The Development of the Danish Legal Profession[1]

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1 This article is based on the author's book on Danish Judges, *see* Hammerslev 2003.

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In most western countries the number of jurists has increased during the 20th century. At the same time jurists have been replaced – or outnumbered – by other professions especially in state administrations and as the prime expert group on the market.[2] This might seem as a surprise taking into consideration the importance of jurists in the early developments of the modern states and the market. In his studies of the development of law and the modern western states Max Weber linked together legal professionalization with the development of the modern state by pointing to jurists trained in formal rational law as an important factor in the development.[3] A contrast exists, however, between legal professionalization on the European continent and in the common law countries. Weber found that on the continent law was developed in close relationship with legal professionalization and the development of the state. In common law countries law developed differently not least because of other structures of the legal profession. Later studies, like Dietrich Rueschemeyer's comparative study of German and the American lawyers, confirm this.[4] On the European continent, the early rational bureaucratic state provided the base for the growing utilisation of expert services. In these countries the state was the power base of the legal profession and the purchaser of expert legal knowledge. In contrast the legal profession in the US developed intimately in relation to market forces.[5] The state was not the principal arena of the professions.

In Scandinavia, Vilhelm Aubert examined the role of the Norwegian legal profession in the development of the modern state. Jurists held important positions in modern society, first in the state and later also in the field of commerce. Judges played an important part as independent peaceful dispute resolvers. However, despite the increasing amount of legislation in the second half of the 20th century, and hence an increasing juridification of society, Aubert argues that jurists were losing their central positions to other professions.[6] In other words: Aubert argues that other professional groups replace jurists and especially judges. The empirical evidence Aubert relied on was statistics about the development of the number of members of the legal profession vis-à-vis other professions and statistics indicating the sectors in which members of the legal profession were employed.[7]

This article asks whether Danish jurists are replaced as they are in other Scandinavian countries. Moreover it asks if the development of the legal profession and professionalism were related to the state or the market. Thus the article concerns the genesis and development of the various sections of the Danish legal profession using the same indicators as in the other Nordic countries, namely statistics on the number of jurists in various sectors of

2 *Cf.* Abel and Lewis 1988a; Abel and Lewis 1988b; Abel and Lewis 1989.

3 Weber 1978; Hammerslev 2007:149-162.

4 Rueschemeyer 1973; Rueschemeyer 1983:38-58.

5 *See* also Larson 1977.

6 Aubert 1964, 77:300-320.

7 In Sweden, Margareta Bertilsson found the same developments as Aubert did in Norway, Bertilsson 1989:9-31; Bertilsson 1995. *See* also Hydén and Anderberg 1995:217-251.

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society.[8] The article follows the development of legal professionalism and its dependence of and precondition for the development of the state and the market. Another purpose of the article is to collect information about the number of jurists since the 17th century from various sources.

It starts by examining variations of the legal profession in the 20th century as an entire group before the profession is divided into different occupational groups of jurists. Then it examines the number of jurists in relation to other professional groups. In order to learn about the power struggles and alliances the legal profession has been involved in, it begins the examination of different occupational groups by outlining the development of the legal profession from 1660 with the absolute power of the King. The different groups of jurists are divided according to the occupational group they belong to, that is jurists in the central administration, advocates and judges.[9]

1 Changes and Continuities in the Legal Space in Denmark in the 20th Century

Before going into an analysis of the variations within different occupational groups of the profession the article discusses the overall development of the legal profession in Denmark. It will do this by examining the number of jurists, and then by relating the number of jurists to the numbers of other social scientists.

From 1928 to 1965, the numbers of jurists in Denmark grew from 3,363 to 7,107. The largest increase occurred from 1946 to 1952, just after the Second World War, cf. table 1. The number rose from 5,039 to 6,154, which is an average increase of 186 jurists per year.

Year	1928	1940	1946	1952	1965	1985	1990	2000
Number of Jurists	3,363	4,289	5,039	6,154	7,107	9,324	11,275	15,384

Table 1. Number of Jurists 1928-2000 in selected years.

8 In Denmark, the only previous examination is Blegvad's from 1973. For the case of Finland *cf*. Konttinen 1991, 16:497-526; Konttinen 2003:101-121. *See* also Papendorf 2002 and Mathiesen 1979 on the case on Norway.

9 For a discussion about the statistical sources as well as further conclusions about the numbers *see* Hammerslev 2003.

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Numerically speaking, the legal profession expanded throughout the whole century, but the expansion was greatest during the last part of the century. During the period 1952 to 1962, it looked as if the increase had become more modest compared to the previous years, but it increased significantly in the last part of the century. But after 1965 the average number of jurists per year rises again, and after 1985 it rises sharper and greater than ever. In short jurists have expanded their territory with the process of juridification and the development of the welfare state. The development in the number of jurists during the last fifteen years indicates that education in law is not an outdated education. On the contrary, the legal field has expanded.

Yet this does not say much without also analysing jurists in relation to other professional groups.

2 Jurists in Relation to other Educational Groups

Comparing jurists with other professional groups tells us about whom the jurists compete with in the struggles over various forms of expert services and expertise.

