasp, property documents reduce the cost of dealing with assets and increase their value commensurately" (2000, 201). This reference to transaction costs is in agreement with the idea of presenting Danish events within the analytical framework of New Institutional Economics. The notion of *institution* is adopted here in relation to the historical aspects of formalized property law to be presented. The institution of real property rights has been addressed and traced historically, notably by Douglass C. North (1990), and this allows us to put the outcome of the Danish case in a wider context. As we shall see developed in section 3, Denmark has through some centuries had a uniform Christian religion and a uniform bureaucratic administration, which on the explanatory model offered by North are comparable to the situation in South America, while Danish economic development compares more directly to what has occurred in North America. The Danish evidence, supplemented with readings of Roman Catholic doctrinal texts, suggests a modification to North's model, one pointing to the societal costs of creating associations.[1]

Section 3 only provides some snapshots of Danish history. In order to give an account of the development of the Danish formalized property sys-

1. Francis Fukuyama, in 'Trust—The Social Virtues and the Creation of Prosperity', examines the role of voluntary organizations around the world and notes, among others, "in certain Latin Catholic countries a relative deficit of intermediate social groups in the area between the family and large, centralized organizations like the church or the state" (1995, 55). The present chapter is thus new not in pointing to the role of associations for economic performance, but rather in the way this role is motivated.

Mystery of CapitalCRev 2/18/08 11:13 AM Page 231

tem, we have to provide more details. These are presented in section 4, which aims at providing information with a bearing on the introduced analytical framework, and section 5, which in more technical terms addresses the formal property system and mortgaging.

2. Methodology Issues

An institution is understood here in North's sense as constituting "the humanly devised constraints that shape human action" (North 1990, 3). These constraints can be understood as being created through what Searle has called "collective intentionality" (1995, 23–26). It is assumed here that either an individual role model or a group functions to provide a shared social understanding, which is then reinforced by repeated action. Now, how do these institutions come into being? Searle asserts that "the creation of institutional facts may proceed without the participants being conscious that it is happening according to [the form 'X counts as Y in C']" (1995, 47) Thus, "in the very evolution of the institutions the participants need not be consciously aware of the form of the collective intentionality by which they are imposing functions on objects. In the course of consciously buying, selling, exchanging, etc., they may simply evolve institutional facts" (47).

More subtle factors of institutional change are identified by North (1990), including the institutional structure of society, which may support or hamper the wealth-maximizing opportunities of organizations and other entrepreneurs, and hence economic development. Factors that play a role here include skills, be it communicative or tacit knowledge, and incentives. The institutional structure provides various incentives as to whether skills are developed within its various domains, for example, the religious or the technological domains. Also, the institutional structure may vary regarding its degree of toleration for the development of new knowledge and worldviews. A final factor of development is people's perception that the structure of rules in the system is fair and just (North 1990, 76).

Factors to look for will thus include education and the existence of motivations for learning. Regarding whether rules are fair and just, we will pay attention to their internal structure, for example, whether or not a system of rules involves the occurrence of dual standards.

Since our goal is that of tracing institutional developments in Denmark, we would benefit here from a more fully articulated developmental model of institutions. One way of developing such a model would be to employ what has been called institutional analysis and design, extending from the well-known method of information systems analysis

Mystery of CapitalCRev 2/18/08 11:13 AM Page 232

and design (see Stubkjær 1999 for a survey). Neither institutional analysis nor institutional design nor the combination is new (Ostrom 1991; Goodin 1998; Ostrom 2002). While a full investigation of these sources is outside the scope of this paper, the approach that they offer does help shed some light on how we should view historical changes in property institutions.

Research carried out on transitions in Eastern Europe is in agreement regarding the "invisibility" of institutional change: "It will turn out that 'design' [of institutions] is a rare and unlikely mode of change; it is even less likely that the activity of 'designing' will be recognized, acknowledged and remembered as such" (Offe 1993, 10–11). However, with many reservations and variations, which are omitted here, some suggestions are indeed offered: "persons (such as Jacek Kuron in Poland), circles and movements that were publicly credited with the quality of being trustworthy proponents of these ideas [alternatives to communism] in Hungary and Poland, turned out to be powerful resources in the process of institution building, as they represented, at the round-table talks, in the media and elsewhere the moral infrastructure and normative meaning of the order to be built" (Offe 1993, 16). These persons, informal networks, and associations made "the visible presence of nuclei of an oppositional political culture capable of entering into relations of compromise and competition with the authorities of the old regime [and] turned out to be a decisive determinant in the process of institution building" (16). The negotiation of modified institutions was thus based on "the presence of a model of the new institutional order that is typically not invented on the spot, but 'imported' and suitably adapted from more or less remote points in time or space. Institutional designs are typically copies, and they are frequently advocated as such" (15).

What can be extracted from these findings is that authorities, social movements, associations, and their interplay regarding political and institutional issues should be recorded, and that we should look for "models of new institutional order" in which all of these play a role.

An early effort in reflection on centennial institutional development was made by the German sociologist Max Weber. His works are complex, but a recent interpretation by Randal Collins (1986) is available. Two concepts or "ideal types" put forward by Max Weber: bureaucracy and patrimonialism, promote an analysis of the interplay between governance and property. Weber suggests that the twins bureaucracy and patrimonialism represent two extremes between which national states fluctuate during their social and political histories. In *bureaucracies*, decisions and procedures are rule bound, positions are well-defined, and administrative means and fees are kept strictly separate from the individual material assets of the

Mystery of CapitalCRev 2/18/08 11:13 AM Page 233

staff. In contrast, *patrimonialism* is like bureaucracy in being an organization of administrative staff, but the relations within this organization are importantly different. In a patrimony, the authority relationship is based on personal loyalty to the superior or ultimate leader, with all other members of the organization falling beneath the leader in hierarchical fashion. In such a hierarchy the leader can handle with substantial discretion both his subordinates and the dependent clients or subjects located outside the administration. One could say that whereas a staff member in a bureaucracy is the custodian of his position, a staff member in a patrimony operates as the "owner" of his position in the hierarchy. Within patrimonialism, political rights and economic rights come together, in the sense that political power includes the command of all resources. Property rights or political rights for any group independent of the leader do not technically exist (cf. Collins 1986, 39).

Since we are interested in the issue of individual ownership, it will be important to keep track of the development from patrimonialism towards bureaucracy, which seems to be a precondition for the existence and availability of real property rights. While it seems promising to relate detailed evidence, such as that from Denmark, to the model of Weber and Collins, this first survey of the Danish history is not intended to be a strictly Weberian account.

As for the retelling of Danish history, we have to confine ourselves to a rather discretionary selection of events and relations, mostly taken from the fourteen-volume standard publication on the history of Denmark, *Danmarks Historie* (hereafter referred to as *DH*), and occationally from a short version of Danish history in English, provided through the Ministry of Foreign Affairs (Jespersen, 2007). Section 5 includes reference to primary sources, namely recordings of assembly deliberations in 1842.

3. Explaining Long-Term Economic Development: The Americas and Denmark Compared

North compares the long-term economic development of North America with that of South America in the context of presenting an analytical framework for explaining such development (1990). The following relates Danish experiences during the same period with the findings of North and argues that bureaucracy does not generally hamper economic development as North seems to suggest. Rather, an alternative explanation can be seen in the past tendency by the Catholic Church and related establishments to control the spontaneous creation of organizations.

Mystery of CapitalCRev 2/18/08 11:13 AM Page 234

3.1. *The Economic Development of the Americas and of Denmark*

North notes that there are enormous contrasts between economies, despite the falling costs of information and technological change. Consequently, he asks, what accounts for the persistence of societies whose economies are characterized by poor performance? and what prevents them from adopting the institutions present in more efficient economies? (1990, 92–93). The following is a brief summary of North's answers to these questions for the cases of North and South America, respectively.

The economic development of North America from the 1750s onwards is characterized by *religious diversity*, *local political control*, and the *growth of assemblies*, all of which it inherited from Britain. Development was framed first and foremost by British imperial policy, but within that framework, the colonist entrepreneurs were free to develop, even if the colonists themselves imposed more restrictions on property rights than did the mother country (1990, 102).

