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THE QUESTION OF HOW DENMARK GOT TO BE DENMARK - ESTABLISHING RULE OF LAW AND FIGHTING CORRUPTION IN THE STATE OF DENMARK 1660 – 1900

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**Getting to Denmark - The process of state building,
establishing rule of law and fighting corruption in Denmark 1660 – 1900**

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ABSTRACT

This article shows how fighting corruption and establishing rule of law has been on the agenda of the Danish rule for more than 350 years and how the level of corruption in the administration of state came to be limited by the middle of the 19th century. The article argues that fighting corruption in an attempt to consolidate the rule has been an integral part of the process of state building in Denmark since the establishment of the absolute monarchy in 1660. The institutional framework set up at this point along with continuing reforms to improve the administration in the period of absolutism between 1660 and 1849 came to form an important basis for an administrative culture based on the rule of law which came to minimize corruption. The building of the absolute monarchical state power came to be ensured through the establishment of a strong and comprehensive state hierarchy with a king at the top level who set out to guarantee the rule of law and attempted to be merciful to his subjects. The king was not only head of state but also the secular leader of the Lutheran state church, and Lutheran-based values and institutions were reinforced in the governance of the country. These elements in combination with the establishment of an increasingly Weberian bureaucracy after 1660 helped to curb corruption in the Danish administration of state, and this is likely to have played a key role in establishing Denmark's present high level of quality of government and global position as a best performer in terms of fighting corruption.

Keywords: Danish history of corruption and anti-corruption, Danish state building

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The puzzle of ‘Getting to Denmark’ and the arguments

Amongst social scientists ‘Getting to Denmark’ has lately become a metaphor for the question of how to transform weak states in developing countries into well-functioning societies such as Denmark and the rest of the Scandinavian countries. As Francis Fukuyama has coined it: ‘For people in developing countries, “Denmark” is a mythical place that is known to have good political and economic institutions: it is stable, democratic, peaceful, prosperous, inclusive, and has extremely low levels of political corruption. Everyone would like to figure out how to transform Somalia, Haiti, Nigeria, Iraq or Afghanistan into “Denmark”’ (Fukuyama 2011: 14; Pritchett and Woolcock 2008). Within the latest research on corruption and anti-corruption ‘getting to Denmark’ has also been used as the synonym for the ultimate goal of the ongoing focus on how the persistent problem of corruption can be fought effectively. In this interpretation the focus is on the historical paths that have been followed to control corruption in the states known to be the least corrupt in the world at present, which according to the index of Transparency International includes countries such as Denmark and Sweden (Teorell & Rothstein 2012; Mungiu-Pippidi 2013, Johnston 2013).

In relation to this several statistical analyses of which factors characterizes the well-functioning states of today have concluded that the quality of state institutions and their history plays a highly significant role (Charron & Lapuente 2013; Uslaner & Rothstein 2012). But what can have been the key elements in the historical development behind this apparent success with state administration in the case of Denmark? What type of rule, state building, administrative- and legal history have laid the grounds for this country’s present position as a *best performer* in terms of high quality of government defined as low corruption, high governmental efficiency and the prevalence of rule of law?

This historical empirical study sets out to trace and analyze the development of anticorruption mechanisms and practices in the state of Denmark between 1660 and 1900. The study demonstrates how elements such as the rule of law and a focus on creating civil servants loyal to the king and state were of particular relevance in the development of anticorruption mechanisms and practices in Denmark. These conditions were established gradually as part of the Danish process of state building, especially after the introduction of absolutism in 1660. Initially these conditions developed primarily to consolidate the supremacy and power of the absolute monarchy. For this to be possible the successive absolute kings needed loyal civil servants to exercise their will as both head of the state and the Lutheran state church. A conscious attempt by the country’s rulers came to create a reliable and devoted administration that gradually transformed the Danish administration towards the Weberian ideals of the bureaucracy and to a large extent minimized the use of bribery in the administration during the 18th century (Weber 1922/1971). By the middle of the 19th century the combination of the Weberian model of bureaucracy, a number of legal reforms that changed the civil servants’ working conditions and the strong will of the Danish rule to ensure maladministration was minimized, proved effective in curbing the level of corruption in the state administration. This established a low base level for both bureaucratic- and political corruption in Denmark, which has on the whole been maintained since the middle of the 19th century. The fairly low level of corruption

in the administration of state in combination with a strong prevalence of rule of law is very likely to have been a fundamental prerequisite for the establishment of the Danish welfare state in the 20th century. The absence of corruption have created the basis for the structure of trust in the administration, there have been conducive to the population's incentive to pay taxes on the level that is necessary for financing the welfare state.

The historical realm of Denmark

Naturally, the state of Denmark, which is today among the oldest monarchies in the world, has a long history in terms of state building with several key changes in relation to type of state control and geography of the territory. During the Middle Ages Denmark - as well as the other Nordic countries - formed into monarchies, which gradually became more powerful. The first Danish king converted to Christianity around 960, and in the following centuries the influence of the Catholic Church contributed to the establishment of the kingdom until the Lutheran Reformation of 1536. Between 1397 and 1523 Denmark, Norway and Sweden were united in a composite state known as the Kalmar Union ruled mainly by Denmark. The borders of this Scandinavian Union – the largest country in Europe at the time - extended from Greenland in the west to present day Western Russia in the east, and from Northern Germany to North Cape in the north. After Sweden's secession from the Union the Danish monarchy ruled over a mid-sized European state. For three centuries, from the early 16th to the beginning of the 19th century, the multinational realm of Denmark geographically included Norway, Iceland, the Faroe Islands, Greenland, the duchies of Schleswig and Holstein and a number of colonies in the West Indies, West Africa and India. In 1814 the territory of the former Danish empire was further reduced by the loss of Norway in the Napoleonic war, and in 1864 the loss of Schleswig and Holstein - after a military defeat to Prussia and Austria - leaving the Danish state as a small country in the European context (Bregnsbo & Villads Jensen 2005).

In Denmark the Lutheran reformation of 1536 came to play a crucial role in the formation of institutions of central government and society as a whole. After the reformation the Danish monarch became the secular head of the churches, which gradually formed into a state church. As head of the church the monarch and hereby the state gradually took over the responsibility and obligations for the well being of people that had traditionally belonged to the church. From the perspective of state building this top down model of reform enlarged the administrative tasks of the state and enhanced state capacities (Østergaard 2010; Knudsen 2000).

