Roman law as such never had any force in Denmark. However, this does not mean that one has not reflected on the importance of Roman law. The theme of this small contribution is centred on arguments in Denmark which have justified the study of Roman law in a Danish context.

On a stone set in the gateway of the town of Rendsborg on the river Ejder you could read “Eidora Romani terminus imperii”. The river was at the same time the border of the Holy Roman Empire and the borderline between national law and Roman law. This fact did not preclude Roman law from having played an important role in the development of Danish law and especially Danish legal science. In his magisterial work, Medio Evo del Diritto, Francesco Calasso used the phrase “Corpus juris numquam receptum instar legis sed loco artis juris”, taken from the German knight Besold and framed in the sixteenth century. The concepts of ius commune and ius proprium are useful also to analyse the situation in Denmark. However, in the Nordic Middle Ages it was especially canon law that was important.

After the Lutheran Reformation in 1536 which had an enormous impact on the forming of Danish society the University of Copenhagen, founded in 1479, was re-established as a Lutheran University according to the new faith and with the basic task of educating ministers for the Danish national church. The Faculty of Law remained with only one jurisconsultus who had to teach Roman law based on Justinian’s Institutes and, if possible, some classic authors. In article 7 of the 1539 Charter of the University the reason for the study of Roman law was explained thus:

A law professor shall lecture on the Imperial Institutiones … For, although in general we do not follow Roman laws and customs here in our countries, because we have our own, it is most right as the venerable Holy Roman Empire asserts that its laws stem from nature’s law, and that it shall not be considered as seeming to contradict the laws of nature, that other countries’ law is in accordance with the law of nature, even though it sometimes differs from Roman law. And this is in accordance with the highest truth, it is the word of Christ: ‘Therefore all things whatsoever ye would that men should do to you, do ye

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even so to them: for this is the law and the prophets.’ The mind also becomes sharpened through a knowledge of the laws of others, so that one is able comfortably to judge Our own laws and customs.

The law professor did not necessarily have to confine himself to teaching the law. The purpose of the teaching was to train men whose “counsel might benefit the State”. Roman law was not the law of the land. Therefore it was necessary to explain why the teaching of law was based on the Roman system. The Charter stated that the study of Roman law was useful when considering whether the laws of the land were in accordance with natural law. Roman law was perceived as a source of knowledge of natural law. Roman law provided the general legal principles that could serve as a yardstick for the validity of domestic laws. However, this did not necessarily mean that Roman law was always preferable because it could actually differ from natural law in several ways. The supreme norm of natural law therefore was the “word of the Lord”, which expressed the “golden rule” in the Sermon on the Mount, the regula aurea of Matthew 7, 12: “Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets.”

The intellectual background to the perception in the University Charter of the significance of Roman law for Danish law may be found in the writings of the reformer, Philip Melanchthon, who was known as the praecceptor Germaniae. Since 1518, when he came to Wittenberg, he had exercised a profound influence on humanistic studies in Germany and also on new legal methods. In a series of speeches, he increasingly stressed the importance of Roman law as a general model for the law also in other countries. The reasoning about the importance of Roman law too has Melanchthonian roots. The Holy Roman Empire maintained that its law was deduced from natural law and that what did not correspond with the law of nature, should not be considered law at all. Hence, the law of the other countries should be in accordance with the principles of natural law as expressed in Roman law. This same reason was given by Melanchthon for the validity of the study of Roman law. He also warned against people who in their reforming zeal had taken the Holy Gospel as the law. The Charter of the University of Copenhagen therefore also expressly forbade the mixing of the law with the Gospel.

Originally, Melanchthon had distanced himself from Roman law. But in a later speech entitled “De legibus” (about the laws) he stressed the importance of Roman law. The speech was published in 1525. In it, Melanchthon presented a view of the relationship between law and State that was based on St Paul’s perception of authority emanating from God. That was in full accordance with Danish political thinking at the time. Melanchthon opposed the extremist movements emerging among peasants, fanatics and other “agitators” who wanted to live in accordance with the Bible without acknowledging the need for either the State or positive law. Instead, Melanchthon demanded that respect for law and authority be preached in church and stressed that the Gospel was compatible with the existence of secular law. For Melanchthon, it was

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1 See Guido Kisch: Melanchthons Rechts- und Sozialehre. Berlin 1967; Ditlev Tamm: Retsvidenskaben i Danmark. Copenhagen 1992, p. 28s. See also Ditlev Tamm: The Faculty of Law. Law Teaching at the University of Copenhagen since 1479. Copenhagen 2010.
“madness to hate the fatherland’s customs and institutions. As nature has inculcated in all of us a holy love of the fatherland, those who obstruct the fatherland’s laws seem to have forgotten themselves”.2

Melanchthon later expanded this topic in his Commentary on Aristotle’s Ethics published in 1530.

