ROUTLEDGE MEDIEVAL TRANSLATIONS

The Danish medieval laws

THE LAWS OF SCANIA, ZEALAND AND JUTLAND

edited by **DITLEV TAMM** and **HELLE VOGT**

ROUTLEDGE

THE DANISH MEDIEVAL LAWS

The laws of Scania, Zealand and Jutland

The Danish Medieval Laws: The laws of Scania, Zealand and Jutland contains translations of the four most important medieval Danish laws written in the vernacular. The main texts are those of the Law of Scania, the two Laws of Zealand – Valdemar's and Erik's – and the Law of Jutland, all of which date from the early thirteenth century. The Church Law of Scania and three short royal ordinances are also included. These provincial laws were first written down in the first half of the thirteenth century and were in force until 1683, when they were replaced by a national law. The laws, preserved in over 100 separate manuscripts, are the first extended texts in Danish and represent a first attempt to create a Danish legal language.

The book starts with an introduction to the history of Denmark in the thirteenth century, covering the country, the political setting and the legal context in which the laws were written. There follows the translated text from each province, preceded by a general introduction to each area and an introduction to the translation offering key contextual information and background on the process of translating the laws. An Old Danish–English glossary is also included, along with an annotated glossary to support the reading of the translations.

This book will be essential reading for students and scholars of medieval Scandinavian legal history.

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MEDIEVAL NORDIC LAWS
Series editors: Stefan Brink and Ditlev Tamm

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THE DANISH MEDIEVAL LAWS
The laws of Scania, Zealand and Jutland
Ditlev Tamm and Helle Vogt

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Edited by Ditlev Tamm and Helle Vogt

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CONTENTS

List of maps viii
A general introduction to the Medieval Nordic Laws *translations* ix
Foreword xi
List of abbreviations xiii

PART I
Introduction **1**

Introduction **3**
Denmark around 1200 3
The Church 8
The laws 10
The medieval laws in Danish legal history 12
The law texts 13
Translating medieval laws 14
The language of the laws 15
The law in the laws 18
The household 18
Courts and procedure 22
Village and agriculture 24
Ownership and different types of property 26
Inheritance 27
Sale 28
Mortgage and pledge 29
Prescription and possession 30
Objects without an owner 30
Responsibility for animals and slaves 31
Contracts 32

Crime and punishment 32
Bodily harm 34
Sexual offences 36
Theft and rapine 36
Military dues 37
Bibliography: introduction **39**
Sources 39
Literature 40

PART II
The provinces and the laws **43**

Scania **45**
The Scanian laws 47
Dating 47
The manuscripts 49
The manuscript used for the translation 50
Editorial choices 51
The Church Law of Scania: translation **52**
The Law of Scania: translation **56**
The royal ordinances **97**
Knud VI's Ordinance on Homicide 28 December 1200 97
Manuscripts 97
Text 98
The Ordinance on Offering Compensation 101
Manuscripts 101
Text 101
The Ordinance on Ordeal by Hot Iron 102
Manuscripts 103
Text 103
Bibliography: Scania **106**
Sources 106
Literature 106
Zealand **108**
The province of Zealand 108
The laws of Zealand 110
Valdemar's Law of Zealand **111**
Dating 112
The law manuscripts 113

The manuscripts used for the translation and the editorial choices 114
The Church Law of Zealand 114
The law of Zealand known as the Law of Valdemar: translation 116
Erik's Law of Zealand 153
Dating 153
The law manuscripts 154
The manuscripts used for the translation and editorial choices 154
Erik's Law of Zealand: translation 156
Bibliography: Zealand 233
Sources 233
Literature 233
Jutland 235
The province of Jutland 235
Dating 238
The law manuscripts 239
The manuscript used for the translation and editorial choices 239
The Law of Jutland: translation 242
Bibliography: Jutland 294
Sources 294
Literature 294

PART III
Vocabulary 297

Vocabulary 299
I. Annotated glossary 300
II. Glossary Old Danish–English 317

Index 344

MAPS

1	Map of Denmark	xiv
2	Map of the medieval Danish districts and regions	6
3	A village where sun-division was used	25

A GENERAL INTRODUCTION TO THE *MEDIEVAL NORDIC LAWS* TRANSLATIONS

The oldest laws of the Nordic countries are written in the vernacular. The earliest manuscripts stem from the thirteenth century and are younger than the texts of the laws, some of which date back to the twelfth century. They are, of course, important in Nordic law and legal history, but they are equally significant for different branches of history, being the oldest written sources we have in the Nordic countries of the society at that time, dealing with the household and social, sometimes administrative, ecclesiastical and agrarian matters and also for philology.