During the same period of time, the economic development of South America is characterized by North as involving the conquerors' imposition of a "uniform religion and uniform bureaucratic administration on an already existing agricultural society." Efforts at reversing this centralized bureaucracy were partial and quickly negated. South American wars of independence during the early nineteenth century brought in French- and U.S.-inspired constitutions, but in spite of that, efforts towards decentralization of powers were unsuccessful after the first years of independence. In the nineteenth and twentieth centuries, country after country reverted to "centralized bureaucratic controls and accompanying ideological perceptions of the issues" (1990, 102–3).

Comparing these lines of development with Denmark, it should first be mentioned that Denmark is extremely small when compared with the Americas. The distance, both in the literal and figurative sense, from local political control to centralized bureaucracy is small in Denmark, and thus it is problematic to infer anything from this aspect.

As regards the growth of assemblies, the Danish development fits with the reasoning above on their impact. Provisory assemblies of the 1830s already had some practical impact on real property affairs, as we shall see developed in section 5, and later in the century associations were created, which provided for mortgaging and other kinds of economic development.

However, as regards the religious aspect, the Lutheran Denmark had almost no religious diversity from the time of the Reformation in 1536 through the end of the nineteenth century. The constitutional freedom of religion from 1849 on brought effects only late in the century, and these had almost no recordable economic consequences. The development was

Mystery of CapitalCRev 2/18/08 11:13 AM Page 235

indeed influenced by the Danish version of the Lutheran "uniform religion," but as described in sections 4.2 to 4.4 below, with an economically positive outcome. As regards the bureaucracy, historians consider Denmark to have had a "stable bureaucratic absolutism" from the late seventeenth century on, implying that the king "by grace of God" and with the help of his advisors, ruled the country in a fairly top-down but also quasi-rational way, (see section 4.2). The improvement in methods of land registration during the nineteenth century fits into this general characterization, and Danish governmental administration was primarily a legal affair until the 1970s, when company management became a model for public affairs. For the case of Denmark it seems that bureaucracy at least permitted if not fostered an economic development comparable to that of North America.

To summarize, Denmark had both a uniform religion and a bureaucratic government, which are precisely the factors that North has used to explain the delayed economic development of South America. Still, Denmark enjoyed a development largely similar to that of North America. We thus have to question the role that these two factors actually play in influencing economic development.

Questioning religious diversity and bureaucracy as relevant factors, we are facing the problem of explaining economic development in a way other than that proposed by North. The factor of the growth of assemblies has so far been taken in the wide sense as including the creation of socially active associations. In the following I intend to show that North's reference to religion and bureaucracy can be specified in a way that relates to the societal costs involved in the spontaneous creation of associations. These costs were high in South America and other Catholic societies, while low in Lutheran or mixed countries. The explanatory model offered by North can thus be modified in a way that reconciles the evidence presented above and also explains the observed outcome in terms of economic development.

3.2. *The Impact of Religion on Development*

Before entering into an assessment of the impact of religion, a sketch of reality perceptions may be relevant. The Roman Catholic and the Orthodox conceptions of reality are to some degree the same, and to introduce the issue, I take an example of Orthodox provenance. A thoughtful newspaper article recounted Russian experiences in the field of individual property rights in land. The Moscow-based reporter Flemming Rose notes that even in well-off quarters of towns, where apartments are individually owned, garbage piles up outside the apartments. Further, local

Mystery of CapitalCRev 2/18/08 11:13 AM Page 236

roads are neglected, even when neighbors have sufficient material resources to maintain them properly. An explanation of these phenomena is offered by professor Alexandr Etkind of the European University in St. Petersburg. "Behind these phenomena hides a conception that what we do together in Russia, we do together with the State or through the State, and when the State does nothing, we do nothing either." (Rose 2003, 7)

I propose that this norm of behavior is not attributed to the socialist regimes of the twentieth century, but rather to a certain Christian way of thinking, a vision of the world held in the Byzantine Empire from the fifth century on. According to this worldview, executive powers emanate from God through the church to the world. By "executive powers" I mean power to act in the right way, according to one's competencies. The term "executive powers" is usually used for the management of governmental affairs, but here it is used in a much wider sense, referring to the government of God that spans all creation (see Sendler 1988, 55–57, on the Byzantine society, and 169–72 on the doctrine of Pseudo-Dionysos). Returning to the example, it means that the apartment owners do not care for joint areas, because nobody possessing the appropriate authority entitled them to do so.

The above interpretation may be substantiated by reference to official documents of the Roman Catholic Church on the associations of workers. Some of these documents were issued in the context of the general political battles surrounding trade unions in the early twentieth century. Within the German Catholic realm, a specific and divisive trade union controversy (*Der deutsche Gewerkschaftsstreit*) took place. It largely addressed the issues of whether workers' associations should be clerically led, whether such associations could mix Christians of Catholic and non-Catholic denomination, and what role the Catholic labor movement might take in the democratic process, including attitudes toward the "free" workers' unions, which were perceived at the time to be militantly atheistic.

A document released by a bishops' conference in Fulda, 1900 ("Fuldaer Pastorale"), insisted on the operating of the associations on a strictly religious base ("die unbedingte Notwendigkeit, die Arbeitervereine auf religiöser Grundlage aufzubauen").[2] Without explicitly insisting on clerical leadership, it pointed to the idea that Catholic men should consult

2. The insistency on clerical (establishment) leadership was neither a Catholic nor a German specialty. A Conventicler Act issued in England 1664 forbade religious assemblies of more than five people outside the auspices of the Church of England. Similar prescripts were issued in Sweden 1726 and in Denmark. The Danish Conventicler Order of 1741 requested the parish priest to chair meetings of devout lay people (*DH* 9:236). However, the Constitution of 1849 brought freedom of association and of religion.

Mystery of CapitalCRev 2/18/08 11:13 AM Page 237

their mother, the Catholic Church, stressed the obligation of association leadership to care for religious formation, and advised the leaders to engage "able and willing helpers" (*tüchtige und willige Helfer*) among the laity (Bundesverband 1977, 73, 77). The release of the document was followed by a decade of struggles, because the large majority of Catholic workers wanted associations without clerical leadership. The pope twelve years later issued an encyclica to the German bishops, ruling that under strict conditions the participation of Catholic workers in mixed Christian associations ("christlichen Gewerkschaften") could be "tolerated" ("es könne geduldet und den Katholiken gestattet werden"). Conditions included that the workers engaged in—and paid to—the "Arbeitervereine" in parallel (Bundesverband 1977, 84).

According to an interpretation by the Nestor of Roman Catholic social teaching, Oswald von Nell-Breuning SJ, a real change was instituted by the encyclica "Pacem in terris" from 1963, which was later corroborated by the Second Vatican Council. It asserted that the clerics should no longer patronize the laity, but rather every layperson should take responsibility within his or her professional domain (Bundesverband 1977, 19). The Council document "Gaudium et spes" from 1965 literally proclaims the laity to be the authorized estate on secular issues. It calls the laity to cooperate most readily with those who share the same tasks. The layperson should not expect a specific solution from the spiritual advisor, who might not have the mission needed. In controversies about the implications of the gospel on a specific issue, no party can claim that its solution is exclusively supported by Church authority (Second Vatican Council. *Gaudium et spes*, paragraph 43). The above excurse into the development of Catholic social teaching relates well to the Russian example of today. Also according to Roman Catholic beliefs, authority emanates from God through the Church. Early in the 1900s, church authorities held that this implied the leading role of priests in secular issues, as documented above. By the 1960s, however, the Council document takes up the issue again by explicitly referring to the different mission and authority of laity and clerics, respectively. In applying the authority of the Church, the fathers of the Second Vatican Council formally (through "Gaudium et spes") empowered the laity to perform the tasks that people of protestant denominations had been performing for some centuries. Furthermore, the Second Vatican Council formulated a more elaborate self-conception of the Church, marked by the keywords "subsistit in." It implies, in loose terms, that the light emanating from God is not restricted to work through the hierarchy and members of the Roman church as a sociological entity. Consequently, according to this self-conception, not only the Christian laity but also any person "of good will" may participate in the perfection of creation.