Compared to other educational groups, it can be seen from table 2. that the legal education has been one of the largest higher educations under the social sciences.

Jurists comprised 93% of the social science graduates in 1897-98. The percent has decreased steadily since then. Jurists constituted 86% in the 1940s and in the late 1950s they constituted 80% of social science graduates. After the late 1970s the percentage decreases markedly. In 1977-1978 the number of jurists graduates constitutes 24% of all the social scientists and in 1996-1997 it fell to 13%. So the relative number of jurist graduates has decreased and in that sense jurists have indeed been replaced in the social scientific space.

Business economists in particular have entered the social scientific space. The overall picture is that jurists are loosing their relative significant dominance in numbers. The entrance of different social scientific groups in the field of power has delimited or challenged the value of legal capital.

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	1897-1898	1908 - 1909	1918 - 1919	1928 - 1929	1938 - 1939	1948 - 1949	1958 - 1959	1967 - 1968	1977-1978	1987 - 1988	1996 - 1997
General social sciences	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)	25 (435)	29 (696)	26 (1,147)
Business economy	(0)	(0)	(0)	(0)	(0)	(0)	0 (1)	3 (9)	10 (173)	25 (600)	33 (1,487)
Economy	3 (2)	6 (6)	13 (17)	10 (18)	13 (26)	13 (43)	18 (38)	21 (63)	9 (151)	8 (187)	11 (483)
Law	93 (68)	94 (96)	87 (111)	89 (132)	84 (170)	86 (289)	80 (166)	67 (203)	24 (417)	22 (537)	13 (581)
Political science & sociology	(0)	(0)	(0)	(0)	(0)	(0)	(0)	1 (3)	15 (259)	5 (131)	10 (455)
Psychology etc.	(0)	(0)	(0)	(0)	(0)	(0)	(0)	5 (16)	12 (206)	7 (175)	5 (215)
Other social sciences	4 (3)	(0)	(0)	1 (1)	3 (6)	1 (4)	1 (2)	3 (10)	4 (73)	4 (99)	2 (87)
Total	100 (73)	100 (102)	100 (128)	100 (151)	100 (202)	100 (336)	99 (207)	100 (304)	99 (1,714)	100 (2,425)	100 (4,455)

Table 2. Distribution of social science graduates % (n) 1898-1997.

3 Developments and Variations within the Legal Profession

In the following the article analyses shifts within the legal profession to analyse the areas from where jurists have been replaced and areas in which they may have extended their territory. The analysis should also reveal information about how the legal field developed, which alliances different occupational groups of jurists had, and whether the jurists have succeeded in maintaining their traditional domination of law.

The development of the sub-groups of the profession in the 20th century can be seen in tables 3., 4. and 5.

Year	1928	1940	1952	1985	1990	2000
Central Administration	431	758	1,289	2,575	2,530	3,215
County and Municipalities	191	347	464	969	1,024	1,309
Advocates	1,075	1,393	1,840	3,400	3,500	4,153
Judges	179	180	212	261	264	320
Others	1,487	1,605	2,349	2,380	4,221	6,387
Total	3,363	4,283	6,154	9,324	11,275	15,384

Table 3. Occupation of jurists.

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Year	1928	1940	1952	1985	1990	2000
Central Administration	13	18	21	28	22	21
County and Municipalities	6	8	8	10	9	9
Advocates	32	32	30	36	31	27
Judges	5	4	3	3	2	2
Others	44	37	38	26	37	42
Total	100	100	100	100	100	100

Table 4. Distribution of jurists in occupational categories (%).

Year	1928	1940	1952	1985	1990	1993	2000
Central Administration	100	176	299	597	587	601	746
County and Municipalities	100	182	243	507	536	578	685
Advocates	100	130	171	316	326	354	386
Judges	100	101	118	146	148	153	179
Total	100	127	183	277	335	-	457

Table 5. The development of the jurists in index numbers 1928-2000.

4 Jurists in the Administration

The introduction of a legal profession in its more modern form may be found with the introduction of the absolute monarchy in Denmark in 1660. After the introduction of the absolute monarchy, one of the first tasks of the persons around the king was to ensure the king's absolute power in fact (and beyond the formal stage). One of the means to ensure this was to create a unified, centralised state bureaucracy, which operated in accordance with the commands of the central power. At that time legal decision-making was largely conducted by legal honoratiores casuistically, in the Weberian sense, which meant that the king could not use the symbolic power of the law as a steering mechanism. In order to create legal unity the *Danish Law Code* was issued in 1683. Formally, it consolidates the formal power of the King by prohibiting legal decision-makers from deviating from the rules. An important step against the casuistic creation of law was taken by this move, since legal decision-makers could no longer support a decision on precedent;[10] they had to base their decisions on the king's commands.

Another step taken to inhibit casuistic creation of law was to limit the number of jurisdictions. At the time, a large number of (competing) jurisdictions existed in the country often headed by a member of the nobility. To counter this, a centralised administrative (and bureaucratic) system centred on state power was developed. This limited the nobility's self-administration, and their power was transferred to the king's administration.