A main concern for him was that Roman law’s intrinsic merits justified its acceptance as law, as had happened in Germany in the years up to 1500. He was aware, as he said in De legibus, that

[t]here are nations in Europe that do not judge according to Roman laws, but domestic ones. And yet, those who would lead the State to study Roman law abroad, and when they – as I understand it – are asked why they place so much emphasis on knowing it when our laws are not valid in their lands, they usually reply that they extract the law’s soul and spirit (animam se spiritumque legum) – for such is how they speak – in other words, to deduce the spirit and nature of fairness (aequitatis vim ac naturam) from it, so that they are better able to judge the laws of their fatherland (ut de patriis legibus rectius judicent).3

This was in close agreement with the beliefs that underpinned the Copenhagen University Charter’s assertion of the significance of Roman law as a basis for assessing Danish law, irrespective of the fact that Roman law was not directly applicable in Denmark.

Consequently, Roman law was taught in the University of Copenhagen. The great majority of students were theologians. Law therefore rather served as an introduction to ethics for students of theology or those in the faculty of arts. Danish law was at that time in the hands of lay judges and was not taught in the University. This situation changed when, in 1736, a law examination was introduced at the University. This was created to enhance the level of judges and practising lawyers and may be seen as part of the law reforms of the absolute government that came to power in 1660/1661. A first step was a Danish Code of 1683. The second step was the professionalization of lawyers.

The main subjects to be studied according to the 1736 curriculum were natural law and Danish law. The position of pure Roman law was reduced and it was mentioned only as a subsidiary subject in order to obtain a law degree. Around two years of study were required in order to qualify for the examination. Natural law was important as it was the system from which solutions could be found when the Code did not offer an answer. Therefore, Danish law and natural law had priority over Roman law that was relegated to a third position.

After 1736, a discussion commenced on the importance of Roman law for Danish law students. In his introduction to Danish law written in Latin in 1736, Andreas Hojer, a law professor, stated that a Danish (and Norwegian) lawyer should basically study Danish and Norwegian law. To that purpose he thought that it is not necessary to study Roman law,

as Roman law is just as far from ours as Justinian’s and Theodosius’ time is from ours or as separate as are the institutions and customs of the ancient Eastern and Western Romans.

2 Philipp Melanchthon: De legibus (1535), Corpus Reformatorum XI, p. 66s., Kisch, l.c. Anhang, p. 189s.
3 Ibid.
from our Nordic. Therefore Roman law does not help in the study of Danish Law but rather presents itself as a hindrance to get an exact idea of this.⁴

He also warned that Roman law might introduce “subtleties and fictions” in Danish law that were distant form the “so direct and always simple” customs in the North.

A more nuanced opinion, namely that “the intellect is refined” and that knowledge of Roman case law could make Danish law more “clear, fine and perfect” – was found in an introduction to the study of law by Peder Kofod Ancher in 1777. He was more positive as to what could be learned from studying Roman law. He referred to Roman law as a source to understand “principia iuris universalis” and maintained that Roman law had such richness that not knowing anything about it was the same as not to know that a study of law actually existed. Those general principles of law were necessary to know because the Danish Code was very short and insufficient. He argued that it was necessary to know not only the words of Roman law but also its background and origin and that it was further necessary to distinguish between general principles and those that were specifically Roman.⁵

The relationship between Danish law and Roman law became an important topic when, in the second half of the eighteenth century, legal history became established as a subject. A decisive step was taken when, in his book (published in two volumes in 1769 and 1776) on Danish legal history from Antiquity to the sixteenth century,⁶ the legal historian Peder Kofod Ancher (1710-1788) made it clear that Danish law was not a successor of Roman law. He pointed out that the roots of Danish law were to be found in the national legislation of the early Norse societies and thus denied that, for example, Roman law had had any influence. He was a patriot who did not admit foreign influence.⁷ Even if Kofod Ancher exaggerated the independence of Danish law from the foreign models of legislation, his view of Danish law was highly influential. His magnum opus became the most important work on Danish legal history to emerge from eighteenth-century academia. Kofod Ancher, who is regarded as the founder of Danish legal history as an academic subject, had been a professor of law in Copenhagen since 1741. He was profoundly influenced by Montesquieu in his view on the importance of knowing the roots of the local law in order to understand the specificity of national law.⁸

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⁵ See Peder Kofod Ancher: Anviisning for en dansk Jurist, angaaende Lovkyndigheds adskillige deele, Nytte og Hielpemidler. Copenhagen 1777; and En Dansk Lov-Historie. 1-2, Copenhagen 1769-1776, 1, p. 396s.

⁶ Ibid.


Only in the beginning of the nineteenth century did it become acknowledged that Roman law had played a more substantive role in the formation of Danish law. Anders Sandøe Ørsted (1778-1860) was the most important Danish lawyer in the first half of the nineteenth century. Ørsted was well-versed in the German natural law of the day and so also in its positive law and legal science, and he had a deep knowledge of the new codes of Prussia, France and Austria. All of this had an impact upon his views, both when it came to the understanding of Roman law, his description of contemporary Danish law, and when he stressed the need for reform.