Alongside the expanding role in ensuring the very early welfare of its people, the Danish monarchy also had expanding military ambitions, and together these two elements played a major role in the Danish process of state-building. The constant rivalry between Denmark and Sweden between the 16th and 18th centuries created what has been termed a “fiscal-military state” (Lind 2012; Glete 2002). To build the military institutions and finance an army the state needed to be able to collect taxes effectively, and for this purpose it needed a civil administration. The people of the country on the other hand wanted something in return for their taxes. By the beginning of the 18th century and most likely already during periods of the 17th century the two Nordic

monarchies were the most militarized of the European states, and this played a decisive part in the expansion of the state administration (Lind 2012; Bregnsbo 1997, 17 - 22).

The early modern Danish state and the introduction of absolutism in 1660

The population of early modern Denmark consisted of a fairly small core of nobility with extensive land holdings, an urban middle class and a large peasantry. The nobles had privileges from the Crown, including exemption from taxation and the right to own land, fish and hunt, which enabled them to accumulate its wealth. Up until the introduction of absolutism in 1660 the nobility of Denmark held the majority of the offices in the central and local administration, which gave them substantial influence on the dealings of the Danish throne (Wolter 1982). In Danish history the period between the reformation in 1536 and the establishment of an absolute monarchy in 1660 is often termed *adelsvalde* meaning a state controlled or governed by the nobility.

In the 16th and 17th centuries there were several wars between Denmark and Sweden, and in 1658 the Danish kingdom had to cede all of the Scanian provinces east of Oresund to Sweden. This included three large provinces in the southern part of modern-day Sweden, whereby the Danish-Norwegian kingdom lost control of the entrances to the Baltic Sea, and the capital Copenhagen was left exposed on the new Eastern border. The continuous Swedish wish to conquer its arch-enemy completely was very close to being fulfilled at this point (Østergaard 2008).

In Denmark the military defeat of 1658 and a crippling economic breakdown led to a political crisis in 1660 which forced the nobles to transfer some of their power and privileges to the king, and a change of the constitution. After a military coup and the strong support from the bourgeoisie and ecclesiastical estates King Frederick III (king from 1648 to 1670) was acclaimed as hereditary sovereign in 1660. The new constitution, the King's law, signed in 1665 gave the king unrestricted and absolute power, his main task being to keep the kingdom undivided and maintain the Christian religion in accordance with the Lutheran confession of Augsburg. The king possessed the supreme power and authority to make laws and ordinances for his own good will and pleasure. Hereby the Kings law changed the former elective monarchy dominated by the aristocracy and gave the Danish realm the most sovereign form of absolutism in all of Europe (Lind 2000, 160 - 165; Tønnesen 2013, 11 - 20). In retrospect, this formally pure absolute rule, although exercised under various forms during the centuries, proved remarkably durable and lasted until the introduction of a liberal constitution in 1848 - 1849.

Reorganization of the administration after 1660

In an attempt by the Danish kings to consolidate the new absolute supremacy an essential tool was to deprive the nobility of its former political power. In the years after 1660 the distinctions of rank were minimized and all citizens were considered to be on a level under the absolute king. At the same time the monopoly of the aristocracy on land-owning and the higher offices in the king's civil administration and in the military service was

abolished. Even though the noble owners of the private estates in the countryside of Denmark did maintain a large responsibility in relation to public administration in the collection of taxes from their tenants, their overall influence on state affairs was to a large extent reduced. These radical changes meant the Danish model of absolutism came to pave the way for meritocracy in the recruitment of civil servants and also greater social equality even though this was most likely not part of the original intention (Ihalainen & Sennefelt 2011).

After the introduction of absolutism the king's government reorganized itself and its administration in a highly hierarchical manner centered on the monarch and based on the rule of law. The central administration was divided into a military- and a civil administration and organized in so-called "Kollegier" or departments - as already seen in Sweden - based on professional rather than geographical criteria, managing e.g. the Treasury or State-affairs. According to the King's law of 1665 the monarch possessed the unrestricted right to appoint and dismiss all royal officials. Gradually the aristocracy lost its prominence in the civil service of central-, regional- and local administration, and was replaced by a new group of bourgeois bureaucrats. By the beginning of the 19th century only 10 % of the royal servants had an aristocratic background, and these mainly occupied the offices in the Foreign Service (Gøbel 2000, 103 – 107; Jørgensen & Westrup 1982, 25 - 30). The rationale for the crown was that civil servants of non-noble origin would be more likely to be loyal to the king. They did not - to the same extent as the nobles - have a political agenda of their own and were also in general more dependent on the income from the office. In the years shortly after the introduction of absolutism, a main priority for the royal government was to create an administration loyal to the king. One of the initiatives taken by the central administration for this purpose was the establishment of a new office as *Generaljiskal*. The intent of this office, which referred directly to the king, was to strengthen the monarch's control over the administration. The high-ranking senior official in this office was the king's Chief Prosecutor with special responsibility to investigate and file appeals against the royal officials who had abused their office. Other central tasks were to recover tax arrears and otherwise safeguard the king's interests, including prosecution in cases involving Majesty- and state crimes (Jespersen 2000, 143 - 145).

The regulatory framework of the Danish absolutism:

The king's unrestricted right of appointment

The loss of the Eastern part of the realm to Sweden in 1658 and the wish of successive Danish kings to recapture the lost territory and safeguard the absolute monarchy intensified the need for an efficient administration for collecting taxes to finance wars. The first generations of monarchs after 1660 used their right to appoint actively to change the corps of royal officials and establish an administration closely linked to the king in person. In the early years of absolute rule, receiving a royal office was still seen as an act of grace from the king to a person he wished to support. But during this period – and especially during the regency of Frederik IV (1699 – 1730) the qualifications the royal servant needed to perform their duties came to be a prerequisite for receiving an office. In 1706 a summary system was introduced in the central administration, so vacant posts were

presented separately with information about the office and a record of all the candidates. These summary reports were presented to the king who made the final decision. This established a procedure in which the capability of the applicants was central for the King's management of appointments. An application needed to indicate the objective qualifications and had to be accompanied by certificates. This replaced the former procedures where the assurance of good intentions or personal relations had in many cases been sufficient to gain an office (Bjerre Jensen 1987, 55 – 90, 129 - 131). Even in the short period from 1700 – 1701 and again in 1715 – 1716 when Frederik IV chose to exploit his right of appointment financially by selling offices, it has been documented how capability by the buyers was still a priority. The sale of offices was used as a way of financing the Danish participation in the Great Northern War (1700 – 1720), and the construction of a building for the central administration close to the King's palace in Copenhagen. Today this building is still used and houses the Ministry of Finance. Under the Exchequer 47 offices were sold and under the Chancellery 56 went for sale which equaled 6% of the appointments in each department.