Yet, in order to increase the control with the country and to build the state it was necessary to change the *practices* of the various local courts and to have the

10 Dalberg-Larsen 1984, p. 54.

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central laws known among lawyers, judges etc. Therefore, the legal education at University of Copenhagen was introduced in 1736, and it was decided that people with a law degree should fill central legal positions in the country. The legal examination was officially introduced to assure *qualified men* to judge, advise and administer in legal affairs.[11] The university should produce civil servants who could legitimise and strengthen the power of the king and the state. The state increased its influence on the university administration while the church was driven back.

Two different kinds of legal exams were introduced with Danish law as a topic in the education. One in Latin was called the exam of the "scholar", and one in Danish was called the exam of the "non-scholar". The top positions in the central administration were monopolised by the Latinists. In this way the clergy and the nobility could uphold their positions in the field of power by transforming their possession of capital to the new circumstances. Thus, sons of the clergy began to study law instead of following in the footsteps of their fathers.[12] Since the symbolic power of the church was diminishing, the clergy found a way to couple themselves to the new requirements by transforming their theological capital to a legal one. In this way they too legitimised the rise of the legal field. The strategy of the central power was to replace the nobility which held central positions due to a social inherited capital with civil servants who possessed an objectified symbolic capital which was codified, legitimised and backed by the state.

Yet, it took some time before the field could be autonomous, or more precisely, before the field could differentiate itself from other fields, a sizeable body of jurists had to emerge, which took more than half a century. According to Hammerich, the number of students was very low for many years. In its first years, the Faculty of Law produced only around five jurists each year, something that was not radically changed until 1770. From 1736 to 1770 the total number of examined jurists was 195.[13] In 1755, more than fifty jurists secured the degree of "non-scholar". Hammerich notes that the "non-studied" jurists had positions as judges in the lower courts and as advocates in the 18th century. Between 1771

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11 The use of the university to produce civil servants loyal to the state started with the Reformation. In 1539 the University of Copenhagen, which was the only one in Denmark at that time, was reformed. This was a part of the Lutherian Reformation of Denmark. The re-foundation of the University on 10 July 1539 stresses that the purpose of the sciences is to qualify men to advise the Government and the parish. Tamm stresses that the aim in educating jurists was to get civil servants for the state, while the theologians were left to the church. *Cf.* Tamm 1990.

12 *Cf.* Hjorth-Nielsen 1936:311-411, p. 328ff.

13 Hammerich estimates that 12 jurists got positions in the lower courts, but when those who went to Norway are subtracted, only five became judges in Denmark. The Supreme Court had only one legal candidate as a judge, in Hofretten three were employed and no jurists had positions in Landstingene. The advocate profession had taken eight legal candidates, the ministries six and the university three. 23 went to Norway, Iceland or the colonies. The rest did not have a job or took positions outside the legal system. From 1736-1771 only 17 of the legal candidates got positions in the administrative system and none of them reached top positions. Hammerich 1936:259-307, p. 288ff.

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and 1800 there were 526 graduates with a law degree. So at the turn to the 19th century there were enough educated jurists to occupy the central positions in the state. In 1821 a monopoly of the profession was introduced in a statutory instrument about Legal Education. Academically trained jurists secured a monopoly on offering advice in legal questions.[14]

The construction of the emerging legal field in Denmark was an instrument for the concentration of the power in the hands of the sovereign. And too, the advocates of that time played an important role in the development of a field of commerce. Because of this total dominance of jurists, Hammerich has called the years between 1814 and 1848 "the golden age of the jurists". Dalberg-Larsen calls the period "state of civil servants." This was also the period Aubert refers to in his analysis of jurists.

At the end of the 18th century, the famous Danish jurist, Henrik Stampe, drew attention to the fact that the right to have a case brought to court was an essential feature of the Danish Monarchy.[15] According to Stampe, justice was a right that could not arbitrarily be taken away from the public. This meant that the administration should respect law "… and should not be led by concrete appropriateness or personal likes and dislikes."[16] The rule of law doctrine gave the public rights against state power. At the same time, the courts and their universal legitimacy should apply law in the same manner in similar cases, which, according to Dalberg-Larsen, meant that they were able to develop case law in hard cases in which statutes did not furnish an answer. The courts should be independent, and case law was to be recognised as a valid source of law.[17] In working to centralise power around the state and king, a legal bureaucracy emerged, and jurists became the king's advisers. Previously jurists had been an important and active *tool of* the central power, consolidating power in the hands of the king, but now they became *a part of* the central power. Jurists strengthened their position in the state and developed condition for the rule of law, and they thereby became able to reproduce their power. But the king was not enthusiastic about this development. Hammerich notes that the king and his advisors opposed it to a certain extent, and they did not only appoint the academic jurists to key positions. With the new focus on the rule of law, jurists found a strategic weapon with which they could win power struggles over the king and other powerful groups.

The self-representation of jurists at this time was very flattering. Hammerich notes that the scientific nature of the education created the picture of the "real" jurist. A jurist who was an ideal type of "… perfect civil servant who, with success, could take part in all parts of the activities of the state."[18] Hammerich refers the view of the leading jurists:

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14 Dalberg-Larsen 1984, p. 55.