These laws were intensely studied by legal historians as the foundation of national law. During the last decade there has been a revival in the interest in these early laws in the Nordic countries, manifested in, for example, an influential conference series in early law at the Carlsberg Academy in Denmark, an initiative of an interdisciplinary network project called *Medieval Nordic Laws* (*MNL*), funded by The Leverhulme Trust and based at the University of Aberdeen, and also some other local initiatives. In order to open up the floodgates for international interest and research on these laws and to facilitate comparison, it was decided in the *MNL* project to translate the laws into English. Besides the obvious scoop of an international interest in the laws based on new translations, another gain with this initiative was the rethinking of the position of the laws in connection with the redaction of new introductions to the laws. The Nordic medieval laws were previously subjected to thorough analysis from both legal and historical points of view and they have been translated into modern Nordic languages. This happened mainly in the 1930s and 1940s, but the laws have long played a central role in Nordic legal history. In the second half of the nineteenth century, the Nordic laws were seen in German scholarship as important expressions of the so-called *Germanenrechte*, and intense learning was used in developing and describing a specific Nordic variant of such law. This approach was never fully accepted in the Nordic countries and a more critical study of the laws based on the idea that they reflected both older and newer layers of law started in the 1920s and continued up to the 1980s in Scandinavia. Today's legal historians in the Nordic countries tend to see the laws in a European context, as new law written down as such. However, most of the Nordic scholarship was only published in Nordic languages. Research into the medieval legal world has continued in later years and a translation and

introductions in English will make the newest research accessible to an international audience. Iceland holds a somewhat different position and has already seen two of the old law codes, the *Grágás* and the *Jónsbók*, given modern translations and introductions recently. The edition of the old Icelandic law has been an inspiration for the present project.

The work has been pursued on a national basis by local teams with occasional meetings to discuss it. The original plan for these new translations was either to establish a team of scholars working with the laws, as in Denmark, or individual experts already acquainted with the law in question, as in Norway and Sweden, to do the work. To assist these translators, reference groups were assembled with some of the most prominent scholars in the fields of law, legal history, canon law, history and philology. A crucial issue when dealing with translations of this kind is to find a 'normative' text to base the translation on, chosen from the many (sometimes diverging) manuscripts which some laws can display. It has been up to each team or translator to make this decision; it would have been desirable but technically very complicated to use the original text. To make the volumes accessible to a broader readership, we have decided not to have the Old Nordic texts included; in most cases these can be found online.

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FOREWORD

This volume contains translations of the four principal medieval Danish laws written in the vernacular: the Law of Scania, the two laws of Zealand, known as Valdemar's and Erik's laws, and the Law of Jutland, all of which date from the time around 1200 or shortly thereafter. The Church Law of Scania and a number of short royal ordinances are also included. A second volume of the series of medieval Danish laws is dedicated to the learned Latin version of the Law of Scania attributed to Archbishop Anders Sunesen, the *Liber legis Scaniae*.

These translations are the result of a project that began in 2011. A group of Danish scholars was established, consisting of Per Andersen, Mia Münster-Swendsen, Frederik Bruhn Pedersen, Ditlev Tamm and Helle Vogt. On the basis of a draft translation made by Frederik Bruhn Pedersen from a version in modern Danish of the Law of Scania, the group discussed basic principles of translating the laws. The often heated discussions carried out in Copenhagen and in Rome also included intense studies and consultation of the text in Old Danish. The result of the discussions was a new, completely revised draft of the Law of Scania carried out by Ditlev Tamm in 2012. Later, drafts for the translation of Erik's Law of Zealand were made by Jeff Love and revised by Jenny Benham, who also made draft translations of Valdemar's Law of Zealand, the Law of Jutland, the Scanian Church Law and the royal ordinances. These drafts have been the object of close scrutiny by Ditlev Tamm and Helle Vogt. Helle Vogt has been the daily administrator of the projects and has directed the comments on the laws and the final edition of the texts which is presented here. Ditlev Tamm has directed the work on the *Liber legis Scaniae*, which will be published in another volume.