Mystery of CapitalCRev 2/18/08 11:13 AM Page 238

The above quotations of Catholic doctrine from the opening and middle of the twentieth century provide evidence for the position that at least until the first half of the twentieth century, the Catholic belief system generally insisted on providing authoritative approval for societal changes of any importance. Due to the well-known path dependency, such past perceptions and behavior patterns are hard to change, even among those who for various reasons have dissociated themselves from church circles.

3.3. *The Cost of Creating Associations*

Returning then to North's interpretation of economic development, it can be established that an important factor in explaining the difference between the Catholic South America and the mixed or Protestant North America and Denmark is *the social costs of creating associations.* In the U.S. from the beginning of the eighteenth century, and in Denmark from the middle of the nineteenth century, people could spontaneously unite into associations, voice their demands, and through the associations contribute to the solving of societal problems by applying domain-specific knowledge to the modification of institutions. In the Catholic south, such associations and their intentions tend to be assessed and monitored by the establishment, generally a resource-consuming process, which might well confuse the original intentions.

This explanation is in accord with the one offered by North as regards reference to the *religious aspect.* Transcendental beliefs do matter in economic development. Thus we find a substantial factor of explanation in the specific conception of reality shared by the Roman Catholic and the Orthodox Churches until the 1960s, when the Second Vatican Council restated Roman Catholic doctrine. The restated view allows us to suggest that the religious factor or power operating in Denmark, South America, and North America is basically the same. The long-term economic development is different, perhaps primarily because the previous worldview hampered economic development in the south by curtailing spontaneous creation of associations. This is again due to the existence of differently constructed institutions, which is precisely the main message of North's model of explanation.

Furthermore, this explanation is consistent with North regarding the importance of *bureaucracy*, which appears to have a fairly open definition. In line with North's terminology, one might interpret the Catholic south as a kind of divine (or Byzantine) bureaucracy, where persons affected by societal problems wait for a person possessing the appropriate authority to bring about a solution. However, while this interpretation might have

Mystery of CapitalCRev 2/18/08 11:13 AM Page 239

some explanatory power, it is definitely a use of the term "bureaucracy" that extends widely from the usual social-science definition provided by Max Weber. It is indeed deplorable that the term "bureaucracy," even within academic circles, carries the pejorative associations of popular usage. This is deplorable especially from the point of view advocated by de Soto, which points out the importance of real property rights for economic development. The "formal representational systems," which de Soto suggests are the basis for capitalism, cannot exist without common standards and bureaucratic administration in the Weberian sense (2000, 192). North, too, agrees that there is a need for "effective judicial systems" and "the development of the state as a coercive force" (North 1990, 59).

To summarize: aspects of the Danish development of real property rights can be related to North's interpretation of the causes of different economic development in North and South America, respectively. Within the general framework of North's explanation, I offer a modification that reconciles the evidence drawn from the Americas and from Denmark. The modification is based on a more elaborate understanding of the notion of bureaucracy and the factors of religion and religious ideology. It suggests that the economic development of the Roman Catholic south was hampered by a general belief that potential solutions to societal problems should await clerical or otherwise authorized approval. The societal cost of this approval stifled entrepreneurial efforts in the south, while the Protestant north could benefit from the economic creativity of associations of every kind.

4. The Institutionalization of Real Property Rights in Denmark

This section provides a more complete account of how the institution of property rights came into being in Denmark. I use "Denmark" in the narrow sense of the term, as including the major part of Jutland, Funen, Zealand, and until 1660 also the southernmost part of what is today Sweden.

4.1. *Roman Officialdom*

The formalization of real property rights emerged in Denmark during the eleventh century through the influence of the expanding Roman Catholic Church. Written documents were foreign to the Danes, whose legal proceedings were primarily oral, but from the south came the *document (diploma)* as legal evidence. The oldest diploma known is a deed of gift

Mystery of CapitalCRev 2/18/08 11:13 AM Page 240

from King Canute to the cathedral in Lund, dated May 21, 1085 (Skautrup 1944, 200). Documents were drawn up in Latin, but interestingly, established Danish technical terms like deed of conveyance (*skøde*) and mortgage (*pant*) are mixed with the Latin texts, possibly due to the varying skill levels of the scribes involved in their compilation (Skautrup 1944, 205).

Education of scribes took place at cathedral schools, in the context of cathedral chapters, which were established, for example, in Lund in 1085 and in Ribe in 1145. Clerics also served at the chancellery of the king, which is known to have been in operation around the twelfth century. About the same time, the country was divided into dioceses and parishes, and a church tax, the tithe, was introduced. The tax established a stable and later formalized relation between users of land and representatives of the community, a relation that may be considered an aspect of the institution of property rights. An inventory of Danish land ("Kong Valdemars jordebog, *Liber Census Daniæ*"), dated 1231, was prepared by the chancellery (Skautrup 1944, 204–5). This inventory might be compared with the English Domesday book. Late in the period in 1479 a university was established with papal consent.

Legal rulings regarding the local level took place at the approximately two hundred court districts, though for a growing number of boroughs and for church matters, these rulings also took place at the chapters. Around 1200, records of such rulings were frequent and often related to one of the kingdom's three ancient governing assemblies, called "things." One thing covering Jutland and Funen lay in the cathedral town of Viborg. A collection of rules for this thing (*Jydske lov*, 1241) was prepared by the bishop Gunner; it differs from the previous by being "given" by the king and adopted by the thing. Village peasants operated through townships with own customary rules. Quarrels could be presented to ordinary courts, which tended to support the township majority opinion.

Transfer of ownership originally was ritualized by the seller putting some soil on a cloak held by people present, thereby designating the land to be surrendered, and declaring that ownership be transferred to the buyer (Buhl 1994, 19f). Gradually, deeds of conveyance were drawn up according to recurrent forms (Skautrup 1947, 16, 72; Buhl 1994, 20–21). From sixteenth century on the announcement was supplemented with recordings in chronological thing registers. For transactions within borough boundaries, the town registry served the same purpose. From the seventeenth century we know that mortgage deeds were recorded as well, and specific mortgage registers were prescribed.

Did we have real property rights installed already in the fifteenth century? The formal conveyance did transfer rights in land, but as to the impli-

Mystery of CapitalCRev 2/18/08 11:13 AM Page 241

cations of these rights, we cannot be sure. Exchange of land and other assets was a way of establishing social relations, including mutual obligations, and the impersonal alienation of an asset is something that emerged very slowly. Furthermore, although the collections of rules generally include inheritance rules, we cannot be sure as to what bindings restricted the dispositions or—in other terms—whether the owner in fact was the individual person or the family. Inheritance rules generally followed the Germanic-Nordic pattern of family inheritance. At least for the major land owners, the nobility, restrictions in dispositions on land were manifest in order to protect family interests *(Danmarks Historie* 7:116), but even here formalization of the family unit came slowly (fixed family names were only instituted around 1526 (Skautrup 1947, 261). The religious concern for the individual soul may have opened up a way for greater individualism, fostered also by the introduction of inheritance by will to allow for donations for religious purposes (Halsall 1998, sect. 4).

Finally, general principles for the adoption of formal rules were only just beginning to emerge. From 1360 on new kings had to agree to a *Coronation Charter*. By the same token, the assembly of lords became the forum for adoption of new legislation, until absolutism was introduced in 1660.

The model of the Coronation Charter was the English Magna Carta (1215), which instituted a division of power between the king and the estates, especially the higher clergy and the nobles. The later versions of the Danish Coronation Charters included quite specific regulations regarding the transfer of real property rights between king and estates, and among the estates as well.

Summarizing the period until sixteenth century, we do find a basis for formalization: Clerics, who could set up documents according to law; a legal system, which could proclaim law, but only weakly enforce it; tithe-related recordings; cathedral schools and a university; and a Christian world view with secular implications that would appear only after the Reformation introduced the Lutheran version of Christianity.

4.2. *Lutheran Absolutism*

Danish bishops, cathedral chapters, and monasteries were in dialogue with their counterparts in the Roman Catholic south. However, other than the containing of royal powers by Coronation charter and clerical officialdom and education, Catholic practices such as celibacy of priests and formation of lay people hardly gained a footing in such distant tracts. The Lutheran reformation came in the early sixteenth century after a period of political disorganization as a new spiritual power.

