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The Institutionalization of Real Property Rights - The Case of Denmark

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In *The Mystery of Capital* Hernando de Soto states the problem that much of 'capitalism' today operates at a subconscious level. Western nations can create capital due to "an implicit legal infrastructure hidden deep within their property systems - of which ownership is but the tip of the iceberg." (: 7). "It is hidden in thousand pieces of legislations, statutes, regulations and institutions that govern the system. Anyone trapped in such a legal morass would be hard pressed to figure out how the process works" (: 41).

The purpose of this contribution is to address the subconscious, the implicit, and make the present Danish legal infrastructure and its emergence more transparent.

The contribution draws on recent research of European scope, performed in the context of the research activity *Modelling Real Property Transactions (COST G9)*, and also on the historical inclination of the author, having researched the development history of the Danish cadastre and other national property information systems from 1780s to 1920s (1969).

A definitional introduction delienates a Nordic conception of *real property right* and a definition of *cadastral systems* used in international research. Often, real property right is understood as a owner-right-land structure. In the above mentioned research, however, emphasis is on transactions and thus taking into account that "all the property records (..) are continually tracked and protected as they travel through time and space. Their first stop is the public agencies that are the stewards of an advanced nation's representations. .. By law, all these [governmental and business] entities have to follow strict operating standards that govern their document-tracking capabilities, physical storage facilities and staffing" (de Soto, 2000: 53). The Danish practise for conveyance of property rights, and for subdivision can be demonstrated by means of diagrams.

In order to uncover deeper layers of the present legal infrastructure, a set of [core 'packages' of cadastral systems](#) has been prepared. They are defined in the context of information modelling, but they may also serve as examples of, how institutional facts are created. For example, terrain objects are the *brute facts* from which an identified cadastral parcel is created. The parcel is existentially dependent on the terrain objects, but probably also on the cadastral index map, which provides the spatial reference frame for it (cf. Smith: 24). Similarly, the status function of recordings in the land book is discussed.

Turning towards the main part of the contribution, the Danish development of real property rights has to be understood in its European context. Reference is made to Randall Collins' interpretation of the works of Max Weber, specifically the chain of causes that led to the rational capitalism of the West (Collins, 1986).

The institutionalization of real property rights and the corresponding development of cadastral systems in Denmark is unsufficiently researched. The easier part is to track the technological development, e.g. through the following selection of topics:

- a. Writing, recording, and levying taxes at national scale. The cadastres of 1660s, and 1844.
- b. From *hartkorn* to money, meters, and mortgages. The technology of objectively gauging assets.

- c. The unity of government: Applying cadastral identifiers and cadastral indexes at the land books of the local courts. Annexing parcel maps to deeds (1845-03-28 Frd; 1847-04-21 Placat)
- d. The modern technology: Typewriters and index ledgers at the local courts (Tinglysningsloven, 1926). Municipalities collecting utility duties by means of joint computer facilities (e.g. I/S Jyske Kommuner edb-central, 1960s).

The harder task is to identify the turning points in history through which real property right was institutionalized. What selection of available evidence shall be picked, and what yet unknown evidence shall be searched for? Assuming as selection criteria that 'collective intentionality' should be at play, what should be the further design criteria of such narrative: The uniqueness of Danish history? The potential for supporting or rejecting elements of related narratives, e.g. the above mentioned analysis by Max Weber? Or the possible relevance for developing countries?

With the above questions in mind, the following list of headlines of remarkable stories have been subjectively made:

1. The Danish agricultural policy since end of 1700s: Keeping an agricultural holding that employs and feeds a family.
2. Supporting the entrepreneurs: Operating factors of the Danish land reform before and after 1800
3. Sharing risks for financing reconstruction after city fire through mortgage (Kreditkassen for Husejere i København, 1797; 1851 ff).
4. Inspired by a diaconal spirit: Providing basic education for children and care for elderly, who were left over from land reform (Andersen, 1996)
5. Assuming economic responsibility for tasks outside the estate: The Danish co-operative movement during the 1800s and its implication for decentralisation of public tasks after 1970.
6. Spreading real property rights to blue collar workers: Social-Democratic policies during the 1900s

Items 1 and 2 are briefly covered, and more emphasis devoted to item 3.

Finally, in the context of a summary, the role of the formal property system as such is discussed, cf de Soto (2000: 42 f).

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