This way of raising money for the administration has not been used since 1716. Besides, even during the period when the offices were sold, the King did not compromise on the necessity for the officers to demonstrate that they were qualified to be a royal servant in this role. In practice, the sales of offices did not really affect the recruitment procedure, and the process was far from the French approach, where offices were put up for auction and automatically went to the highest bidder. In Denmark the civil servant never came to own his office in person even though he had paid to receive the nomination, which probably in the larger context of eliminating corruption was a crucial difference (Bjerre Jensen 1987, 283 – 305).

Essentially, what happened in Denmark after the introduction of absolutism in 1660 was a conscious move by the crown to curb the power of the new corps of royal servants. It was made clear from the start that the offices that were established were to be managed by the absolute king. The power those in office exercised was only a loan from the crown and they never came to own the office in person. An office could be lost at any time if the civil servant did not act according to the laws of the country and instructions of the administration (Bjerre Jensen 1987, 296 – 304). Naturally, there have been many exceptions from the strict rule of law in the administration – there are not to be compared with today's demands for transparent government. But it seems fair to say that the intentional moves made in Denmark after 1660 to create a corps of bureaucrats loyal to the king and with formal qualifications have over the years contributed to the prevalence of a state governed by law and civil servants loyal to the king in person, and later to the state.

The oath of office

Part of the framework for the royal servants was specified in an oath of office that was to be renewed in person for the successive monarchs. Especially for the kings in the first several decades after 1660, who aimed to pursue a personal royal absolutism, the establishment of a corps of devoted servants was a main priority. To occupy an office the royal servant had to solemnly swear an oath of fidelity and loyalty to the king in person and hereby

promise to perform his duties according to the king's laws and guidelines. It was specified that the civil servant must be honest, hardworking, diligent, work for the best of the king at all times and secure the king's fortune (The National Archive: Rigsarkivet, Danske Kancelli, Embedseder A92, A95). The word corruption was not used, but the oath did set up a standard and specification of what was expected of a person who occupied an office in the administration, and corrupt behaviour from the royal servants was definitely not part of the official framework.

For men in the highest state offices the oath was sworn to the monarch in person with prostration and hand-kiss. The royal servants lower in the hierarchy swore the oath to one of the king's representatives with the signing of a written formula (Lind 2000, 178 – 180; Bjerre Jensen 1987, 43 – 44). This bond of loyalty established by the oath between the absolute monarch at the grace of God and the servant is not to be underestimated. As with other monarchies in Europe up until around the middle of the 18th century the king's power was believed to be divine making the oath of the highest importance and hereby also the royal offices more attractive in general. At this time when the ideological basis for the absolute monarchy transformed from a divine right to a social contract, and the administration changed from royal- to bureaucratic absolutism the oath still remained a personal contract between the absolute king and his civil servant as a moral backbone and specification of the ethics of office. The practice of oaths in the royal administration was used more systematically after 1660, but was not an invention of the absolute rule. It had been known since the Middle Ages when it was common for the king to demand an oath from his life guards, members of the Court and top officials. Conversely, Danish kings would swear an oath to the people at their coronation (Jørgensen 1947, 264, 310 - 315).

In return for a loyal performance of duties from the sworn civil servants the absolute king and his advisors worked consciously to give prestige and social status to the officers. In 1671 a law on rank was adopted which allowed the King to acknowledge dutiful and faithful service with honorable titles of rank and attendant privileges for both the civil servant and his family.¹ This helped enshrine the principle of office and rank as something awarded in favor of merit by the king, and not something acquired by virtue of birth (Bartholdy 1971, 583 – 584; Knudsen 2006, 35 – 38). Both the bond of loyalty implied in the oath of office and the use of glorious titles and positions giving social status to the royal servants can be seen as important steps in an improvement of the regulatory framework for the officers.

Legal regulations and the use of surety and petitions

The end of the 17th century was in many ways a period of reforms in the administration of the state and country. In 1661 a commission was set up by the Danish king to review the existing legislation and remove what was not in line with the absolute regime, and prepare a contemporary process system. The work of the commission

¹ The law : Rangforordningen May 25th 1671, changed Feb. 11th 1734

resulted in The Danish Law of 1683 which made Denmark a legal entity. Previously the country had been divided geographically into a Jutland, a Zealand and Skåne jurisdiction each with its own legal basis. The code modernized, standardized the former provincial laws, and – to a large extent –introduced the principle of equality before the law. This collection of the majority of the country's laws into a legal code helped create a new basis for the enforcement of the rule of law in the realm of Denmark (Jørgensen 1947, 148 – 159; Tamm 1983).

At the end of the 17th century there were further reforms to reduce the likelihood of perceived criminal activity among royal servants. A number of laws, which regulated the duties of civil servants and imposed harsh punishments such as life imprisonment and loss of office for crimes of corruption, were introduced to minimize exploitation in the state's administration. The first explicit ban on bribery and the acceptance of gifts by the royal servants was introduced in 1676 and this piece of legislation was renewed and extended in 1700.² Under the law of 1676 it was forbidden to both give and receive bribes, and a reward to the person who reported the crime was granted. Clerical, civil and military officials were covered by this law. Throughout the 18th century, the ban on bribery was reinforced and targeted at specific groups of officials such as for example the custom officers.

In the Danish Law of 1683 and subsequent legislation the standards for official duties were also described: forgery by civil servants was included in the Danish law and a clear ban was imposed. Embezzlements were to be judged as theft from the crown. The king issued a law specifying and regulating the penalty for fraud and embezzlements in office in 1690. The sentence was hard labor for life unless the money was repaid to the king's Treasury.³

The Danish Law also specified demands for judges in the court system. They had to be both *uberygtede* and *vederhæftige* meaning they could not have been convicted or guilty of any act considered by the general public to be dishonorable.⁴ They also had to have sufficient private wealth to meet their financial obligations. This requirement was probably set up to minimize the risk of them being tempted by bribes or to embezzle. After 1660 some of those who took up a civil service office in the local and regional administration, such as custom officers and tax-collectors, were obliged to deposit an economic guarantee before they were sworn in as civil servants. If they did not have the money themselves, they had to find a guarantor – usually a prominent and well to do local citizen. This surety could be called in if the servant was to defraud the crown (Larsen & Thomsen 2007, 46 - 47, Nielsen 1951, 310 – 333).