Mystery of CapitalCRev 2/18/08 11:13 AM Page 242

The first Lutheran king, Christian the Third, balancing between the factions of nobles, the major cities, external powers in Germany and the Netherlands, and the Catholic clergy, managed to get hold of the country by force, but then occupied himself with the reestablishment of legal procedures (*DH* 6: 52–54, 279–82). For example, during the sixteenth century the crown was concerned both to protect the peasants from their masters (*DH*, 6: 130, 269, 290) and to consolidate legal prescripts into a general law book (283). The codification effort succeeded in 1683 with the adoption of the *Danske Lov* (Danish Law), well before other European countries prepared comparable law books, such as *Preussisches Landesrecht* of 1794 and the French *Code Civil* from 1804. By the 1660s absolutism was introduced. However, royal willfulness was generally balanced by leading advisors and the chancellery.

Church land and church offices, such as cathedral chapters, were taken over by crown administration without much further change. For example, the chancellor of the king overtook the full office of the next bishopric (Roskilde), including responsibility for the university (*DH* 9:241). Careful management of crown contracting concerning entailed estates gave the crown badly needed income. The accounting practice quickly spread through the whole country. By the late seventeenth century, tax registers were in place both at the manors and centrally. They mentioned every holding, copyhold as well as freehold, and its duties. Due to the remarkable Danish ability to maintain continuity, the name of the central register, *Matriklen*, today still designates what in other European countries has come to be called the Cadastre or Land Administration.

The successor to the throne, Frederic the Second, was quite another character. Nevertheless, he demonstrated how land could be traded in an entrepreneurial sense. He was fond of hunting, and arranged for scattered possessions to be consolidated into larger units by means of exchange of property with the nobility. The nobility followed suit where possible.

Reformation caused a change in higher education, which further supported development towards a state of law and order. Before Reformation, it was common for young nobility to frequent the university with a view to eventually taking up clerical positions. However, the university was reorganized, causing it to become increasingly frequented by commoners, who could now study theology, medicine, or law. This in turn led the youth of the nobility to travel abroad in order to learn law and other disciplines useful for governmental affairs. This practice remained for centuries (*DH* 10:40). Arriving home, many volunteered for the chancellor, hoping to acquire the entailed estate (*DH* 6:154, 205). Installed there, they were responsible for the administration of justice at the local level (*DH* 6:219–20). Sources reveal that the judicial standard in such places could be high indeed (*DH* 7:92–93). Rephrasing this within the analytical frame-

Mystery of CapitalCRev 2/18/08 11:13 AM Page 243

work of North we may say that the changed institutional setting of the Reformation provided other incentives for career planning, changes which supported the formalization of rights in general.

Commoners who became priests formed a mediating stratum between the formal, document-based central administration and the informal village community. They proclaimed the law, be it divine or secular, and in the later part of this period they also issued information on economic development. The title of one of many books published during the time: *Agricultural Catechism* (1782) is indicative (Skautrup 1953, 100).

The Lutheran church may well have been a "means of indoctrinating the population with the Lutheran dogma of divinity of authority," as a recent Danish historian sarcastically phrases it (Jespersen, 2007). However, the Lutheran dogma also provided all strata of society with a sense of being responsible according to law, divine as well as national. This applied to the king, who generally was charged with the task of providing "happiness" for his subjects and specifically was admonished in writing to judge impartially (*DH* 7:55–56, 59). Worship was performed in the national language, and as worship attendance became a civil duty, the evangelistic message Sunday by Sunday was forming the people (*DH* 8:357). While the model of Roman Catholic formation of the lay people was confession (Morris 1989: 305f; 489–91), the Danish model became singing. A psalm book of high-quality original Danish poetry became popular and has been rehearsed and sung in school and church right up until the age of TV broadcasts. The example below is a morning song:

> My soul! Be fresh! Enjoy! let sorrow wither,
> your bodily perianth is in God's hand.
> This very day He gives me strength and power,
> that through my calling and position,
> I duly serve my God and Father.
>
> God, join hands with me and grant
> the generous Holy Spirit thrive my vocational work.
> Bless me, oh Lord, of your might!
> If only I today, and every day as well,
> in You and in my industry be satisfied!
>
> —*Kingo: Nu rinder solen op* 1674, verse 4 and 5

It is perhaps more world oriented than the majority of psalms, but it proclaims the layperson to be a recognized participant in a divine project, an individual entitled to dispose of his resources. The vitality brought about by Lutheranism went along with admonitory sermons on obeying authority: "You have a mortal lord of manor as your master . . . yet later

Mystery of CapitalCRev 2/18/08 11:13 AM Page 244

an overlord over lords, by the name Jesus Christ," as an early Lutheran bishop put it (*DH* 6:176). The words were directed towards the lower strata, but Christian the Third, called "the priestly king" (*DH* 6:306) abided by the same overlord, thereby reinforcing the legal institutions by outlawing dual standards. His successors on the throne largely followed suit in legal-economic affairs, as witnessed by advisors and the chancellery.

By about 1650, 47 percent of the land of the kingdom (not including boroughs) was under crown administration, including church holdings. Another 47 percent was owned by the nobility, while about 6 percent was freehold. The land was structured into about 9000 townships, which were made up by 920 manors, 70,800 copyholdings, and 4,800 freeholdings (*DH* 7:118). Less than 1 percent of the population owned this land. Interestingly for the further development, freeholdings were unevenly distributed across the country, being most common in periphery areas. In the duchy of Slesvig, south of the kingdom proper, freeholdings were quite common and we find a segment of larger peasants, who through generations provided bailiffs and sent their sons to cathedral or borough schools. Peasants in this area managed to convert villeinage into a cash fee, and in some townships they started a process to consolidate their share of commonly tilled land into parcels, which they could manage individually with benefit.

By 1700, do we have real property rights in Denmark? The answer certainly seems affirmative; perhaps one could even say that we had a market in land, even if a tightly regulated market. Tenant contracts, conveyance deeds, and mortgages were recorded and enforced, at least in some places, quite rigorously. However, what is nicely recorded and easily available for the historian is perhaps only the fraction of peoples with the "best practice." Still, property rights were far from comprehensive and exclusive. King, landlord, and tenant were bound to one another by a host of rules, contracts, and conventions. Finally, to the restrictions in the exercise of property rights we must add the fact that less than 1 percent of the population actually had owner status.

4.3. *The Enlightenment and the Land Reform of the Later Eighteenth Century*

Most people outside of the boroughs were illiterate, so economic development had to come from the upper strata of society. Around the 1750s the leading advisors of the king had a power that later history dubbed "a government by Excellencies" (*DH* 9: 304–7, 311). These highborn characters were self-confident in their position as governors of state affairs and were convinced that the general welfare of the kingdom was dependent on their

Mystery of CapitalCRev 2/18/08 11:13 AM Page 245

efforts towards promoting "the common good." Patrimonialism, the exploitation of a position for private benefit, did occur in Denmark; however, predominant belief in the existence of congruent worldly and divine kingdoms may help explain why a commitment to impartial service in office predominated amongst those in power. Being self-confident in one's position was not restricted to the upper strata; the artisans, farmers, priests, and civil servants of the time all had similar attitudes towards their own positions. The German word *Beruf*, literally, vocation or calling, fits the corresponding Danish term *kald*, and conveys much better than English terms like "position" or "occupation" the way in which one's work is conceptualized in the Christian worldview. However, at this time social mobility was virtually nonexistent. When mobility later emerged with commoners occupying ever-higher positions in central administration, the government of the Excellencies was gradually overturned.

The period was characterized by wealth brought about both by international trade and by agricultural experiments that were performed on some of the manors, first in the duchies south of Denmark, and later on crown land and noble manors in Zealand. For example, a new surveying technology, the plane table, was applied in order to measure homogenous pieces of land. Having valued the yield of every piece, the area of each piece was carefully computed and parcels of regular shape were demarcated for every farmer according to his share in the township yield. This radical change in tilling practice was frequently opposed by the farmers, but the general experience was that it was beneficial in the economic sense for all parties. Some farmers became educated, and were identified as role models for their peers by poets writing in the spirit of Rousseau.