15 For an analysis of legal import and important forms of capital in this development, *cf*. Hammerslev 2007:73-83.

16 Dalberg-Larsen 1984, p. 55.

17 Dalberg-Larsen 1984, p. 55.

18 Hammerich 1936:259-307, p. 299.

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> "The scientific essence of legal education legitimises the exceptional position of the profession. The legal education is considered a universal education that endows its disciples with a previously unknown versatility and makes them competent to rule and lead in all the aspects of the state and society."[19]

In other words, jurists had won a struggle over the leading positions in the central and local administrations by holding the specific form of capital that is required in order to hold the powerful positions. Thus, the process of concentration of academic competencies was paralleled by a process of differentiation, which led to the constitution of an autonomous field with strict control over its own reproduction.

Towards the middle of the 19th century, jurists dominated both the constitutional debate and the work in the constitutional committees.[20] 40 of the 152 members of the constitutional assembly in 1849 had a legal education. Eight were lawyers in private practice. Mogens N. Pedersen stresses that "No one in the Assembly did in fact challenge the eligibility of civil servants or judicial officers, so obvious was their position."[21] Or as one of the members of the constitutional assembly declared: "It is undesirable to remove civil servants from Parliament, as long as the Intelligentsia in this country is not more extensive."[22] Jurists' position in the political field was met with cognitive obviousness because they had the right forms of habitus and capitals. Hammerich notes that in the middle of the 19th century the country was in fact considered led by the legal profession.[23] At this time legal education was the largest scientific education within the social sciences.[24]

The Danish constitution of 1849 introduced the separation of power doctrine in which power is shared by the legislative, the executive and the judiciary. Furthermore, civil rights were introduced. Changes in the administration happened mainly formally. Civil servants continued their work as previously, except for those in the leading positions. According to Dalberg-Larsen, the struggle against the absolute monarch was also a struggle against the leading civil servants, who still had a lot of social capital, primarily jurists with great influence. So the struggle was against both the absolute monarch and against the bureaucracy.[25] But jurists, and the civil servants, law professors and judges, including Supreme Court judges, still held central positions in the political field in the first decade after 1849. They were members of the Danish Parliament during the first sessions after the constitution went into effect. So were "… a considerable number of landowners and journalists with a background in legal

19 Hammerich 1936:259-307, p. 300.

20 Pedersen 1972:25-63, pp. 25-63.

21 Pedersen 1972:25-63, p. 50f.

22 Beretning om Forhandlinger på Rigsdagen 1848-49 sp. 2823.

23 Hammerich 1936, p. 298.

24 Other large educational groups were theologians and physicians.

25 Dalberg-Larsen 1984, p. 56.

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education."[26] Pedersen notes, though, that the greatest number of jurists was not found in the "Folketing" but in the "Landsting", which was the upper chamber, and especially in the Cabinet. A position of minister was considered the "… culmination of the administrative career, and accordingly many of the ministers were former civil servants."[27]

In the last part of the 19th century, civil servants played a powerful role in the state administration. The 15 permanent secretaries and other similar positions in 1871 were recruited from a narrow circle. They were a central part of the political life:

> "This closed and powerful body of civil servants formed the backbones of the state together with the army, and has inevitably continued the late paternal traditions of absolute monarchy in norms and practices, adjusted to a new time."[28]

However, in the 1860s legal competence was not considered sufficient to rule the country anymore. This meant, as Hammerich writes, that they "… fuse into their professional trades."[29] Jurists began to disappear from the political field,[30] both numerically and as regards their participation in the public political debate. Hammerich explains:

> "The more public life has expanded, the more jurists have locked themselves up behind one thing or another, behind the bench of the court-room, behind the doors of the office, behind the desk of the university."[31]

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26 Pedersen 1972, p. 51. Pedersen notes that seven of 22 ministers in the cabinet were government employees between 1856 and 1865.

27 Pedersen 1972, p. 51. Thus, in 1866 28% of the members of the Folketing and 29% of the Landsting were public civil servants. Rerup 1989, p. 148. This can also be seen from the biographies of the judges from the 19th century. It was not unusual to go into politics late in the judicial career.

28 Rerup 1989, p. 148.

29 Hammerich 1936, p. 305f.

30 Pedersen notes that this happened simultaneously with the emergence of modern class-oriented political parties. He stresses that jurists came under attack in a constitutional debate in the last 30 years of the century: "At an early time the civil servants, and therefore the jurists, became scapegoats in this struggle. Already in the 1850s the representatives of rural Denmark (*Bondevennerne*) had opened an attack on the civil servants, who were considered a closed circle of Mandarins, bearers of the absolutist values. They tried in vain to break the jurists' monopoly as civil servants – even the law degree as such was criticized as a source of the alleged evil. When the party system unfolded in the 1870s with the organization of the farmers and a little later the manual workers, the attacks became even more furious. Because the civil servants and most other jurists were identified with, or at least were considered the allies of, the Conservative governments in the period after 1870, they, and to a high degree the whole legal profession, came under fire from the majority parties in the Folketing." Pedersen 1972, p. 51f. Compared to other countries, especially the common law countries, this is remarkable because jurists in the common law countries have continued to participate in the political field.