In the will of King Christian V. of 1683 (king from 1670 – 1699) the guidelines for the professional standards he wanted the administration to emphasize was also described. Here it was specified that the judges should be honest and judge strictly according to the law. It was also determined that officials should lead and report financial statements. The importance of merit and qualifications before Naissance was also stressed (Worsaae 1860).

² The law : Forordningen om Forbud paa Skienk og Gave at give og tage, March 20th 1676 and October 23th 1700

³ The law : Forordningen Om Tyves og Utrøe Tieneres Straf, March 4th 1690

⁴ Christian 5. Danske Lov 1683, 1-5-1.

A central challenge for all heads of states was to receive sufficient information about the actual functioning of the administration. Denmark followed several of the other early modern European states in setting up a system of petitions or *supplikker*, as it was called in Danish. Under the Danish law of 1683 any of the king's subjects had the right to send in these applications or petitions.⁵ The topics brought to the king's attention in this manner ranged widely from issues that pertained to trade, to family and legal matters: applications for the king's pardon; a farmer's assertion that he was harassed by a landlord; general complaints from or of the royal servants or suggestions for changes and improvements to the administrative procedures. According to the law the *supplik* had to be sent to the king's central administration through the local civil servant unless it concerned a complaint about the local administration - then it should be guided directly to the king's administration in Copenhagen. Throughout the 18th century the use of petitions increased dramatically. In 1706 the Danish Chancellery received 1539 petitions by 1799 the chancellery were dealing with 11,298 petitions (Bregnsbo 1997, 87 – 90). This established a formal space for communication between the king, his administration and the people where wishes or complaints about the system and its administration could be filed. In more general terms it also contributed to a change from a formal top-down, non-participatory system of government to Danish absolutism, in which the subjects of the king had a chance to be heard while the monarch had an opportunity to exhibit and emphasize the legitimacy of his rule by being merciful, accessible and able to guarantee law and justice (Bregnsbo 2011, 55 – 65; Lind 2000, 213 - 219).

Even though Danish absolutism as described in the King's law of 1665 was the most sovereign form of absolutism in all of Europe, Danish rule cannot in general be characterized as wicked but more as a regulated despotism. As already mentioned, the Danish kings did have special responsibilities as the secular leader of the Lutheran church. The state was to a large extent a religious state and the absolute rule took up the responsibility for turning the population into true Christians. Starting in the late 18th century, the kings and their governments were inspired by the ideas of the Enlightenment, and royal power in the latter part of the period has been interpreted as an absolute monarchy controlled by public opinion, where government to a large extent was performed in accordance with the will of the people. The royal government worked extensively in the interests of the people in maintaining law and order, and gradually introducing reforms desired by people which the regime *inter alia* could follow through the use of *supplikkerne*. This form of communication gave the subjects of the king more than just an impression of being heard (Seip 1958; Lind 2000, 213 - 216).

From the perspective of fighting corruption the imposition of standards for regulating the ethics of office and the legal framework criminalizing corruption must have been significant. In the Danish case it is possible to say that by the end of the 17th century the state had adopted laws defining the duties of the civil servants and had specifically criminalized bribes, forgery, fraud and embezzlements. Meanwhile, the system of *supplikker* gave the crown a way of receiving information about maladministration by the royal servants. This must in general have

⁵ The Danish Law 1-26-1,2,3,4 Om Supplicationer

increased the possibility of corruption being discovered and in so doing helped in its prevention. At the time the laws were passed, they were probably to a large extent part of the absolute monarchs' attempts to preserve their position and power. But over the years the legislation contributed to the establishment of an administration with a corps of civil servants largely loyal to the king and the laws of the country rather than private self-interests.

Formal qualifications and recruitment based on merit

By the middle of the 17th century the officials of noble origin had often studied law, languages, philosophy or theology at different universities in Europe. Others had received practical training in an office of a civil servant where they started out working with copying letters, keeping books etc. and hereby learning the administrative procedures, the formal language used in the documents and the laws. At the University of Copenhagen a university examination in law was established in 1736, and at the same time it was decided that no official in the future was to achieve the office of judge without a formal law degree. The establishment of the law school was intended to improve the officials' skill and knowledge of Danish law (Løgstrup 1991, 504 – 513; Iilsø 1985, 111 – 121). The legal graduates, mainly of bourgeois origin, gradually came to occupy the offices in the administration, thereby contributing to the professionalization of the civil service. Throughout the 18th century, jurists gradually took over the bureaucratic offices, starting in the central administration in Copenhagen and spreading slowly to most regional and local higher public offices. Around the beginning of the 19th century, recruitment to the royal nominations in the administration was fundamentally meritocratic, and had improved the conditions for building a state governed by the rule of law. In general the official requirement for the royal servant's formal knowledge of the law was strengthened, and by 1821 a new law was passed making it a requirement to have a law degree in order to obtain a wide range of state offices (Gøbel 2000, 133 – 157; Feldbæk 2000, 318 – 325; P.U. Knudsen 2001; Pedersen 1998, 374 -376).

All in all, within the absolute monarchy's first 100 to 150 years a number of specifications for the royal servants' qualification were put in place and the regulation and level of control of the individual servants became more detailed. The administration's competence, diligence, legal knowledge and allegiance to the king came into focus in a more direct way than was seen previously. The need for the civil servants to be serving the state and king rather than private self-interest was central. Recruitment primarily came to be based on formal qualification and merit. These changes in the system of appointment as well as the legal set up for the royal servants is very likely to have laid the grounds for the tighter definition and specification of the professional responsibilities and duties in office and the development of a more general notion of the ethics of public office. The combination of these administrative and legal reforms might very well have been key elements in the early establishment of what we today can see have developed into state institutions of high quality.