Some Excellencies participated in these experiments, bringing about a public debate on these and similar issues. At the occasion of the king's thirty-second birthday in 1755, the general public was invited to prepare treatises on "every subject that may serve the sustained flourishing of the country." The treatises could be handed in anonymously and were published over the course of the following decade (1755–1764). They created a spirit of curiosity in economic and political affairs among the reading strata, notably priests and other university-educated officials (*DH* 9: 334–42). The Royal Danish Agricultural Society of 1769 and other patriotic societies acted as forums of discussion, slowly transforming the "top-down" approach of the absolutist regime into a more participative one. In terms of the analytical framework, the general institutional structure not only tolerated, but also promoted the adoption of new knowledge on economic and other affairs.

During and after an interregnum marked by a king who suffered from mental illness (dementia praecox), common people were able to gain higher posts in central administration. A bloodless coup d'état installed the

Mystery of CapitalCRev 2/18/08 11:13 AM Page 246

crown prince Frederic the Sixth as the effective royal ruler until the death of the insane Christian the Seventh in 1808. On May 13, 1776, shortly after taking office, Frederic issued an order on the lifting of joint cultivation. The order was based on previous experiments and further reforms carried out on crown land, as well as on the debates over and outcomes of previous orders. However, it introduced a new mechanism. While the former schemes left the right of initiative with the landlord or—later—with a majority of the tenants, the initiative was now given to whoever amongst them functioned most effectively as an entrepreneur. A single tenant of the village was entitled to trigger a quasi-legal process by which his share was extracted from the joint tilling of the township and consolidated into a few lots. The process was based on the detailed mapping in scale 1: 4000 and on assessment of yield as described above. However, this individualization did not imply the granting of ownership; rather, copyhold generally became hereditary and obligations were gradually transformed into cash fees.

The land reform process was conducted by a land surveyor, while the assessment of yield was done by two village peasants, elected by the villagers themselves. The costs of the process had to be paid by the villagers, and all township parties had to contribute to the costs, whether they wanted to extract their share from the community or not. Claims were submitted to a three-person committee, which was chaired by the chief official of the county. The central administration (*Rentekammeret*) elected the two other persons from amongst the local judges, higher officials or nobles. Further claims were resolved by the *Rentekammer*, except for claims specifically regarding title, which were to be handled by the ordinary courts. No tenant was forced to leave the cultivation community of the township, but the ideal solution would be to spread the new production units equally over the township in order to minimize working distances and obtain parcels of regular shape. However, the township community dealt not only with production matters, but also with other community affairs according to customary and tacit rules. The desire to keep close to the old, secure community is still visible across Denmark in terms of the so-called star allotments, where boundary banks and hedges radiate from the village center between the old farm houses to the township boundary.

4.3.1. Summarizing the Factors Leading to Change in the Land Reform

What were the factors responsible for change during the land reform? As suggested above, the widespread belief in two congruent kingdoms, the worldly and the divine, was a large part of the social background. Thus, the vocational attitude toward work and position that had been fostered by

Mystery of CapitalCRev 2/18/08 11:13 AM Page 247

Lutheranism remained, even when the divinity of the absolutist monarch was questioned by a growing number of people (*DH* 10:39). Furthermore, the royal decrees implied that contracts should be kept, even when a party was not able to defend his rights by his own means and, moreover, that fulfillment of contract ought to be accomplishable by ordinary effort. This concern was first held by commoners among the civil servants, but was eventually voiced by the crown prince Frederic the Sixth as well.

It is generally held that the most important change of the reform period was not the reallotment process, but rather an order given on August 8, 1787, enforcing the economic rights of tenants in relation to their landlords. This decree required that the estate of a tenant holding should be assessed by an independent party at the death of the tenant or other closure of tenure. The job of this independent party was to determine whether the landlord should be compensated for losses or whether the estate of the tenant should be paid for improvements (*DH* 10:74–78). Further, the fixing of obligations in terms of a cash fee was finally forced through after several promptings. Governmental committees traveled across the country, engaging in fierce negotiations with peasants and landlords to establish a fair deal (*DH* 10:82).

Experience demonstrated that the new organization of the means of production was effective. This was due not only to the effects of allowing individuals to till their own land, but also to the fact that resources were used more efficiently. Landlords themselves benefited from the introduction of new crops and methods of cultivation. Some were prepared to alienate tenant holdings in order to invest in new equipment. Moreover, provisions were made for those among the villagers who could not cope with the new individualism, and who could potentially have fuelled riots, by the installment of poor-law authorities in 1803 (*DH* 10, 114–15). Finally, general education was introduced, and by the 1850s illiteracy was largely eradicated.

Did we have real property rights by 1800? By all means: About half of all holdings were acquired by tenants as freeholds (*DH* 10, 90–91), and by 1850, only 1 percent of land was still in joint cultivation, mostly on moors and peat soil (Thomsen 1988, 115). An independent, self-sufficient farming class developed, which was able to compete internationally in agricultural products by the end of the nineteenth century.

4.4. *The Extension of Real Property Rights to Lower Social Strata*

In Denmark, two quasi-parliamentary advisory assemblies were instituted by 1835. The assemblies acted as a melting pot for ideas on how to

Mystery of CapitalCRev 2/18/08 11:13 AM Page 248

improve the kingdom, just as the contributions at the occasion of the king's birthday had done almost a century before. The self-conception of "patriot," the term preferred over "citizen," valued a concern for "the common good" (Damsholt 1997). Apparently, this did not block economic development, but envisaged development in a more collective sense than that of English liberalism.

During the latter half of the 1800s, the guild system was abolished, boroughs were expanded through the earthwork bounding the cities, and industrialization slowly emerged. New railroads winded their way through the country and in agriculture the effects of the land reform were consolidated. The farmers established associations, such as dairies and bacon factories, in order to process their agricultural products, and in so doing became competitive in the world market with these products. Although landlords still played an important role in society, the money economy and the improvement of education gradually diluted their privileges. During the first quarter of the 1900s, their entailed property was converted into "normal" holdings. Many smallholdings were established through this process, thereby spreading access to real property rights.

By the end of 1800s, industrialization brought strikes and street fights. The general practice of handling societal problems through associations operated here as well. By 1899 the workers' union and the employers' association reached a general agreement (*Hovedaftalen*) regarding the rules of the game, and some years later set up a quasi-legal body (*Arbejdsretten*) for the purpose of arbitrating in issues of interpretation of the agreements. The workers' union succeeded in keeping a high degree of organization amongst the workers, including the skilled workforce, which gave them a tremendous advantage in labor negotiations. Through the 1900s they used this bargaining position to direct a share of the surplus of production to their members, thereby enabling them to acquire their own detached houses during and after the economic growth of the 1960s. Again, access to real property rights was spread, and now to all strata of the society, thus enabling them to earn their own living. In terms of the analytical framework, the association of workers effected an institutional transaction (Bromley), which redistributed production surplus.

In general, the rise in quality of living conditions may be attributed to industrialization, scientific and technological developments, and other factors that in principle are available to every country. However, what specifically explains the Danish development, especially the spread of property rights to a substantial number of inhabitants?

In Denmark, it is fairly common to attribute the "Danish" way of development to Grundtvig and the cooperative movement (*andelsbevægelsen*) (see, e.g., Ingemann 2002; for a detailed discussion of the political economy of Grundtvig, see Ingemann 1997). Grundtvig

Mystery of CapitalCRev 2/18/08 11:13 AM Page 249

(1783–1872) was a priest, a poet (who contributed to about one third of psalms of the Danish Psalmbook) and above all a spiritual animator. Through studies, writings, and speeches he articulated a worldview that was largely accepted and perpetuated by the following generations. Deeply involved with Christianity, Grundtvig wrote psalms of tremendous clarity and depth. However, this very involvement in Christianity made it possible for him to question its central tenants, and to consider possibilities lying outside the limits that it imposed. He was thus repeatedly in opposition to the established church.