The editors wish to thank the people mentioned above; and for their help with establishing the glossary and terminology lists, surveys and other important tasks, Jenny Benham and Anne Ladefoged. Thanks also to Michael H. Gelting, Jill Harris, John Hudson, David Ibbetson, Niels Lund and Bertil Nilsson, who have given valuable advice on specific questions of translation; and Kate Gilbert for her thorough and dedicated work as linguistic adviser. Any remaining errors are the responsibility of the editors.

The translation project has received generous support from The Carlsberg Foundation, The Ernst Andersen and Tove Dobel Andersens Foundation, The Consul George Jorck and Hustru Emma Jorcks Foundation, The Engineer Captain Aage Nielsen's Family Foundation and The Knud Højgaards Foundation. The editors are most grateful for this support, which has immensely facilitated the project.

Ditlev Tamm and Helle Vogt

Copenhagen, 1 July 2015

ABBREVIATIONS

A&O: (*Arvebog og Orbodemål*) Book of Succession and Crime

ASun: (*Anders Sunesens Parafrase over Skånske Lov*) The *Liber legis Scaniae*

DD: (*Diplomatarium Danicum*)

DgL: (*Danmarks gamle Landskabslove med Kirkelovene*) The Old Provincial Laws of Denmark, including The Church Laws

EsL: (*Eriks sjællandske Lov*) Erik's Law of Zealand

JL: (*Jyske Lov*) The Law of Jutland

SkKl: (*Skånske Kirkelov*) The Church Law of Scania

SkL: (*Skånske Lov*) The Law of Scania

VsL: (*Valdemars sjællandske Lov*) Valdemar's Law of Zealand

Map 1 Map of Denmark

Part I

INTRODUCTION

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INTRODUCTION

Helle Vogt and Ditlev Tamm

Denmark around 1200

The medieval kingdom of Denmark consisted of three major legal provinces or regions: Scania, in the east; Zealand in the middle; and the peninsula of Jutland (with the island of Funen) to the west. The long coastline and the many smaller but often heavily populated islands meant that the kingdom was bound together by waterways. Deep, impenetrable woods marked the border with the Swedes. In the south, the river Ejder marked the border with the Holy Roman Empire.

Each legal province had its own major provincial assembly, held in Lund for Scania, Ringsted for Zealand and Viborg for Jutland. These three provinces were subdivided into districts, each with its own district assembly. The assembly (*thing* in Old Danish; *placitum* or *ius* in Latin) functioned simultaneously as a court and as a multifunctional venue for discussion and determination of any number of communal concerns, including public announcements, publication of social status, settling of disputes, and the like. The major provincial assemblies also had a political function, serving as the place in which kings were elected, allegiance was sworn and new legislation approved by those present. An early twelfth-century source tells us that the provincial assembly in Viborg would gather regularly "to discuss and establish the truth or firmness of the laws".[1] Although the system apparently was based on the principles of equality and one man, one vote, we may suspect that the assemblies in many cases were dominated by local magnates or specific interests. The system of proof used in judicial matters did not necessarily further justice on truth-finding in a more ideal sense, but it may have been functional when it came to the necessary settlement of conflicts. With the increased power of the kings during the thirteenth century, the political functions of the provincial assemblies declined, and the forum for political deliberations and decisions moved from the assemblies to the yearly gathering of the magnates[2] and to the king and his councils.

1 Ailnoth, "Gesta Swenomagni Regis et filiorum eius et passio gloriosissimi Canuti Regis et martyris" in *Vitae Sanctorum Danorum*, ed. M.Cl. Gertz (Copenhagen: G.E.C. Gad, 1908–1912), 111.

2 The gathering was called *hof* in Old Danish, translated into Latin as *parlamentum*: "*parlamentum, quod hof dicitur*". Erik Kroman ed., *Den danske rigslovgivning indtil 1400* (Copenhagen: Munksgaard, 1971), text 1, § 1:75.

