

# Contents

<b>Introduction – Themes and Outline</b> .....	<b>13</b>
<b>A. Denmark interacting with the International Community</b> .....	<b>15</b>
<b>Chapter 1 International Relations and Self-Government for the Faroe Islands and Greenland</b> .....	<b>17</b>
Michael Hansen Jensen and Ole Terkelsen	
1. Introduction .....	17
2. The government acts on behalf of Denmark in foreign affairs .....	20
3. The consent of the Parliament to certain acts regarding foreign relations .....	22
4. The Foreign Policy Committee .....	32
5. Delegation of sovereignty .....	34
6. Greenland and the Faroe Islands .....	40
<b>Chapter 2 Denmark and International Human Rights</b> .....	<b>47</b>
Jonas Christoffersen	
1. The internationalisation of human rights .....	47
2. Legal response to international human rights .....	49
3. Political response to international human rights .....	54
4. Conclusion .....	59
<b>Chapter 3 Particularities of the Danish Membership of the European Union</b> .....	<b>63</b>
Ulla Neergaard	
1. Introduction .....	63
2. The four Danish opt-outs .....	65
3. The “second home” protocol .....	76
4. Greenland and the Faroe Islands .....	78
5. Conclusions .....	85

<b>Chapter 4 Democratic Legitimacy</b> .....	<b>93</b>
Henrik Andersen	
1. Introduction .....	93
2. Democracy, the law and the rule of law .....	94
3. Democratic governance as a legal requirement .....	100
4. Competence to regulate the citizen and the principle of conferral .....	103
5. Decision-making close to the citizen: subsidiarity and proportionality .....	105
6. Representation and participation .....	109
<b>Chapter 5 Implementation of EU Legislation in Denmark</b> ..	<b>119</b>
Morten Kallestrup	
1. Introduction .....	119
2. The EU decision-making procedure .....	123
3. Transposition and implementation of EU legislation .....	130
4. Conclusions and perspectives .....	135
<b>Chapter 6 International Courts and the Internationalisation of the Rule of Law</b> .....	<b>141</b>
Mikael Rask Madsen	
1. Introduction .....	141
2. The origins and transformation of international courts .....	144
3. International courts between proliferation and pushback ...	157
4. Conclusion .....	161
<b>Chapter 7 Danish Immigration Law</b> .....	<b>167</b>
Thomas Gammeltoft-Hansen and Sarah Scott Ford	
1. Introduction .....	167
2. A general overview of Danish immigration law .....	168
3. Asylum .....	175
4. Family reunification .....	181
5. Expulsion and returns .....	190
6. Sovereignty vs. international cooperation .....	195
7. Conclusion .....	203

**B. The Distribution of Constitutional Powers ..... 209**

**Chapter 8 The Folketing's Role and Tasks ..... 211**

Jørgen Albæk Jensen

- 1. Introduction ..... 211
- 2. The Folketing ..... 212
- 3. Parliamentary immunity ..... 220
- 4. The legislative process ..... 224
- 5. Limitations of the legislative power ..... 232

**Chapter 9 The Three Constitutional Powers..... 237**

Jørgen Albæk Jensen

- 1. The separation of powers principle ..... 237
- 2. Institutions and functions ..... 238
- 3. Institutions and functions in practice ..... 240
- 4. Separation of personnel in the three constitutional institutions ..... 249
- 5. Checks and balances ..... 250
- 6. The rule of law. Is the separation of powers a reality in Denmark? ..... 253

**Chapter 10 Political and Legal Responsibility for Government Actions ..... 257**

Jørgen Albæk Jensen

- 1. Introduction ..... 257
- 2. The parliamentary principle ..... 258
- 3. Formation of government ..... 260
- 4. The organisation of the government ..... 265
- 5. Tasks of the government ..... 266
- 6. Governmental responsibility ..... 267
- 7. Conclusion ..... 277

<b>Chapter 11 The Independence of the Courts</b> .....	<b>281</b>
Henrik Palmer Olsen and Mikael Rask Madsen	
1. Introduction .....	281
2. Organisational independence .....	283
3. Functional and personal independence of judges .....	288
4. Temporary judges .....	292
5. European obligations of relevance .....	294
<b>Chapter 12 Danish Consensus Democracy</b> .....	<b>299</b>
Flemming Juul Christiansen	
1. Introduction .....	299
2. Historical background to negotiations and consensus in the Danish case .....	301
3. The idea of Danish consensus democracy in comparison ....	305
4. Consensus in legislative votes .....	309
5. How and why legislative agreements function .....	312
6. Legislative organization, institutional rules and consensus .....	318
7. Norms of Consensus .....	319
8. Conclusion and Discussion .....	322
<b>Chapter 13 Constitutional Review of Laws as a Special Function for the Ordinary Courts</b> .....	<b>329</b>
Henrik Palmer Olsen	
1. The origins of constitutional review in Danish law .....	329
2. The first Supreme Court cases on constitutional review: Establishing the right to review .....	331
3. Standing cases: developing a new foundation for constitutional review .....	332
4. The move to a more extensive review .....	334
5. Constitutional and semi-constitutional review: The interplay between Danish legislation, EU law and European human rights law .....	341
6. Reviewing administrative decisions in light of finality clauses .....	353
7. Conclusion .....	355