To give an idea of his poetry, I set out a Pentecostal psalm, that is: a hymn to the Holy Spirit and its effects. The psalm paints through the first verses a picture of Danish nature, the farmers' fields and harvest, sun and birds, forests and meadows:

> …
> and lovely trickles at our stepthrough the meadow the brooklet of the flood of life
>
> —Grundtvig, *I al sin glans nu stråler solen*, verse 3 (1843)

It would have been picturesque, had it not vibrated and eventually burst into a crescendo of praise that included all tongues, including pagan and Jewish. Like Kingo, he relates the everyday and the transcendent, but while "everyday" for Kingo was duty in the presence of the king, for Grundtvig "everyday" was cultivating the created world, especially the countryside. Grundtvig raised the questions, what was of value in the North before Christianity? Did truth only come by Christianity? The answer he developed through countless drafts was that the mythology of the North did contain truth and, furthermore, that this truth was a paradigm of the life that the people of the nation were to perform. Having come to this realization, Grundtvig gave up the "sweet dream" that the whole Danish people would be "deeply Christianized." He envisioned instead the "national spirit" as the uniting bond, as it manifests itself in language, historical narratives, and mythology (Thanning 1971, 62–74, 66).

Lutheran Christianity was perceived individualistically, as a "Christianity of penance." Therefore, it did not answer the questions raised by societal life, for example, the question of how the work of creation was to be redeemed. Grundtvig echoes the statement of Kingo that all members of the people "with heart and soul perform their trade, each in his circle, yet intensely participate in one another's pursuit, as parts of one body" (quoted by Thanning 1971, 69). Significantly, however, Grundtvig replaces Kingo's hierarchy of God, king, and estates with interrelated circles while conceiving of heart, soul, and compassion for the com-

Mystery of CapitalCRev 2/18/08 11:13 AM Page 250

mon good as Kingo did. The enemies are the spirits of the (German-Roman) emperor, the Catholic pope, and rationalistic enlightenment that kills heart and spirit. The objective was to unfold the Nordic spirit by empowering each and everyone to perform noble deeds (70, 97–99). Grundtvig viewed the peasants' work as the model of a noble deed, a view which at that time was definitely not the dominant opinion. The former tenant thus became the key factor of development and hence the task was to arrange that every Dane could be economically self-sustaining through ownership. Furthermore, teaching itself should not only convey practical knowledge, but also lift the heart.

Grundtvig's gift was twofold. First, he pointed to the existence of legitimate values outside of established Christianity. In so doing he was able to inspire those who were indifferent or even hostile to the church and related authorities. Second, he did this in a way that did not offend those who were comfortable with the more traditional Christian life. The goal of all of this was to set free and empower the poor so that "few own too much, and less too little." Later this program came to fit the interests of members of the workers' union in such a way that the workers' movement became moderate and political, rather than radical and violent. The social democratic party in a sense took up this idea of pursuing the common good. Indicatively, the title of its political program in 1934 was "Denmark for the people."

Grundtvig developed these ideas in the 1830s, which meant that the vision he provided was able to fill the institutional vacuum that opened up during the fairly uneventful collapse of absolutism. The Constitution of 1849 provided, among other rights, freedom of association. This was just the first occurrence of a correspondence between Grundtvig's ideas and historical events. His position that truth could be found outside Christianity and that it should be pursued for the common good inspired Danish politics for more than a century, as we shall see detailed in section 5, and the emphasis on the common good made it possible for low-income families to become home owners.

4.5. *Development Factors in the Danish Way of Institutionalizing Property Rights*

How did the formal system of property rights come into being? A number of factors come to mind: (a) impartial service predominated and thus dual standards were ruled out, (b) resources of the realm were managed bureaucratically and yet effectively, and (c) the dominant elite actively defended the rights of the lower strata. These factors are supported by the following:

Mystery of CapitalCRev 2/18/08 11:13 AM Page 251

- Roman clerks and bishops brought formalization of agreements in writing, cathedral schools and universities, subdivision of the realm into parishes, and the habit of restricting the powers of the king through coronation charters.
- The pious king, Christian the Third, restored law and order and installed a Weberian bureaucracy, the Chancellery, after the Reformation in 1536 in order to manage a substantial part of the natural resources of the realm: the former church property. He thus institutionalized what became a path of dependency, which through centennial revitalization lasted at least to the present age of neo-liberalism and materialism. He, his followers on the throne, and the surrounding elite ruled out dual standards and in the late 1700s even insisted that tenant rights be respected long before the notion of the welfare state was conceived.
- The feudal system implied the existence of unequal social strata. However, inequality did not imply stagnation: Out of the hierarchical structure came the message that humankind was entitled to "join hands with God" in pursuing its secular duty. Thus, ordinary people became more actively involved in societal affairs as a result of different factors over three centuries: their forced participation in Lutheran sermons in the late 1600s; the consent of an absolutist crown prince to a shared effort in search of the common good in the late 1700s; and general education as well as economically capable societies and associations during the 1800s.

This summary, although provisional in nature, corroborates the emphasis in the previous section on religion as a determinant factor in long-term economic performance, as especially factors (a) and (c) above are strongly motivated by the Christian belief system. One may question whether this is a valid retelling of Danish history. Though the present author may be inclined towards religious explanations, the evidence here is either directly drawn from or is consistent with standard historical scholarship. Historians of the former half of the twentieth century may be guided by social-democratic (center-left) values and bypass (liberalist) economic thinking, but they could not invent the noble deeds of the past.

I do not claim that Danes were or are more pious than other people. First, a similar economic development occurred in neighboring countries. Next, Denmark is situated at the semi-periphery relative to the shifting centers: the Netherlands, the British Empire, and the U.S. Through international trade and formation journeys of the young nobles, new ideas and experiences were easily available, and the restricted size of the country made it a manageable task to implement them. Furthermore, the Danish

Mystery of CapitalCRev 2/18/08 11:13 AM Page 252

realm decreased during the period, which in combination with the meritocratic bureaucracy tended to ensure that capable civil servants were implementing royal orders. In sum, unique advantages supported the impact of the factor of religion.

5. Land Registration and the Role of Mortgaging

Hernando de Soto points to the importance of formalization in terms of land registration for the purpose of bringing "dead capital" to life through mortgaging. In the following, I compare this line of reasoning with Danish evidence of a more administrative-technical nature.

5.1. *Procedures and Registration of Transaction in Real Property*

Deeds of conveyance and mortgage had to be announced at governing assemblies, the "things," already before the Danish Law of 1683. At that time, records were established at the courts. After a reading of the deed, extracts were made in chronological registers of conveyances and of mortgages, respectively. From 1738 on indexes relating names to the chronological entries were introduced and established at every court, and by 1805 it was required that recordings take place at the local courts (Buhl 1994, 19–22).

By 1844 a new cadastre was put into effect for Denmark. It was based on the maps and recordings of the land reform, duly revised and supplemented. It located and identified practically every parcel in the country and provided a new basis for taxation. However, the tax base of the old cadastre from 1688 was still kept, as its failure to reflect the real value of the property units had been taken into account in prices paid by buyers through the ages. The new cadastre was introduced according to suggestions by the advisory assemblies, which were instituted by 1835.

An assembly proposal made in October 1842 for the purpose of improving land registration was motivated, among other things, by the fact that the proposer himself had received an incorrect statement on mortgage deeds from a local court. He also pointed to the fact that the new cadastre would make it possible to establish indexes of property units, and proposed that such indexes be introduced along with the prescription of uniform formats for land registration. Furthermore, he suggested that every document regarding an immovable entity apply the new cadastral identification. These proposals "will be as important for the security of property rights as

Mystery of CapitalCRev 2/18/08 11:13 AM Page 253

for the corroboration of credit in general" (*VST*, 1842: 768). The resulting act on indexes for conveyance and mortgage registers prescribed that the indexes were to be introduced only "gradually," that is, at the discretion of the person in charge (Indenrigsministeriet, 1863. Fr. Ang. Registrene over Skøde- og Panteprotokollerne, 28. Marts 1845). The application of the new cadastral identifier was convenient for all and further stressed through a request that the conveyance deed of a subdivided property unit be annexed with a cadastral map of the property concerned (Indenrigsministeriet, 1863. Pl. 21. April 1848). This and similar rules kept the recordings of immovable property in Denmark coordinated from the 1840s on, even when such recordings were performed by different authorities (for example, for purposes of taxation, agriculture, or justice). A reform of the land registration of the local courts was later accomplished by the Law on conveyancing (*Tinglysningsloven*) of 1926.