31 Hammerich 1936, p. 306.

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Thus jurists were ousted from politics. But that did not mean that they did not participate in the political debate at all. Instead of being political they hid behind legal logic by which they made their statements. And too they participated in the bureaucratic field as experts. They withdrew from the public sphere as well as from public life, press, local assemblies and from the political area into scientific studies that mostly addressed other colleagues. But at the same time, the profession professionalised and limited its symbolic jurisdiction. It slowly developed powerful new forms of legal thinking, in which legal positivism became dominant, and had the force of the law in their hands without actually participating themselves in the political public life. By developing a strong legal science, they managed to divide the juridical labour between them. The academics rationalised the different judgements and laws so they spoke with one voice, while the judges secured the openness of the system.

In 1936 legal education was reformed and the former exams merged into one in Danish.

4.1 Jurists in the Central Administration During the 20th Century

Between 1985 and 1999 the number of jurists who are employed in the central administration fell from 28% to 21% of the total number of jurists. Yet numerically this was an increase from 2,575 to 3,215. The relative decrease indicates that some processes occurred in the late 1980s resulting in jurists being ousted from the central administration, cf. table 6.

It can be seen that the forms of capital have changed and hence also the different forms of practices in the central administration and that jurists have been replaced to a considerable extent.

Year	1965	1970	1975	1979	1985	2001
Jurists	81	70	55	54	51	39
Economics	18	24	34	26	24	20
Political scientists	0	3	4	10	11	20
Others	1	3	7	10	14	19
Total	100	100	100	100	100	98

Table 6. New graduates who are members of The Danish Association of Lawyers and Economists employed in the central administration (%).

On the one hand, jurists have increased numerically in the central administration. On the other hand, they have been relatively ousted from the central administration, while political scientists and other social scientists enter the space. This has occurred since the late 1980s.

The number of jurists in the local administration has increased during the century. In 1928, 191 jurists were employed in the counties and municipalities, in 1940 the number had increased to 347, and in 1952 the number had risen to 464. In 1985 the number had almost doubled again, namely to 969. In 2000 the number had risen to 1,309. Relatively speaking, the number of jurists in the counties and municipalities has increased since 1928. In 1928 they constituted 6% of the total number of jurists in Denmark, in 1940 and 1952 they constituted

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8%. In 1985 the number had increased to 10% whereafter it fell to 9% in 1990. Afterwards it has remained stable at 9%. Jurists have increased their terrain in these areas at the same time as they have lost terrain in the central administration.

5 The Development of Advocates

Advocates in Denmark emerged around 1730. Advocates existed prior to that time, but they were considered "a necessary evil" pleading in court.[32]

In 1720 the president of the Supreme Court studied the number of advocates in the country and how many were needed in society. The president found that there were 56 *known* advocates in Denmark.[33] The right to license advocates was decentralised,[34] and therefore it was difficult to find all of them. The king had licensed 34 of these advocates, including the 17 advocates in the Supreme Court.

The advocates pleading in the district courts usually did not have an education, nor did the district judges as we shall see below; they were only trained by practice. Many of them were "… sciolists … who were not afraid of interlarding their pleading with phrases in Latin …"[35] which they had taught themselves in order to earn money by pleading in court. These advocates had also learned the procedural rules. Because the district court judges did not (necessarily) speak Latin and did not (necessarily) know the laws, the pleadings of the advocates could go beyond their comprehension. The district court judges at the time had not studied law, which meant that it was urgent to restrict the advocates' role in the local cases. They were damaging for the authority of the district court judges and the legal field, so they were considered problematic "warriors".

In 1736 there were at least 53 advocates who were royally licensed. After the introduction of the absolute monarchy, the king also centralised the appointments of the advocates. He could then appoint those who had the right form of legal capital and who worked on his behalf. Now the positions in the emerging advocate profession were largely filled by sons of the clergy.[36] It

32 Hammerich 1936, p. 284; Tamm 1990, p. 108.

33 Of those 17 were Supreme Court advocates, 11 were advocates in the district courts in Copenhagen, 11 on rest of Zealand, eight in Jutland, five on Funen and four on Lolland and Falster. A later estimate found that Funen alone had 73 advocates, 14 of whom were licensed and five had a royal licence. Hjorth-Nielsen 1936, p. 312.

34 The way to become an advocate at the time was "… 1) by royal licence which gave the right to plead in all the courts of the county or a part of these, 2) by licence from the prefect that gave the right to advocate activity in the courts of the country concerned, and finally 3) by belonging to the bourgeoisie, which naturally only gave right to plead in the lower court." Hjorth-Nielsen 1936, p. 312. Thus, there were more advocates but they were not publicly known, as no central register existed, and as there were many ways to become an advocate.