Corruption in the Danish administration after 1660

Despite the several attempts in the decades after the introduction of absolutism to strengthen control over the administration, improve the formal qualifications of the royal servants and set up a legal framework to criminalize corrupt crimes such as bribery, forgery and embezzlements, corruption in the royal administration was a real problem. One of the most prominent cases in Danish history became known in 1676 shortly before the first law specifically banning bribery was adopted. Here the chamber secretary and chancellor of King Frederik III, Peter S. Griffenfeld, who had played a crucial role in the writing of the Kings law of 1665, was charged. He was convicted and imprisoned for life for his involvement in the systematic sale of clergy and secular offices, embezzlement, abuse of office, acceptance of bribery and insult of the majesty (Olden-Jørgensen 2000). Another prominent case at the top level of the central administration in Copenhagen was discovered in 1725 when Frederik Rostgaard, the chief secretary of the Danish Chancellery, who dealt with the affairs of the state, justice and the church, was convicted. He admitted to having received what he called “Diskretion” or gratuity from the people he had helped while doing his job. As defense in his plea to Frederik IV he declared and assured the king that he had never acted against the will of the king after receiving the bribes or hereby against his oath to the monarch. Despite his plea he was convicted, lost his office and was banished permanently from the capital (Gøbel 2000, 212 – 214). Bar these prominent cases of corruption in the royal administration at the end of the 17th and beginning of the 18th centuries and several other minor cases, there has been no systematic empirical study of corruption during the early years of absolute rule. Unfortunately our knowledge still rests on these scattered cases up till the end of the 18th century. As in most other European countries the history of corruption and the development of anti-corruption mechanisms have been and still are greatly neglected by historical studies in general (Kennedy & Frisk Jensen (ed.) 2013).

A study of corruption in history

The systematic empirical study of a shady crime such as corruption is notoriously difficult, both in contemporary culture and from a historical perspective. Nevertheless, the author has attempted such a study in respect to Denmark in an attempt of gaining a greater understanding of the factors that underlie the country’s transition towards the low level of corruption reported for today’s government and administrative systems. The author began her foray into this area of study with her PhD thesis “Corruption and the Ethics of Public Office – corruption amongst Danish civil servants during the period 1800 to 1866”, completed in 2008. Initially a study was undertaken of cases of maladministration by civil servants in the secular part of the royal administration between 1736 and 1936. The aim was to trace exactly what the officials had to do to be suspended from office and investigate the variety of crimes in which the royal servants allegedly engaged. Using a modern definition of the phenomenon of corruption as *abuse of public office for private gain*, the crimes of embezzlement, forgery, fraud and bribery were characterized as corruption when carried out by the royal servants. In the historical sources

from the administration in the 18th and 19th centuries the term corruption was seldom used, and when it was it tended to have more general meaning such as malpractice in relation to the administration.

It has not been, and will never be, possible to trace systematically those historical cases of corruption that were not discovered at the time. So a basic starting point for this initial study was to single out the cases where public officials were relieved of their responsibilities on grounds of misconduct or malfeasance. This was possible through a systematic reading of the short biographies of the several thousand men who graduated with a degree in law from the University of Copenhagen in the years between 1736 and 1936 (Falk-Jensen & Hjorth-Nielsen 1957, vol. I – IV). Since these graduates were the ones who primarily occupied the offices in the public administration from the end of the 18th century these biographies provided an insight into corruption, as defined above, in the time period roughly from 1790 to 1936. The information gained from this search has been combined with a reading of the published registrars from the National archives of Denmark, *Statens Arkiver*, and especially the surveys of material in the archive concerning the financial and legal administration.⁶ Another source of information has been the several published employment records from the civilian, secular part of the administration. These records hold information on the employment of the civil servants, which offices they held and in many cases also when and why their employment ended, such as death while still in office, retirement or suspension due to misconduct.⁷ The reading of these records has also been supplemented by a systematic study of the official announcements from the administration published in *Collegialtidende* from 1798 to 1847, and in *Departementstidende* from 1848.⁸ In the author's estimation, the combination of these studies provides valuable insight into corrupt tendencies among civil servants in Denmark between 1790 and 1936.

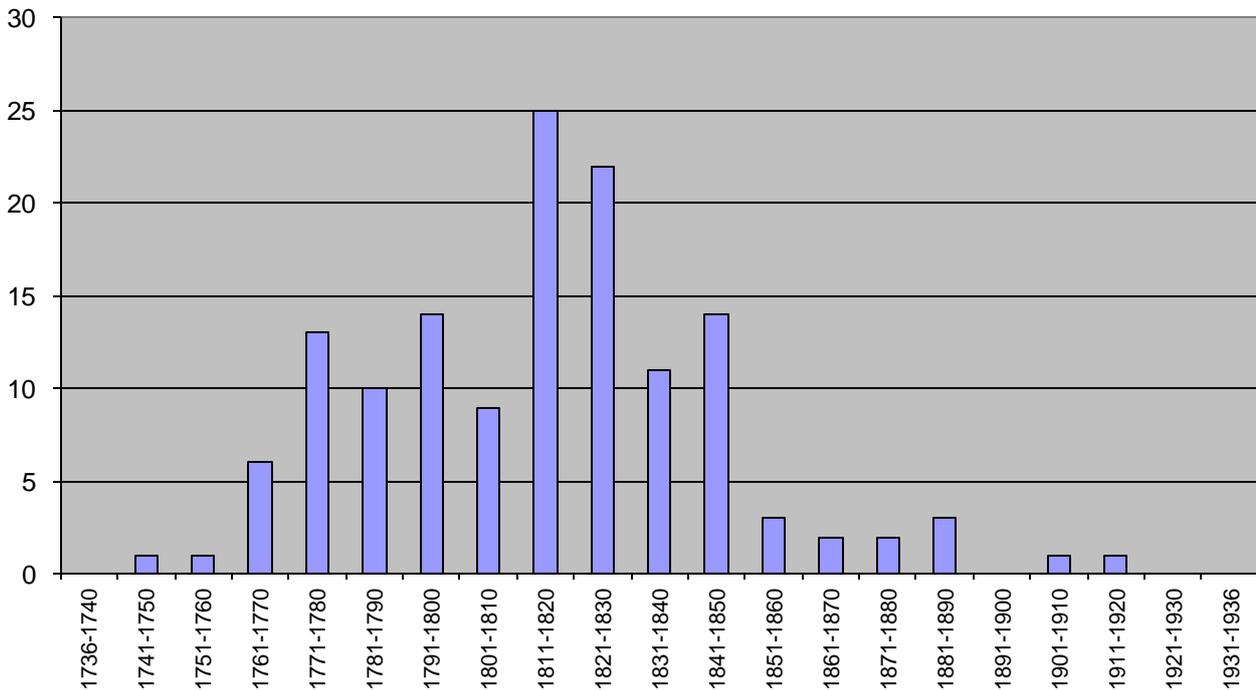
For the total number of years from 1740 to 1936, the literature investigation identified 203 cases where public officials in the civil secular part of the administration were discharged on grounds of misconducts or malfeasance.