The Danish realm, as a union consisting of the three provinces of Scania, Zealand and Jutland, can be traced back to the early ninth century.[3] From time to time during the following centuries, and as late as the civil wars of the 1150s, power was vested in more than one king at the same time. These kings did not claim sovereignty over all the Danes, but merely over one of the three provinces. Little is known about Danish feelings of identity at the time the laws were written down. Most people at that time probably saw themselves more as belonging to a specific locality than as Scanians, Zealanders or Jutes – not to mention Danes. We nevertheless find general references in the laws to Scanians, Zealanders or Jutes and, for that matter, Danes. Further insights can be gleaned from a contemporaneous work, the historian Saxo's *Gesta Danorum* (*The History of the Danes*, c.1210).[4] Saxo presents the Zealanders as brave, loyal and heroic, in contrast to the cowardly Jutes and the rebellious and ungrateful Scanians. With regional differences playing such a significant role in a work such as Saxo's, which was intended to tell about the deeds of the Danes in general, one might well suppose that these differences were a contentious issue at the very beginning of the thirteenth century.

The picture of the Scanians as shifty and treacherous may be coloured by the rebellion in this province (1180–1182) directed against the king and the Archbishop of Lund, Absalon, who was Saxo's Maecenas. It is not clear what provoked the rebellion, but it may have resulted from attempts by both the archbishop and the king via his officials to claim increased jurisdiction over spiritual and secular matters in the province. After the suppression of the rebellion, Scania was the province in Denmark that saw the most extensive legal activity, at least as far as the sparse source materials allow us to know. Although a number of royal ordinances concerning crimes are known only from Scania, we cannot know whether similar legislation was given to the other provinces or whether the extensive legal activity in Scania was due to special conditions in Scania such as the presence of the archbishop, or the perception that the province was more vexed with killings than the rest of the kingdom, as the ordinance from 1200 states. This ordinance, Knud VI's Ordinance on Homicide (1200), was the most important element of the royal legislation from this period. Because this was given by the Danish king, one could argue that it was more centralized than specifically Scanian in its jurisdiction, although it seems that legislative reforms were carried out as a co-operative effort by the archbishop, the king, and the magnates who dominated the provincial assembly. In this context it is important to emphasize that both the magnates and the Church had property and interests in the other provinces as well, and thus the legal reforms cannot be seen as an exclusively Scanian project.

3 Bernhard Walter Scholz and Barbara Rogers, trans., *Carolingian Chronicles: Royal Frankish Annals and Nithard's Histories* (Michigan: University of Michigan Press, 1972), s.a. 809, 811, 90 and 93. For a historical overview of early Danish history in English, see for instance, Peter Sawyer, *Kings and Vikings: Scandinavia and Europe AD 700–1100* (London: Routledge, 1984).

4 Saxo Grammaticus, *Gesta Danorum: Danmarkshistorien*, Latin text ed. Karsten Friis-Jensen (Copenhagen: Det Danske Sprog-og Litteraturselskab, Gads Forlag, 2005), volume 2, especially chapters 13–16.