35 Hjorth-Nielsen 1936, p. 315.

36 Of the 53 with royal licences a fifth were sons of ministers. Hjorth-Nielsen 1936, p. 328ff.

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seems that the legal profession was gaining in prestige when sons of clergymen entered.

However, most of the advocates only had the legal exam in Danish, which kept them at the bottom of the legal hierarchy until the turn of the 19th century, except for the Supreme Court advocates. Educated jurists, who were the Latin jurists, did not choose the advocate career, except for the few in the Supreme Court. It was more attractive to obtain positions in the administration or with the higher courts.[37]

Advocates had always been objects for hatred and derision, but the advocate profession became a respected profession at the turn to the 18th century, at the time of the move to the bourgeois constitutional state. As Henrik Stampe, one of the best known jurists of the time, noted in 1755, new forms of contracts and financial instruments had to be developed with increasing commerce. Stampe's statement reveals that advocates had extended their field of operation. Whereas they had previously worked in the courts, they now had extended their domain to the emergent commercial field. In that way advocates became important consultants in the development of society. The crucial shift came when they changed their activities from pleading to consulting. They were the central figures in advising and establishing predictability between the different parts of commercial agreements. The field of commerce developed together with the establishment of the advocate profession. Advocates developed commercial laws in an empirical form of law, in contractual arrangements.[38]

In 1809 royal resolution made advocates civil servants, which meant that they became public employees in a way. The interference of the state in the development of the profession is a tremendous change in the recognition of advocates. They were now considered a necessary and important part of the legal system. Thus in a period of 100 years, advocates changed status from being a scorned species to become a part of the field of power. The elite among advocates was still the Supreme Court advocates, never more than ten, and below the Supreme Court advocates around thirty advocates in the *Hof- og Stadsret*.[39] They were members of the boards of companies of the time, of clubs, of commissions and held other public positions as well.[40] Some of them also obtained top positions in the civil service. Hjorth-Nielsen notes that advocates from the lower courts later became a part of this trend, but at the local level. This

37 Hjorth-Nielsen 1936, p. 342f. In 1744 the advocates in the Supreme Court had to take a test, and from 1796 the advocates in the high courts and district courts had to spend two years on "probation" before receiving title of advocate. They also had to present a certificate stating they were "good and moral men". Pedersen 1969, p. 27.

38 For instance, the number of public limited companies was fourteen in 1850, 52 companies in 1870 and by 1912 the number had increased to 650.

39 Until 1919 *Hof- og Stadsretten* was the court of first instance in cases from Copenhagen, but was changed to The District Court of Copenhagen in 1919. From 1805 the court was also a court of appeal for cases outside Copenhagen.

40 Hjorth-Nielsen 1936, p. 372.

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continued until 1868 when advocates became a liberal profession.[41] The Ministry of Justice authorised the advocates to practice law.

Many advocates also applied for positions in the courts and in the civil service. They were also well represented in the financial sector. As Hjorth-Nielsen notes:

> "… especially Fire Insurance had worked with advocates at an early date. Several advocates were connected with the only bank in the country, the Central Bank, mainly as members of the board."[42]

Advocates were also represented in the national politics, and they participated in the local political field for a long period, especially after 1837 when there was a new form of governance for market towns.

The number of advocates was still relatively small. In 1868 there were 229 advocates,[43] and in 1889 the number had increased to 738. In 1919 the number had increased to 1,462.[44] Like jurists in general advocates disappeared from political life after 1868. Instead they focused on their practices and their increasing advisory role. With the increasing juridification of society, advocates became indispensable to laymen who had to consult them about problems in commercial and civil life. In that sense, advocates had their golden period on the turn of the 20th century. They had expanded their domain to become the main group of advisors in the development of western commercial life.[45] This happened during the bourgeois state when advocates coupled themselves strategically to the differentiation of the commercial field.

Advocates succeeded in gaining control over their own conditions in the 20th century; they were administered by the Danish Bar and Law Society from 1919. Their association gained competence to judge in cases concerning its members. All advocates were obliged to become members of this association.

5.1 Advocates in the 20th Century

The number of advocates increased from 1,075 in 1928, to 1,393 in 1940 and to 1,840 in 1952. According to statistics from the "Danish Bar and Law Society", the number of advocates in 1993 was 3,805 and in 2000 the number was 4,153. From 1928 to 2000, the overall increase is 386 in index figures, cf. table 5.

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41 Hjorth-Nielsen 1936, p. 366f.

42 Hjorth-Nielsen 1936, p. 379.

43 Hjorth-Nielsen 1936, p. 383. Hjorth-Nielsen calculated the number from *Hof- og Statskalenderen* from 1869.

44 Pedersen 1969, p. 28.

45 It is ironic, as Hjorth-Nielsen notes, that the president of the Supreme Court in 1720 found that 20 of "that kind of warrior" outside the Supreme Court should be more than enough. But Hjorth-Nielsen warns that the advocate profession is in danger of becoming proletarianised if the number of advocates continues to grow. "The vocation of advocate is the freest of all. No advocate needs to take a case he does not want. But truly the condition for this is that his business provides him with a livelihood, so he does not have to take cases that he would prefer to be without." Hjorth-Nielsen 1936, p. 410f.