⁶ Vejledende arkivregistratur I: "Danske Kancelli og de dermed beslægtede Institutioner"; Vejledende arkivregistratur II: "Rentekammeret, Generaltoldkammeret og Kommercekollegiet 1660 – 1848"; Vejledende arkivregistratur XII: "Rentekammeret – danske og norske afdeling 1660 – 1848; Vejledende arkivregistratur XXI: "Enevældens Finansarkiver"; Registraturen for Landstings- og Kommissionsdomstolsarkiver for Landsarkivet for Sjælland.

⁷ Kringelbach (1894) "Den civile Centraladministrations Embedsetat 1660 – 1848"; Kringelbach (1889) "Den Civile Centraladministration 1848 – 1893"; Rosenkrantz (1936) "Amtmandsbogen – portrætter og biografier af stiftamtmand og amtmænd i Danmark 1660 - 1935"; Bruun (1919) "Danmarks Amtsforvaltere 1660 – 1848"; Richter (1907) "Danske Postembedsmænd med kgl. udnævnelse"; Olsen (1929) "Den Danske Postetat 1642 – 1927"; Richter (1896) "Den danske Toldetat 1750 – 1896".

⁸ The indexes of *Collegialtidende* and *Departementstidende* has been examined in the years between 1800 and 1866, there were the main chronological period of the Ph.D.-dissertation. In the index all notes on "Bestalling casseret" (Office discarded) has been checked.

Civil servants in the Danish administration discharged on grounds of misconduct of malfeasance 1736-1936



The fact that there are few cases before around 1770 – 1780 in all likelihood relates to the search method. As noted above, before the end of the 18th century the majority of men in the administration did not have a background in the law. Therefore, it is difficult to draw conclusions regarding bureaucratic corruption before 1790 based on the search methods used for this analysis.

For the years from 1800 to 1866 the initial search for civil servants discharged on grounds of misconduct of malfeasance has been combined with a detailed empirical study of a large number of court cases for the discharged civil servants (Frisk Jensen 2008). These studies show that during the years 1811 to 1830 the number of officials convicted of and sentenced for corrupt crimes escalated to a level of about two or three cases a year. Whether this escalation represents an actual increase in the number of civil servants engaged in corruption or a closer monitoring of the civil servants by the crown resulting in more cases put on trial is hard to determine exactly. In 1824 though, the situation was directly characterized as an “Epidemic of embezzlements” in the Danish administration indicating the increase in the number of cases of malfeasance was real and perceived as very serious at the time.⁹ This development was followed by a decrease in misconduct amongst civil servants, so that by 1860 Denmark had reached a very low level of corruption: a level that has remained fairly constant since, which is probably the most important insight of the study.

⁹ Mentioned as “den herskende kasse-mangel Epidemi” in a letter from Supreme Court Justice Michael Lange to the top official in the Danish Chancellery, præsident F. J. Kaas, May 13th 1824. (Rigsarkivet, Privatarkiver. F. J. Kaas, no. 5825)

Corruption in the Danish administration in the 19th century

In the beginning of the 19th century Denmark was involved in the Napoleonic wars as an ally of France. The costs of the war were immense, and in 1813 the Danish state went bankrupt and the country was hit by a severe economic crisis lasting until about 1830. It was during this period that there were a larger number of prosecutions of civil servants in regional and local administration in particular, but also in the central administration, for crimes relating to corruption. The closer study of the court cases showed the vast majority of cases were about embezzlements. The civil servants would have been affected by the economic crises: inflation would have eroded salaries, while declining activity in the community would have meant lower wages for the officials partly paid by the so called *sportler*, which was a kind of pay based on commission. In this situation several of the officials began to “borrow” the money they held because of their office. Royal officials were allowed to borrow from the public funds; they just had to repay the money when the audit took place. If they could not repay the loan, it was to be considered as a crime of corruption (Frisk Jensen 2013; Frisk Jensen 2009).

The detailed study of the archive material for the court cases where civil servants were put on trial for their corruption in the years after 1811 demonstrated the seriousness of this crime. Corruption was not acceptable. The absolute king, his advisors and court of law were very consistent in their condemnation of the misconducts of the civil servants despite the poor economic climate. As mentioned earlier, in this period Denmark also experienced the greatest loss of territory in its history with the transfer of Norway to Sweden in 1814. The future of the state had been at stake during the Napoleonic war. The Danish kind of absolutism was under threat as other European countries experienced revolutions and the introduction of liberal constitutions as was the case in Norway in May 1814. The French revolution was also still remembered. Danish intellectuals were increasingly aware of liberalism and democracy, and the majority of the population was experiencing economic hard times. The Danish king Frederik VI. (king from 1808 to 1839) and his closest advisors quite rightly feared a revolution, and the corruption of the king’s civil servants was most likely perceived as a threat to the absolutist rule. The increase in administrative and economic misconduct among the civil servants presumably drew the crown’s focus as something that needed to be handled and punished if the king was to maintain absolute power. This is most likely why the crown was so consistent in its condemnation of the corruption of the civil servants. When corruption was discovered, the civil servant was usually suspended while his case was investigated thoroughly before he was put on trial. If this had not been the case and the king had given the civil servants a pardon – as an absolute king could – and hereby accepted the officials’ misconducts, this could have led to an administrative culture where embezzlement was an ingrained part. Instead the quite opposite happened, and this could well be one of the important elements in the history of combatting corruption at this point of time in the administration of Denmark. Subsequent studies on corruption in both Sweden and Norway have shown a fairly similar development with an increase in the number of court cases of malfeasance after 1810 and in the case of Sweden also a drop to a fairly low level after the middle of the century (Teorel & Rothstein 2012; Teige 2014)

Another central finding from the empirical study of the many cases of civil servants put on trial for misconducts in Denmark in the first half of the 19th century was that not many cases of bribery were found. The misconducts of the civil servants primarily took the form of embezzlements. It appears that by the beginning of the 19th century bribery was no longer a common form of corruption in the Danish bureaucracy and did not form a deep-rooted part of the administrative culture. One guess how to explain this development could be that the legal and administrative framework set up for the civil servants in the decades after 1660 over the years had an effect in minimizing the use of bribery by the civil servants. If bribery amongst the crown officials had been more commonplace in the beginning of the 19th century, then the path to eliminating corruption would have differed to the one followed to prevent embezzlement. In the case of embezzlement the problems discovered between 1811 and 1830 could be handled with the suspension and conviction of the specific civil servant who had stolen from the public funds he was hired to administer. A well-developed administrative system of bribery on the other hand, would have involved a large number of people and probably demanded a different punitive approach. Even though the consistent condemnation of the maladministration of the civil servants by the crown in the beginning of the 19th century most likely sent a strong message to act according to the rule of law in the administration, these prosecutions were also followed by a number of legal and administrative reforms. These combined efforts most likely contributed decisively to the lowering of the overall level of bureaucratic corruption by the middle of the 19th, which is identified in the empirical study.