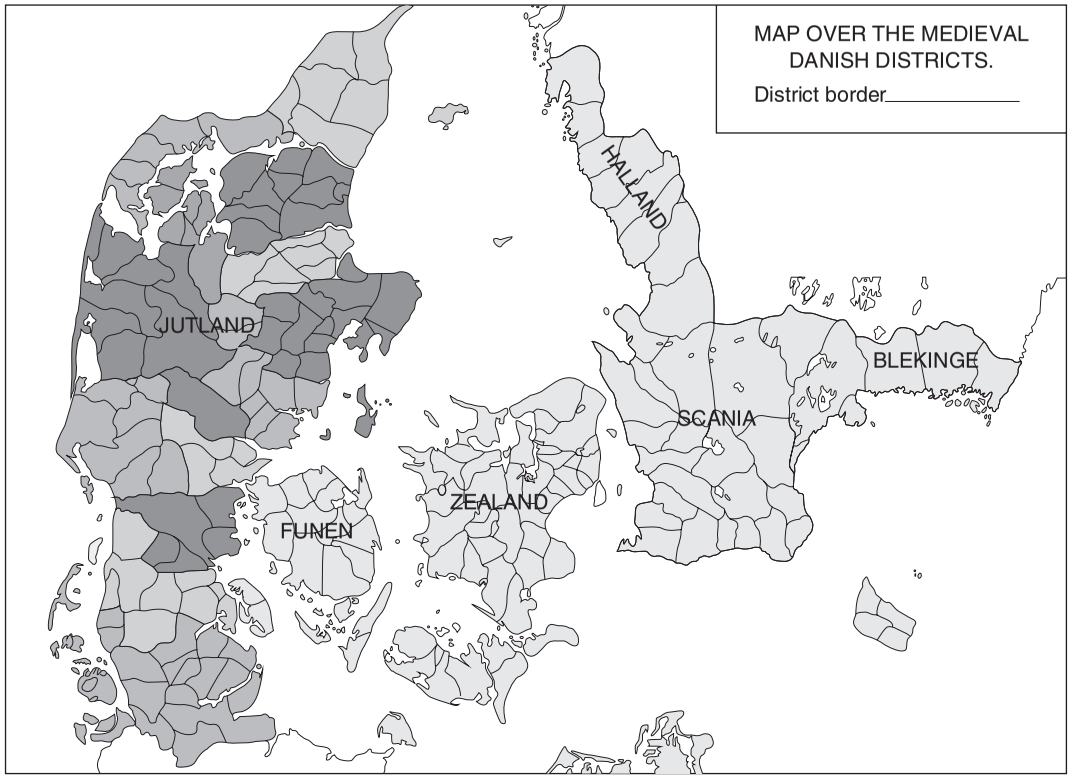
The provinces were divided into a number of districts (see Map 2). The term used for these, *hæreth*, probably comes from the word *hær*, which can mean both "army" and "people", and *rath*, from "disposal" or "consent". The division into districts in Scania dates back at least to the second half of the eleventh century. Districts are mentioned in a royal charter from 1085 by which King Knud IV (r.1080–1086; later canonized) donated land in a number of Scanian and Zealandic districts to the cathedral chapter of Lund.[5] The rest of the realm was probably divided into districts at the same time, but it is only in the cadastre known as King Valdemar's Survey from 1231 that we get a fuller picture of the districts in Denmark, which at that time numbered around 200.[6] The division into districts gives some indication of population density. In the areas with fertile soil, districts were usually smaller in area than those in sparsely settled forest areas or other less populated areas. Most Danish districts bordered the coast or were at least connected to the sea by a major waterway. Each district consisted of one or more ship-sokes that were expected to present fully armed and crewed ships when military duty was called for. The districts may have their origin in a royal attempt to improve the military system and exert better control by means of tax payments.

By around the year 1200 royal officials were to be found all over the realm, and – in theory at least – in each district. Such officials are often mentioned in the laws. The role of the king's official was to ensure that the king received his share of the fines to be paid, to ensure payment of labour and other dues to the king, and in some cases to help with the administration of justice. In Old Danish the official was called *umbuthsman*. In Erik's Law in particular we find the word *bryte* (bailiff; Latin *villicus*) used synonymously with *umbuthsman*, which may indicate that the official managed a royal estate in the district. The word *bryte*, which is regularly found in the laws, was probably originally used for a farm manager. In the Law of Scania we find many provisions that bear on the private agreement between the farm owner and his *bryte*. There must have been a significant social difference between bailiffs with an official position as manager of the king's or bishop's estate with public functions and those who were merely farm managers, even if the latter were in charge of extensive lands.

The decades around 1200, when the laws were written down, was a period of internal peace. The rather stable political situation and general prosperity are reflected in the fact that, as in most of Europe, the population seemed to have increased dramatically in Denmark during the high Middle Ages. From an estimated population of around half a million in 1050, the population may have grown

5 DD 1:2, no. 21.

6 O. Nielsen, ed., *Liber Census Daniæ. Kong Valdemars den Andens Jordebog* (Copenhagen: G.E.C. Gads Forlag, 1873). The survey is only known in a manuscript from around 1300 from Sorø Abbey. It was written by the same scribe who wrote the manuscript of the Zealandic laws used for the present translation.