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The greatest increase occurred in the last part of the century. In 1928 advocates comprised 32% of the total number of jurists, which was the largest group in the legal field. In 1952 the percentage fell to 30% of all jurists. In 2000 advocates comprised 27% of all jurists, cf. table 4. So despite the increase in number of advocates, there has been a relative decrease. However, they have been the largest group of the legal profession during the entire period.

As can be seen in table 2 above, people with business economic educations have entered the social science space in large numbers. On the basis of the data of this article, it is difficult to discuss the cognitive battlefields, but international socio-legal studies have shown that advocates are struggling with large accountant firms about economic and financial advising.[46] So it must be assumed that a battle is fought between the law firms and the big consultant firms about the competence over the consultant task.[47]

The old differentiation within the field, with the "non-scholar" at the bottom of the legal field and the "scholar" in the top, can still be found. The large law firms in the largest cities, including Copenhagen, are developing various methods to recruit the best students from the law school, often while they are still students. A strategy from American law firms has become practice in Denmark.

To sum up, then, the profession of advocates played an important role during the development of the early state in the emergence of a commercial field. Now, though under pressure from other professional groups that are offering consultancy, advocates are developing different types of dispute resolution that threaten the dispute resolving function of the courts. The increasing number of advocates indicates, however, that advocates have found new markets.

6 The Development of the Profession of Judges

One of the first things the king did in 1661 after the introduction of the bourgeois state was to set up a Supreme Court, which took the place of the "King's Court".

There was a great difference between the judges on the higher courts and the lower courts in their possession of capital. The "Landsting" and the Supreme Court employed persons who, as Tamm notes, by "… birth, rank, and education – though the education not necessarily was legal …"[48] were qualified to hold positions as judges. The required qualifications were in accordance with the Danish Law Code 1-5-1 that judges should be "trustworthy and of unblemished reputation". The required qualifications were, thus, neither professional skills,

46 *Cf.* e.g. on this development Dezalay and Sugarman 1995; Gessner and Budak 1998.; Dezalay and Garth 1996; Teubner 1997.

47 A report, "Brancheanalyse: advokatbranchen i tal", Copenhagen: Advokatsamfundet, produced by "The Danish Bar and Law Society" confirms this.

48 Tamm 1990, p. 135.

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nor objectivised forms of capital, but a kind of cultivation, a form of social capital.[49] Dalberg-Larsen notes that

> "… previously noble descent was the decisive qualification criterion for positions in the administration and in the courts, the king had in his showdown with the nobility to find *new recruitment criteria*. It was general practice for many years that such positions were assigned as rewards for acts of friendship, i.e. of economical kind …"[50]

In the period 1685-1725, five of 60 judges on the Supreme Court had studied law, while 25 had studied other subjects. In the period 1725-1771, 16 of 58 judges had studied law, and 30 had studied at the university. From 1771 all new judges had studied law. In 1790, the majority of the judges had a law degree, but only 16 were Latin candidates, the rest were Danish jurists.[51] In 1771 there were 13 judges on the Supreme Court including the president.[52] The same year many courts in Copenhagen were merged into "Hof- and Stadsretten". Power was centralised by reducing the number of courts, which laid the ground for a prestigious powerful court in the capital.

With professionalisation of the district court judges, the king had local civil servants who knew the laws of the country and were accepted in the districts where they practised, because they and their families normally came from these regions. With their local social capital they were able to impose the legal system on behalf of the king. So the king managed to have civil servants who were obeyed in the districts.

From 1821 all Danish judges had to be legal candidates. By 1800 most of the high court judges had law degrees.[53] Thus the monopolisation and rationalisation of the field by people with law degrees was a process that went together with the development of the constitutional state. The increasing number of jurists made this monopolisation possible. Academic jurists began to find their positions on the courts, and they were the first to transform their capital into formal legal capital, with which they were able to become key agents in the legal field.

According to Tamm, the increase in the number of judges with an academic education meant that decisions were based on a theoretical analysis of cases. This laid the foundation for modern jurisprudence in which judgements became

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49 Holmboe stresses that the elite of the judges consisted of the elite of the Danish nobility together with a part of the bourgeoisie, professors and doctors. Holmboe 1961:203-230.

50 Dalberg-Larsen 1984, p. 54. However, Holmboe notes that the nobility had relations to the courts until the constitution of 1849 which abolished right of primogeniture due to birth and title. In 1690 76% of the judges in the court were from the nobility, in 1736 58%, in 1772 35% and in 1815 16%. In 1849 the deputy judges ("retsassessor") constituted 38% of all the assistant judges. From around 1750 the majority of the members of the court were civil servants from the civil and military, prefects, clergymen, landowners etc. Holmboe 1961, p. 207ff.