Legal and administrative reforms in the administration in the 19th century

Monitoring of the civil servants

In 1803 an initiative was taken to strengthen control over the local and regional administration and so ensure practice was conducted according to the law and the instructions of the civil servants. One of the deputies in the Danish Chancellery was to travel to the provinces of the country to inspect the administration every year. It was the deputy's job to review the organization of the administration, how books were kept etc. and guide the local or regional official if errors or omissions were found. This system continued until 1807 when it was suspended because of the war. In 1819, these regular inspections were reinstated after the Danish Chancellery received a large number of complaints about civil servants' administration, made by the general public to the king. In the years between 1819 and 1830, several top officials from the central administration and judges from the Supreme Court were sent to the different regions of the country to audit the administration and especially the account books of the officials (Jørgensen 1969; Frisk Jensen 2013, 201 – 212). This increased Crown surveillance meant that the likelihood of corruption being discovered increased considerably and it was during these official trips of inspection that the fraudulent activities of several civil servants were discovered. In line with the will of the crown not to accept maladministration, the officials were prosecuted, and in many cases they were given life imprisonment. This surveillance was probably one of the key elements in changing the situation. In a fairly small country like Denmark after 1814, news of the crown's approach to bureaucratic corruption would have spread quickly both among the civil servants and the population in general. This spread of information will have

occurred even though the press was not free until the end of the absolute rule in 1849, and the king could not be criticized openly. Since the civil servants were a direct responsibility of the king, any critique of the administration could be perceived as or related to a lack of capability by the sovereign monarch. This perception was naturally irreconcilable with the autocratic form of government, and malfeasance had the potential to cause discontent with the king and his rule.

A major revision of accounts and audits

In the reports made by the delegates who travelled through the regions of the country to monitor the administration, one of the clear conclusions was that the standard procedures for check, audits and accounting in general were out of date, badly organized and inefficient. In 1824 this led the king to appoint a committee of top officials to prepare a new set of laws to regulate the state's accountancy. One of the most prominent members of this Committee, Jonas Collin, explained how he saw the slow and inefficient audit as the main reason for the many cases of embezzlements by the civil servants in the beginning of the century. He argued that the state needed to centralize the financial administration so expenditures and revenue would no longer be divided into various departments which hampered or prevented a complete view of the state budget. The commission worked on this complicated and difficult task until 1835 and came up with a recommendation that led to the adoption of a new law for the administration of public accounts in 1841. Also in the year 1835 the state budget was published for the first time. Publicity and transparency in the administration was definitely not a characteristic feature of the absolute rule, and the news of the size of government debt caused great concern or almost consternation in the country (Olsen 2000, 417 – 424).

The new law of January 1st 1841 introduced a more detailed keeping of accounts, separate account books for separate offices and a considerable intensification of audits. Very importantly from an anti-corruption perspective, the law also abolished civil servants' right to borrow from the public funds. The law demanded a clear separation of civil servants' private and public funds. The former laws had given the officials the right to have credit in public funds as long as he was able to pay his debts when his accounts were checked. This right had proved very hard for the civil servants to exercise responsibly in hard economic times. The inefficiency of audits before 1841, had provided an environment in which the officials' debts could escalate to a point where the chance of repayment no longer existed (Frisk Jensen 2013, 212 – 216).

New penal codes

By 1840, a new general penal code was introduced which included a new law on misconduct in office. The crimes of malfeasance as embezzlement, fraud and forgery were described in far greater detail than in the former laws from the end of the 17th century, and new standards for meting out penalties were introduced. In the former penal code, the punishment for embezzlement had been fixed, which gave the civil servant no incentive to stop committing corrupt actions: the penalty would be the same no matter if an official had stolen a small or large amount from the public funds. The penal code of 1840 was drafted by one of the most competent top officials

in Danish jurisprudence at the time A. S. Ørsted. He had experience from a long career in the central administration and as a judge in the Courts of Copenhagen, and had also been one of the deputies who inspected the administration in the provinces several times in the 1820s. Furthermore Ørsted had a thorough knowledge of the criminal laws of malfeasance in other European countries, which inspired his draft for the penal code (Tamm 1989, 158 – 161, 184 – 190; Frisk Jensen 2013, 220 - 225). The 1840 penal code was changed again in 1866 to include a separate chapter specifying the forms of misconduct of public servants in even greater detail and it also introduced the general principle of no punishment without law.

Salaries and pensions for the civil servants

During several of the trials at which civil servants were convicted of corruption after 1810, the salary system and insufficient wages were mentioned in their defence. By the beginning of the 19th century, a fixed salary was in place for the royal appointments in the central administration, in the Supreme Court and the higher regional courts. However, officials in regional and local administration were primarily paid in the form of a combination of a small fixed amount and a certain percentage of service and legal fees called *sportler* (Feldbæk 2000, 326 – 331). Even though the service and legal fees were regulated officially they continued to represent a potential source of income for the corrupt civil servant. By the 1850s, salaries had been raised and civil servants in general had become a part of the well-to-do middle class. In 1861, a new law on the salary system for the state's civil service was passed which abolished the fee system and granted fixed salaries to all categories of officials. During the 18th century, many of the civil servants' official duties had been added and posts were accumulated in an attempt to provide civil servants with a decent wage, so by the middle of the 19th century, the majority of civil servants were also full-time employees (Knudsen 2000, 542 – 544; Knudsen, P.U. 2001, 381 – 386).