Map 2 Map of the medieval Danish districts and regions

Note: The coloured parts in Jutland show the Jutlandic regions.

to around 1.3 million in the middle of the thirteenth century,[7] a number which would be reached again only in the late eighteenth century. This population growth has been explained by such factors as favourable climatic conditions, low incidence of famine, new methods of cultivation and new technology, in addition to an expanding economy.[8] The growing population placed a great deal of pressure on the arable land, which led to a wave of deforestation and cultivation of marginal land. As people began to run out of new land to cultivate, the existing land became an even more important resource, and from that came the need to regulate such matters as ownership, possession, borders and trespassing, as well as succession and such family relations as could imply transfer of land.

The politics of stable domestic conditions and close co-operation between the Church and the Crown came to an end after the death of Valdemar II in March 1241. At this time, fighting for the succession to the Crown among different royal lines started again. Valdemar's immediate successor Erik IV (r.1241–1250) was killed, perhaps on the orders of his younger brother Abel (r.1250–1252). A powerful bloc supported Abel against Erik, who had been crowned as king and co-ruler in 1232, the same year in which Abel became Duke of Schleswig. Among Abel's supporters were many magnates, including members of the influential Hvide family such as the Bishop of Roskilde, Nicholas Stigsen. The death of Erik IV was apparently seen by many of the Danish magnates as a way to gain peace and stability. They supported the oath given by Abel together with twenty-four oath-helpers to prove his innocence in the case raised for the murder of his brother, and elected him king. After Abel was killed in battle in 1252, the election of Erik and Abel's younger brother Kristoffer (r.1252–1259) as king laid the foundation for struggles between the descendants of Kristoffer and those of Abel that lasted for the rest of the century.[9] The last Danish king to be murdered was Erik V (r.1259–1286). The same period also witnessed a fierce struggle for power between the Crown and the archbishops of Lund. In this period all the earlier legislation was nostalgically referred to as "the Laws of King Valdemar". The medieval laws survived the time of unrest and, unlike in Norway and Sweden, no unifying national law was given for either countryside or towns during the Middle Ages. The provincial laws were kept until they were partially incorporated into the Danish Code of 1683, by which the old division in provincial laws was abolished.

7 Nils Hybel and Bjørn Poulsen, *The Danish Resources c. 1000-1550: Growth and Recessions* (Leiden and Boston: Brill, 2007), 124–129. Because the audience for the present volume is mainly readers who do not read Nordic languages, we have chosen for the most part to cite literature in English or non-Nordic European languages and limit references to literature in Danish to the most important texts.

8 For a general introduction in English to the Danish population, climate and resources in the Middle Ages, see Hybel and Poulsen, *The Danish Resources.*

9 On the Danish dynastic struggles of the thirteenth century see Kai Hørby, *Status Regni Dacie. Studier i Christofferlinjens ægteskabs-og alliancepolitik 1252–1319* (Copenhagen: Den danske historiske Forening, 1977).

The Church

Denmark was Christianized in the second part of the tenth century.[10] After a church organization was developed in the eleventh century, the influence of the Church reached a peak in around 1200. From the period when the laws were written down we can clearly see the influence of general theology and canon as well as Roman law; and several papal letters remind us of the close links between the Pope in Rome and leading members of the Danish clergy. Most of the cathedrals and medieval parish churches still standing today date from that period, bearing witness to a level of artistic taste and mastery comparable on a smaller scale to what is found in Western Europe at that time. Denmark was part of Latin Christian culture, and we can hardly understand the impact of the project of writing down the laws without considering the cultural European context.

Around 1060, during the reign of Svend Estridsen, Denmark was divided into nine dioceses. Five of them were in Jutland: Schleswig, Ribe, Viborg, Aarhus and Vestervig (later moved to Børglum). One was in Odense on the island of Funen and one in Roskilde in Zealand. Originally there were two in Scania, Dalby and Lund. In 1066, however, Dalby was unified with Lund. Until 1103–1104 Denmark, as well as the rest of the Nordic countries, was subordinate to the Archbishop of Hamburg-Bremen. In 1103 or 1104 the Bishop of Lund, Asser, was appointed as archbishop there and given primacy over Norway, Sweden, Iceland and the other North Atlantic settlements.