Considering these incidents, and drawing also on details not reported here, it appears that mortgaging was common by the 1840s, that mortgages were probably recorded with the same degree of perfection as titles, and that forced sales in case of debt default were practiced. The issue of credit and mortgaging is mentioned on a par with real property rights in general in the proposal of 1842, as well as during the deliberations and in the documents pertaining to this proposal. It appears that both are important, and were, in a sense, perceived as aspects of the same institution of property rights.

Formalization can be expensive, and in recent years warnings have been issued against putting too much emphasis on the importance of formalization by means of information technology (Holstein 1996; de Soto 2000, 184–87). Also, in addressing the degree of formalization required in a given context, Steven Hendrix calls for a "situation-specific examination of the [conception of] property and design of any property securization plan. Furthermore, the expenses of titling must be weighted in each given locality against the *increased* level of security titles provide over existing documents which also evidence ownership rights and interests" (Hendrix 1995, 191; italics in original). A rephrasing of the latter sentence fits the reasoning of the Danish assembly of the 1840s: The assembly majority agreed that the expenses of establishing indexes of property units had to be weighted across each registration office against the reduced probability (increased security) of issuing defective certificates.

Thus, we can conclude that while the formalization that can be provided by information systems is important, it is apparently not the key issue. However, formalization also tends to exclude person-specific dependencies, and as will be explained further below, it is actually this aspect of property rights that will normally be the important issue.

Mystery of CapitalCRev 2/18/08 11:13 AM Page 254

5.2. *The Emergence and Role of Mortgage Associations*

Mortgaging was not a key factor during the land reform, as the reform was initially an individualization of cultivation. However, the relief of copyhold was a political issue and suggestions for mortgage schemes were popular, frequently combined with requests for some governmental support (*DH* 11, 356). The government was not in favor of the support for a number of reasons; including the fear that such support would be misused by some landlords to charge excessive prices (Møller 1997, 91). Nevertheless, the tenants gradually gained ownership. By the end of the 1840s the number of copyholdings was reduced to 21,000. Often, the landlord found it convenient to let a mortgage in the holding be part of the charge. Due to the existence of such personal relationships, the conditions for the new owner could thus be more troublesome than a loan offered by an impersonal enterprise.

A mortgage association was established in 1796 for house owners of the city of Copenhagen. A lasting principle of this effort was that the direct contact between a mortgagor in need of money and a mortgagee was avoided and replaced by the mediation of an association. The association issued mortgage bonds, which were secured by mortgage deeds, and sold the mortgage bonds at the Exchange (which had been in operation since the 1600s). While this arrangement is normally seen as the start of mortgaging in Denmark, the actual procedure was generally quite complicated, and most importantly it was not yet available to the farmers. A public debate on the issue resulted in the establishment of mortgage associations for Danish landowners (Møller 1997, 89; on present practices, see Moody's 2002). English liberalism did enter into the debate, but it was the cooperative movement, marked by men like Robert Owen, that apparently best suited the Danish "patriotic" attitude to economic affairs. The Constitution of 1849 allowed for the free establishment of associations, and this lead to the passing in 1851 of a statute law, which provided a framework for the existence of regional associations with rather specialized portfolios. In the following years a number of these mortgage associations popped up as well as savings banks for peasants. The cadastral identification of property units and the fairly well-kept land registers provided a robust basis for the mortgage business. A recent account of the role of mortgage associations over a two-hundred-year period offers the following survey:

Møller et al. find the cooperative mortgaging scheme most relevant during the 1800s. The society in that period made the transition from a barter economy to a money economy. The mortgage associations were able to compensate for defects of the capital market in terms of monopolies, asymmetry of information, and lack of public control, and this was much

Mystery of CapitalCRev 2/18/08 11:13 AM Page 255

Year	Savingbanks	Banks	Mortgageassociations
1840	3	0	5
1880	30	12	28
1920	21	56	36
1960	19	27	36
1994	67		118

Deposits in banks, saving banks, and mortgage banks (percent of gross factor incomes). From Møller 1997, 61.

less needed during the 1900s. Generally, they warn against attributing too much importance to the fact that mortgage loans were provided by associations as opposed to other organizational structures, as alternative lending opportunities in terms of saving banks and ordinary banks were available during later periods.

Perhaps one could suggest that mortgaging gained its most significant role for property development during the period 1960–80, where the number of owners of detached houses expanded to include low-income families with stable incomes.

1600s: Crown owned about half, nobility the other half (~2000 persons out of 600,000)

1800s: Of the 60,000 farms, about half were acquired by tenants as freeholds

2001: 1,130,241 detached houses and farm houses, owned by individuals (out of 5.3 million)

The mortgaging scheme was robust across social strata as it was not generally dependent on the creditworthiness of the mortgagor, aside from whether or not the mortgagor had a stable income. This made housing construction cheaper, as banks were prepared to supply young prospective homeowners with temporary loans that enabled them to complete the building process all at once, because the loan would be returned by the proceeds of the subsequent mortgage. Finally, it assisted manifestly in making Danish urban planning and development a quasi-rational process, as the hypercautious mortgage associations requested a certificate (from chartered surveyors) that the intended construction was in due accord with public as well as private restrictions (spatial plans, easements, etc.). As the

Mystery of CapitalCRev 2/18/08 11:13 AM Page 256

majority of people were dependent on mortgage loans, the same majority was forced to subscribe to mortgage conditions and thus to spatial planning measures (Stubkjær 2001).

Summarizing this section, mortgaging existed in Denmark well before and during the land reform. It is reported to have enhanced the landlord's investment in equipment, but was not mentioned as a prerequisite or active element of the land reform. Moreover, mortgaging as an impersonal and bureaucratic/formalized activity, a clear benefit for new owners, appeared only a few generations after the land reform. Danish economists find that the cooperative style of Danish mortgage associations fit the values and needs of nineteenth-century Denmark better than a more market-oriented scheme. The impersonal mortgaging scheme financed the widespread extension of real property rights after the 1960s and contributed to a successful urban development. The effects of mortgaging on economic development (of the construction sector) are recorded only after the 1960s. The specific importance of mortgaging for general economic development is thus not corroborated by the Danish evidence, but this does not imply that mortgaging was not of importance.

6. Conclusion

The Danish evidence confirms the attention Hernando de Soto has called to the importance of a "staircase" of real property rights for the humbler members of society. In Denmark, a small and in many respects homogenous country, it took well over two hundred years of more or less conscious efforts to expand real property rights to a substantial fraction of the humbler strata. The development from about 1750, the "construction" of the staircase, took its point of departure from a governmental and judicial structure that had already been bureaucratic in the positive Weberian sense for about two centuries and that retained this quality throughout the period under investigation here. Development was supported by the fact that basic notions like "the common good" and the idea that work is a vocation remained constantly meaningful and inspiring, while the context of these notions moved from divine absolutism via participation in redeeming the created world to a Social Democratic "Denmark for the people."

The Danish evidence, however, only partly supports de Soto's concern for the formalized property system as a development factor, perhaps due to the clean bureaucracy that was at work from the start. The institution of property rights was indeed further formalized throughout the period, but the formalization came along the road. Formalization did make a difference as it introduced an impartial party, the not-for-profit mortgage associations, between mortgagor and mortgagee.

Mystery of CapitalCRev 2/18/08 11:13 AM Page 257

This Danish evidence was put into an international perspective by relating it, in section 3, to Douglass C. North's model of long-term economic development. Some of the factors of development identified by North were discussed. Uniform Christian religion and uniform bureaucratic administration ruled both in Denmark and in South America, but these factors do not unconditionally hamper economic development. The difference in economic development between Denmark and South America has here been related to the Christian proclamation of the competency of the layperson and of the occurrence of true values outside the established church, which in Denmark took place some hundred years before it became part of the Roman Catholic doctrine that prevails in South America.[3]

The paper suggests that North's model of explanation, with its focus on socially constructed institutions, holds not only for the Americas, but for Denmark and perhaps other Northern European kingdoms as well. The difference in economic development between Denmark and South America was related to the Christian proclamation of the competency of the layperson and the social costs of creating associations. Within the context of the hegemony of liberal capitalism, this retelling from Denmark offers an alternative, as the "shared intentionality" of the parties of the Danish society was not directed at economic utility, but at "the common good." More specifically, it was directed at a conception of real property rights that implied a strong concern for common affairs outside the individual unit of exclusive property rights. In business terms, the stakeholder view widely overruled the shareholder view. Factors of development furthermore include considering work a vocation, and actively defending the rights of the lower strata. These norms all fit within the Christian worldview and were in fact derived from this world view during decisive parts of the period.