**C. Selected topics from Danish Administrative Law . . . . . 359**

**Chapter 14 General Principles of Danish administrative law . . . . . 361**

Frederik Waage

1. Introduction . . . . . 361
2. The Danish Parliamentary Ombudsman . . . . . 362
3. The scope of the Public Administration Act . . . . . 363
4. General principles of administrative law were essential for establishing judicial review . . . . . 363
5. General principles of administrative law were inspired by civil procedure . . . . . 365
6. General principles of administrative law regarding the content of decisions . . . . . 366
7. General principles of administrative law regarding procedure . . . . . 371
8. The acceptance of state liability – a general principle of law? . . . . . 373

**Chapter 15 Co-designing with Interest Groups . . . . . 377**

Peter Munk Christiansen

1. Introduction . . . . . 377
2. The legislative perspective: Why establish an interplay with interest groups on the regulatory process? . . . . . 380
3. The ministerial governance perspective: Why establish independent collegial bodies? . . . . . 382
4. Origin, function, and the development of corporatism . . . . . 385
5. Post-1970 changes . . . . . 389
6. Present-day role of interest groups in policy formation . . . . . 390
7. Collegial governance in present-day public administration .. 394
8. Are committees and boards really independent? . . . . . 403
9. Conclusion . . . . . 405

**Chapter 16 Public digitalisation in Denmark . . . . . 413**

Hanne Marie Motzfeldt

1. Introduction . . . . . 413
2. Historical development . . . . . 414
3. Legal challenges . . . . . 421
4. Summary and perspectives . . . . . 426

<b>Chapter 17 Administration by Design and Good Administration Impact Assessment</b> .....	<b>429</b>
Ayo Næsborg-Andersen and Hanne Marie Motzfeldt	
1. Introduction .....	429
2. Methodology – the importance of the Danish Parliamentary Ombudsman .....	430
3. The case law of the Ombudsman regarding digitalisation ...	432
4. Principle of administrative law by design .....	434
5. Good administration impact assessment .....	437
6. Conclusion .....	440
<b>Chapter 18 Transformation</b> .....	<b>445</b>
Hanne Marie Motzfeldt	
1. Introduction .....	445
2. Automation when the legal basis is (relatively) clear and unambiguous .....	447
3. Decision support and machine learning .....	455
4. Perspectives .....	461
<b>Chapter 19 Public Authorities, Transparency, Freedom of Information</b> .....	<b>463</b>
Sten Bønsing	
1. Introduction .....	463
2. What is covered by the rules on public access? .....	464
3. Internal records .....	470
4. External records .....	475
5. Additional access .....	481
6. Decisions on freedom of information requests .....	483
7. Final considerations .....	485
<b>Chapter 20 Public Servants’ Duties and Freedom of Expression</b> .....	<b>487</b>
Sten Bønsing	
1. Introduction .....	487
2. Freedom of expression .....	507
3. Conclusion .....	509

<b>Chapter 21 Access to Justice</b> .....	<b>511</b>
Bettina Lemann Kristiansen	
1. Introduction .....	511
2. The concept of access to justice .....	514
3. Access to justice and legal aid .....	515
4. Access to justice in a rule-of-law state perspective .....	516
5. The emergence of the welfare state .....	518
6. Access to justice in practice – Denmark as a case .....	522
7. Conclusion .....	535
<b>Chapter 22 The Danish Model in the Labour Market</b> .....	<b>539</b>
Dorthe Pedersen	
1. Introduction .....	539
2. The concept: the Danish model .....	541
3. The institutional history of the Danish model .....	543
4. Continuities and discontinuities in concerted actions .....	555
5. Recent bargaining rounds – contesting key principles .....	560
6. Conclusion .....	563
7. The normative future of the Danish Model .....	565
<b>About the Authors and Editors</b> .....	<b>573</b>
<b>Index</b> .....	<b>577</b>