To a great extent, later Danish jurisprudence was built on the foundation laid by Ørsted, tackling legal matters in a practical manner, rather than indulging in subtle theoretical considerations about the nature of legal matters or their place in a more wide-ranging system. With his substantial knowledge of Danish and foreign law, he set a high standard for erudition for those who would write about law. His way of reasoning was deeply anchored in the legislation of the day and he referred to currents in foreign law, when he found it useful, without too much speculation. Much has changed since then, but it would not be inappropriate to say that Danish law has not diverged substantially from this approach.

The more positive view of Roman law that we find in the legal works of Ørsted, is also reflected in the new curriculum for legal studies instituted in 1821 with Roman law as one of the eight main courses to be taught. However, the question “Why Roman law?” was still a matter to be addressed and one of the questions to be addressed in a professorial competition in 1830 was related to this:

Which reasons recommend the study of Roman Law in a State like ours, where it does not have any binding power, without deference to the fact that it might be the source of certain of the domestic law’s regulations, as well as how Roman Law ought to be lectured in such a way that its study can be fruitful to the promotion of legal knowledge and rather promote than hinder the study of national laws as the main subject of study.

The question was answered by P.G. Bang (1797-1861), who won the competition. Even though he only served as a professor for six years, he managed to write a detailed work on Roman law and a number of procedural analyses during this short period. He based his essay on the contention that only to a limited extent should law be promoted by...
legislation, but that it had emerged “from the life of the people” like the language, later to be developed by a specialised legal profession. The German Historical School considered this perception to have been confirmed by the way Roman law had evolved, and Bang accordingly asserted that the first and foremost reason for the study of Roman law was that it was relevant because of its “particular historical development”. A second main reason was to be found in its content: its richness, depth, shrewdness and consistency. As a third reason for studying Roman law, Bang stressed its importance for the post-Justinian development of European law. According to Bang, lectures on Roman law should therefore be organised in such a way that they helped in ordinary legal training, provided an opportunity for independent advanced studies and served towards a better understanding of Danish law.

Textbooks were required for the fulfilment of this programme and to this end Bang started work on one,11 which, however, was never completed.

In 1871 the question “Why Roman law?” was still discussed. In a speech to mark the annual commemoration of the founding of the University, law professor Andreas Aagesen stressed the importance of Roman property law for legal training, especially as it had developed in general commercial law, which he referred to as _jus gentium_. It was the high academic level that justified the study of Roman law. Aagesen found that the Romans were second to none when it came to establishing what harmonised with “the nature of things”.12 As a result, he focused on the aspects of Roman property law that had a direct significance for Danish law, and he was less interested in historic studies. As a further motive to study Roman law, Aagesen stressed in his 1871 speech, that profound studies of Roman law would potentially pave the way for a new codification of Danish civil law. This would not only make the law more accessible and its application more uniform, but would also make it possible to avoid superfluous academic discussions and open up the prospect of new advancement. In this sense, the study of Roman law had a function different to the study of legal history. Aagesen clearly stated the nature of Roman law as an ancillary to dogmatic law. For him the lectures on Roman law in Denmark had the same function as textbooks on the German Pandectist law. His argument in favour of the study of Roman law echoed Rudolf von Jhering’s famous statement in his _Geist des römischen Rechts auf den verschiedenen Stufen seiner Entwicklung_, in which he explained the importance of Roman law as a model for a sensible rule of law in a modern world. He therefore wanted to move “durch das römische Recht aber über dasselbe hinanaus”.

11 _Lærebog i de til den Romerske private Ret henhørende Discipliner_ (Textbook in the Disciplines Belonging to Roman Private Law) I (1833) and II (1835). The first volume covered an introduction and external legal history. The first half of volume II was about property rights. Bang himself wrote that the book was based on “the most famous new systems”. He wanted to “depict Roman law more or less faithfully at the juncture to which academic study has led it today ... ?”. P.G. Bang, l.c. I (1833), Foreword.

12 Aagesen’s 1871 speech was published in _Ugeskrift for Rettsvæsen_ 1871, p. 1059s.; see also the foreword to A. Aagesen: _Forelæsninger over den romerske Privatret_. I, Copenhagen 1882, by Evaldsen and Goos.
With this speech in 1871 the discussion as to the relevance of Roman law in Denmark naturally came to an end. It was still taught in 1900 and for some decades to come, but only on a very small scale. Even today we have a course in Roman law. The students who elect Roman Law mostly do so as they see it as an introduction to modern law, especially the law of obligations. The same arguments still apply: the high quality of Roman legal reasoning and its relevance for modern law even if so much in Roman law is different from modern law. In today’s discussion about subjects to be taught to students there is little disagreement. Roman law, like other subjects which are not completely orientated towards the modern world, are in danger and such subjects must fight for their position. I am happy to be able to send this greeting from the North from a colleague who is still teaching Roman law, to a South African colleague who has dedicated his career to Roman law to show that the position of Roman law in a law student’s syllabus is still something worth fighting for.