In the early years of absolute monarchy, pensions for the civil servants were considered to be an act of royal grace the civil servants could apply for in connection with their resignation. In an attempt to solve the persistent problem of financing the pensions a public pension system for deserving elderly officials was established in 1712. The funds to finance the pension system were, however, insufficient throughout most of the 18th century. From the late 1700s, it became fairly standard practice to give an official at their resignation a pension that amounted to around 2/3 of the amount of their previous salary. The Danish constitution of 1849 stated the right of civil servants to receive a retirement pension at the age of 70 or in case of illness. The detailed rules of the retirement reform were furthermore specified in an act in 1851, which also stated that the right to a pension could be lost in case of misconduct in office (Frisk Jensen 2013, 230 – 232).

In total this set of legal and administrative reforms introduced during the first 50 to 60 years of the 19th century, in combination with the will of the kings and their top advisors to condemn the misconducts of the civil servants probably made it more worthwhile to work according to the rules and receive a pension than to try to increase income by corrupt means. This contributed most likely to a new – and fairly non-corrupt – overall setting for the

Danish administration, which was in place around the middle of the 1800s. At this point in time in the process of state building in Denmark several other central elements in modernizing the state framework were introduced. The liberal constitution of 1849 changed the absolute rule to a constitutional monarchy, established a bicameral parliament, separated the powers and granted freedom of press, religion and association. The king in person did maintain a central role in the government until 1901, when cabinet responsibility was introduced, and by 1915 women were enfranchised.

The administrative and legal reforms in the first half of the 19th century supplemented an institutional set up and framework for the bureaucracy that was already to a large extent - according to the standards of the time - based on law, justice and had undergone a professionalization. Offices were constructed so the power the civil servants exercised was only a loan from the crown and the chance of being dismissed was present at any time. The royal officers had sworn an oath to the king and with his oath received a specification of the duties in office. The loyalty demanded by the kings of the civil servants led to a more clear distinction between their interests as private citizens and their duties in office. Special attention had been given to the establishment of the judicial institutions and qualifications such as formal training in law came to be a requirement to obtain an office. Malfeasance as bribery, fraud and embezzlements had been criminalized and in the larger perspective an increasingly Weberian type of bureaucracy came into place in the state of Denmark after 1660.

Towards the Weberian bureaucracy

As already stated, by the beginning of the 19th century the Danish state administration had many of the central features of an efficient and rational working bureaucracy as described by Max Weber, but not all. The detailed study of civil servants convicted of and sentenced for corrupt crimes between 1800 and 1866 did reveal an insight into some specific problems with respect to the level of control of the civil servants. Corruption – mainly in the form of embezzlements - was still possible because of the lack of separation between the civil servants' private and public finances, the absence of fixed wages and full time work and the lack of systematic control over the civil servants' accounts. These shortcomings in the bureaucratic set up of Denmark were remedied and improved as the country's administration moved towards an even more Weberian model with the reforms in the first half of 19th century. This is when control over the civil servants' accounts and practice of administration was strengthened with the introduction of additional inspections by the deputies from the central administration between 1819 and 1830. By 1841 a new practice for keeping accounts had been introduced along with systematic and more efficient audits, and the formal separation of private and public accounts for the civil servants was adopted. A new penal code of 1840 renewed and updated the criminal laws of malfeasance and corruption which helped to specify what acceptable and legal behavior in an office was. Around 1850 salaries for the civil servants in general had improved and their wages were sufficiently generous that corruption was less likely. By 1861 fixed salaries were in place for the personnel in all of the administration, and a pension was guaranteed by 1849 to the civil servants retiring because of age or illness. This complex of legal and administrative reforms, passed largely between 1840 and 1866, brought the administration of the Danish state a great step closer to the ideals described

by Weber, and is probably an important part of the explanation of how the level of corruption came to be very low already around the middle of the 19th century.

The question of 'Getting to Denmark'

As demonstrated the historical path to curb corruption in the Danish administration evolved over several centuries as part of the establishment of an absolute state based on law and order and with a large influence from the Lutheran state church setting up a moral backbone for both the individual civil servant and the rule as a whole. During the first century after the introduction of absolutism in 1660 the legal and administrative framework the civil servants were working within were strengthened and changed towards the Weberian ideals of bureaucracy. This development has most likely played a central role in minimizing the use of bribery in the administration. A second major step in terms of fighting corruption was taken in the first 50 to 60 years of the 19th century after several civil servants were caught with embezzlements during a severe economic crisis. The control with the administration was intensified and the legal framework renewed and tightened up to clarify the ethics of public office. The absolute rule demonstrated a will and power to fight the corruption of the civil servants through a fairly consistent condemnation of the wrongdoing both high and low in the bureaucratic hierarchy, which is most likely of great importance in fighting the disease of corruption in any state administration.

In general terms the attempt of trying to explain how Denmark got to be Denmark runs the risk of producing a deterministic explanation. Though as several elements in the history of state building and fighting corruption in Denmark is seen as constitutive of the present, although not necessarily determinative of it, this approach does contribute to a more general explanation of how and why Denmark ended up in the present situation with a state characterized by high quality of government. In this analysis of the numerous elements since 1660 that most likely played a part in establishing the current state of corruption in Denmark's governance it is naturally not possible to determine which of these elements have played the most important role. Detailed empirical comparative studies within the European states would be required in order to work towards an answer. The hope is that this study of the Danish process of state building and development of mechanisms for fighting corruption will create a foundation for further studies and attempts to compare these processes across countries. This study of anti-corruption measures could certainly have been expanded with empirical analysis of elements in the state building processes that are common in the Scandinavian countries, such as the traditions of rural self-government also present in Denmark in spite of the absolute rule, the agrarian and egalitarian nature, the long-standing monarchical traditions and Lutheran based political culture and values and a strong link between state and church. Another central element in fighting corruption is most likely linked to the relatively high levels of literacy for both men and women in the Scandinavian countries, at a comparatively early point of time in history. As Bo Rothstein and Eric M. Uslaner have noted in their study on the roots of corruption there is a strong statistical link between the levels of education in 1870 and a country's level of corruption today (Rothstein &

Uslane 2012). Societies which achieved a high literacy level in the 19th century or before are the ones, which to a large extent have succeeded in fighting contemporary corruption. This points to the importance of making connections between the historical roots of state building, the development of solid institutions, the rule of law and the true nature of the regimes, in future studies on the development of anti-corruption mechanisms and practices in history.

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