51 Hammerich 1936, p. 289.

52 Jensen 1986:115-143, p. 123.

53 Tamm 1990, p. 138f.

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a central legal source. Another important development was publication of Supreme Court decisions. This meant that Supreme Court decisions became widely known, and that the court could distinguish itself by making other courts judge according to its case law.[54] From 1855 the judges of the Supreme Court had to justify their decisions instead of giving "oracle judgements".[55] Thus, the Supreme Court underlined its central position in the legal field by pointing attention to its decisions. This was also a part of the rule of law strategy with which the Supreme Court placed itself centrally in the legal field.

The Danish constitution of 1849 made the courts independent of the legislature, and the courts were empowered to control the administration. Judges became formally independent, meaning that they only had to apply the law and that they could not be removed. In 1919 another major reform of the administration of justice was enacted. The main principles of the Administration of Justice Act of 1919 were:

> "… principles of open trials and of orality, freedom to consider evidence … introduction of juries, separation of judiciary from chief constable offices and a special public prosecutor …"[56]

The District Court of Copenhagen and the Eastern and Western High Courts emerged. There was also a Southern High Court until 1927. The latest change in jurisdictional division occurred in 1972 when the rest of the "herreder" disappeared, and the number of jurisdictions was limited to 82, with two high courts and one Supreme Court constituting the judiciary.

6.1 The Number of Judges in the 20th Century

Table 3 shows that the number of judges rose from 179 in 1928 to 212 in 1952. In 2000 the number had increased to 320 judges. The increase is greatest in the latest part of the period.

It seems as if the judges have continued to extend their domain throughout the 20th century. However judges form a relatively decreasing segment of jurists. In 2000 they were 2% of the total amount of jurists, cf. table 4, while they were 5% in 1928. Table 5 shows that the judges have the lowest rate of increase compared to other groups of jurists between 1928 to 2000. All in all, the index number of judges has risen to 179 in the period.

Taken as a whole, it can be seen that judges have weakened their position in the legal field.

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54 From 1789 Supreme Court judgements were published in a monthly official gazette, from 1802 in a supplement to the newspaper Berlingske Tidende, and later they were published other places. A systematised form of publishing the judgements began in 1839. In 1857 all the judgements of the Supreme Court began to be published. Jensen 1986, p. 123.

55 Jensen 1986, p. 124.

56 Tamm 1990, p. 271.

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7 Conclusion

As this article illustrates the legal profession changes during the 20th century both internally and in relation to other professions. First of all, it shows that the number of jurists has increased significantly during the 20th century. This increase has primarily been among advocates, jurists in the central and local administrations as well as jurists employed in non-legal firms. After a stagnation in the increase of jurists in the late part of 1960s and the 1970s, the number of jurists rises sharply afterwards. However, the social science educations grew in this period so that the jurists became a relatively smaller group.

The legal profession in Denmark developed in earnest with the emergence of the absolute state. Legal civil servants were educated and a legal field emerged centred around the king as a symbolic weapon. With the development of the state based on the rule of law, jurists dominated the central administration. But in the last half of the 20th century they came under pressure. From the middle of the 1970s, economists made significant inroads into the jurists' traditional domain, and later both political scientists and other groups from the social science space began ousting jurists. However, jurists still form one of the largest groups of social scientists. In line with changes in the domain of local authorities, jurists found a new area to conquer. In the central administration, as well as in the local authorities, jurists are taking part in conflict resolution in an increasing number of dispute resolving councils and boards. That means that many disputes never go to court. Dispute resolution is carried out of the courts and into the administration. Thus local decisions do not necessarily become part of the corpus of national case law.

The group of advocates developed when sons of clerics went into the field and transformed the positions of advocates. From being a scorned group, advocates became important in the development of the field of commerce and thus in the development of private law. In the 20th century, advocates of large law firms have extended their domain into the field of commerce, where some of them are battling against business economists in order to retain the role of primary advisors of the large corporations. Increasing trade and the increasing legislation – both national and now mainly European – have opened new markets for advocates. For Aubert, it was surprising that the process of juridification did not result in growing number of disputes going to court. But businesses – with help from the jurists – are handling most of the cases themselves within their own institutions. As other studies show, the field of commerce has developed its own dispute resolving institutions, and to a large extent also its own legal system, independent of the national states. This is not new, but the extent and scope of alternative dispute resolution in the field itself has increased. The field of commerce does not, to any great extent, use the official courts. Advocates are also developing alternative dispute resolving methods and institutions which point in the same direction: that the law is opting out of court.

Judges came to play an important role in the development of the legal field as the field mainly centralised around the decisions of the judges. The absolute monarch managed to have his commands obeyed throughout the whole monarchy by using the courts. Law became rationalised through the education of

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legal technicians. Despite the fact that the number of judges increased from 1925 to 2000, their proportion of jurists has decreased.

This article has followed the traits of classic Scandinavian sociology of law and has illustrated that the Danish legal profession taken as one group has been replaced. Whereas the legal profession was important and almost held a monopoly in the building of the modern state and was a key profession in the creation of the commercial field – so important that the 19th century has been called the "golden ages of jurists" – the profession was replaced in the 20th century when other professions appeared. On the other hand, the increasing number of jurists indicates that jurists have found new markets for their services. As we have seen in Norway and in Sweden the legal profession has reacted to the development of replacement with further specialisation and differentiation.

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