Mention is made, that both Grundtvig and later the Second Vatican Council played a role in pointing to the existence of legitimate values outside of established Christianity. Moreover, Grundtvig conceives members of national societies as "parts of one body." He thereby again anticipates events, such as an emerging concern for "the body metaphor for society." (Jomo and Reinert 2005, ix).

The cord of institutional change that we have followed through Danish history has a core made of information systems: Pergament diplomas and heavy ledgers at the outset, computer systems today. Paperwork

3. While the pope in 1922 welcomed the movement "Catholic Action" and other initiatives of "the laity . . . when, united with their pastors and their bishops," still in 1928, the Church considered itself "a perfect society" with corresponding duties for social affairs (Pius XI, 1922, paragraph 54, 58; 1928, paragraph 6).

Mystery of CapitalCRev 2/18/08 11:13 AM Page 258

comprised the base for the institution of real property rights, and cadastral work further specified the relations required for the formation of Searle's hierarchy of status functions. Through centuries, careful recording of facts, agreements, and decisions based on publicly known rules made the economic aspect of life more predictable and hence more prosperous. Generally, through the centuries, work was considered a calling and because of that, bureaucracy did not constrain the creative among the bureaucrats.

REFERENCES

Buhl, Lars, Asbjørn Grathe, Knud Lund, and Hans Willumsen, eds. 1994. *Knud Illum: Tinglysning* [Land law and registration] Jurist- og økonomforbundets Forlag, Kbh.

Bundesverband der Katholischen Arbeitnehmer-Bewegung Deutschlands. 1977. *Texte zur katholischen Soziallehre* [Documents on Catholic social doctrine] Die sozialen Rundschreiben der Päpste und andere kirchliche Dokumente [Social encyclica of the popes and other eclestiastic documents]. 4. Auflage.

Damsholt, Tine. 1997. *Fædrelandskærlighed og borgerånd* [Patriotic love and civic spirit]. *Uddannelse* nr.7/97. Copenhagen: Undervisningsministeriet.

de Soto, Hernando. 2000. *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. London: Bantam.

Danmarks Historie (*DH*) [history of Denmark]. 3rd ed. Edited by Hal Koch and John Danstrup. Copenhagen: Politikens forlag. 14 vols. 1977–78 . A short Danish history in English is available at http://www.denmark.dk/en/menu/AboutDenmark/History/.

Goodin, R. E., ed. 1998. *The Theory of Institutional Design*. Cambridge: Cambridge University Press.

Halsall, Paul. 1998. *Frederick I Barbarossa: Affirmation of the Right of a Priest to Make a Will, 1165*. http://www.fordham.edu/halsall/source/1165Prstwill.html.

Hendrix, S. E. 1995. "Myths of Property Rights." *Arizona Journal of International and Comparative Law* 12, no. 2: 183–223.

Holstein, L. 1996. "Towards Best Practice from World Bank Experience in Land Titling and Registration." Paper, presented at the International Conference on Land Tenure and Administration, Orlando, Florida, November 1996. http://www.surv.ufl.edu/publications/land_conf96/HolsteinPD.PDF.

Ingemann, Jan Holm. 1997. "Note om N S F Grundtvigs politisk-økonomiske forestilling" [A note on N. S. F. Grundtvig's conception of political economy]. Arbejdspapirer, Institut for Økonomi, Politik og Forvaltning, 1997.

Ingemann, Jan Holm. 2002. "Agricultural Policy." In *Consensus, Cooperation and Conflict: The Policy Making Process in Denmark,* ed. H. Jørgensen, 210–31. London: Edmund Elgar.

Jensen, Hans. 1936. *Dansk jordpolitik 1757–1919*. Vol 1. Copenhagen: Gyldendal.

Jespersen, Knud J. V. 2007. "Reformation and Absolutism: The Spiritual life." Ministry of Foreign Affairs in Denmark, About Denmark, History. http://www.denmark.dk/en/menu/AboutDenmark/History/ReformationAbsolutism/TheSpiritualLife/

Mystery of CapitalCRev 2/18/08 11:13 AM Page 259

Jomo, K. S., and Erik S. Reinert. 2005. *The Origins of Development Economics: How Schools of Economic Thought Have Addressed Development*. New Delhi: Tulika, and London: Zed Books.

Moody's Investors Service. Danish Mortgage Bonds (*Realkreditobligationer*): Highly Secure Financial Instruments. Accessed 5/21/2002. http://www.realkreditraadet.dk/C1256A76002DE477/webDocsByID/C0D6483B31198637C1256BC000358163/.

Morris, Colin. 1989. *The Papal Monarchy: The Western Church from 1050 to 1250*. Oxford: Clarendon.

Møller, Michael og Niels Chr. Nielsen. 1997. *Dansk realkredit gennem 200 år* [*Danish mortgage through 200 years*]. Copenhagen: BRFkredit.

North, Douglass C. 2002. *Institutions, Institutional Change and Economic Performance*. Cambridge: Cambridge University Press.

Offe, Claus. 1993. "Designing Institutions for East European Transitions." Public Lecture No. 9. Budapest: Collegium Budapest/Institute for Advanced Study. http://www.colbud.hu/main/PubArchive/PL/PL09-Offe.pdf.

Ostrom, E. 1991. "Rational Choice Theory and Institutional Analysis: Towards Complementarity." *American Political Science Review* 85, no. 1: 238–43.

Ostrom, E. 2002. "Institutional Analysis and Design." Micro. syllabus for workshop in political theory and policy analysis. http://www.ipsonet.org/syllabi/elinor-ostrom.pdf.

Pius XI. 1928. Encyclical *Mortalium Animos* [On religious unity]. January 6. http://www.fordham.edu/halsall/mod/1928pius11-mortan.html.

Pius XI. 1922. Encyclical *Ubi Arcano Dei Consilio* [On the peace of Christ in his kingdom]. December 23. http://www.papalencyclicals.net/Pius11/P11ARCAN.HTM.

Rose, Flemming. 2003. "Ideologisk debat: Kapitalismens filosof" [Ideological debate: The philosopher of capitalism (Ayn Rand)]. *Morgenavisen Jyllands-Posten*, 11 June.

Searle, John R. 1995. *The Construction of Social Reality*. London: Penguin.

Second Vatican Council. 1965. *Gaudium et Spes* [Dogmatic constitution on the church in the modern world], 7 December.

Sendler, E. 1988. The Icon: Images of the Invisible. Oakwood Publications. Originally published 1981 in French by Editions Desclee de Brouwer, Paris.

Skautrup, Peter. 1944–1953. *Det danske sprogs historie* (The history of Danish language). 3 vols. Copenhagen: Gyldendal.

Stubkjær, E. 1999. "Cadastral Research: Issues and Approaches." *Kart og Plan* 59, no. 3: 267–78.

———. 2001. "Spatial, Socio-economic Units and Societal Needs: Danish Experiences in a Theoretical Context." In *Life and Motion of Socio-Economic Units*, ed. A. U. Frank, J. Raper, and J. P. Cheylan, 265–79. No. 8 in the GISDATA series. London: Taylor and Francis.

Thanning, Kai. 1971. *For menneskelivets skyld—Grundtvigs opgør med sig selv* [For the sake of human life—Grundtvig's self-encounter]. Copenhagen: Gyldendal.

Thomsen, Carl. 1988. *De danske landboreformer i u-landsperspektiv* [The Danish land reforms in a third world perspective] *Bol og By* 1988, no. 2: 107–30. Odense: Landbohistorisk Selskab.

Viborg Stænder Tidende (VST). 1834–1849 [Tidings of the Viborg Assembly]

Mystery of CapitalCRev 2/18/08 11:13 AM Page 260