The Church derived its income not only from large donations but also from the fees paid by those who used the ecclesiastical courts, the supremacy of which in spiritual matters, including marriage, seems to have been accepted in Denmark in the second half of the twelfth century.[11] The bishops or their delegates, the deans and canons, heard and decided cases with a possibility of appeal – in principle – as far as Rome. Very little is known of the legal practice in the Danish ecclesiastical courts. No court rolls have survived, and for the high Middle Ages, only the abbey cartularies give glimpses of practice in land conflicts.[12] Provisions relating to church matters are rarely found in the Danish laws, though the Law of Jutland includes more such material than the other laws. This can be explained by the fact that the six dioceses in Jutland and Funen, unlike dioceses in Zealand and Scania, did not have their own church laws. In those dioceses the bishop's tithe was first introduced in the later Middle Ages. Until then an annual bishop's gift was paid.

We know little about the level of learning of the higher clerics in the first half of the twelfth century. The cathedral schools in the German empire seem at that time

10 On the Christianizing process see Nora Berend, ed., *Christianization and the Rise of Christian Monarchy: Scandinavia, Central Europe and the Rus' c.900–1200* (Cambridge: Cambridge University Press, 2007).

11 Helle Vogt, *The Function of Kinship in Medieval Nordic Legislation* (Leiden and Boston: Brill, 2010), 51–53.

12 Helle Vogt, "The power to judge: jurisdiction in property conflicts in thirteenth-century Denmark" in *Disputing Strategies in Medieval Scandinavia*, ed. Kim Esmark, Lars Hermanson, Hans Jacob Orning and Helle Vogt (Leiden and Boston: Brill, 2013), 161–180.

to have been the favourite place to go to study abroad. This changed mid-century, when the schools in Paris became the preferred place for the magnates to send their sons. According to the chronicler Arnold of Lübeck, writing at the beginning of the thirteenth century, "Also in scholarly education they [the Danes] have had no small progress, since the nobility send their sons to Paris, not only to elevate the clergy but also to educate them in all kinds of secular knowledge".[13] Arnold mentions that not all those who went to Paris were designated for an ecclesiastical career, but all those we know about were clerics. Several Danish and Norwegian bishops studied at the schools attached to St-Victor and Ste-Geneviève. The prominent Danish bishop and statesman Absalon studied in Paris before he returned to Denmark to become Bishop of Roskilde in 1158. He brought one of his fellow students, William (1125–1203; canonized in 1224) to Denmark to run an abbey of Augustine canons at Æbelholt (Latinized as *Paracletus*, "Paraclete") in Zealand. From the late twelfth century Danish students also began attending the law schools to study Roman and canon law. Little is known about the number or names of these students.[14] One of them, however, must have been Archbishop Anders Sunesen who, according to Saxo, had studied in Paris (where he became a magister in theology), Italy (probably Bologna) and England.

Beginning in the late eleventh century, most bishops were of Danish noble origin. Of particular note are Absalon (Bishop of Roskilde 1158–1192 and Archbishop of Lund 1178–1201) and his nephew Anders Sunesen (Archbishop of Lund 1201–1223). Both Absalon and Anders Sunesen, as well as Anders Sunesen's brother Peter, who succeeded Absalon as Bishop of Roskilde in 1192, belonged to the powerful Zealandic Hvide family. Extended landowning in Zealand was the economic basis of this kin group, which was closely allied with the royal power during the reign of the Valdemars. For more than a century they also dominated the episcopal sees of Roskilde and Lund. Danish bishops were active in the legislative process, and the participation of both Absalon and Anders Sunesen is particularly well documented. A source from Jutland, the *Life of Bishop Gunnar of Viborg* (1151–1252), mentions that Gunnar was active in the redaction of the Law of Jutland.[15]

13 "*Scientia quoque litterali nonparum profecerunt, quia nobiliores terre filios suos non solum ad clerum promovendum, verum etiam secularis rebus instituendos Parisius mittunt*" in Monumenta Germaniae Historica, *Arnoldi Chronica Slavorum*, III, 4, (Hannover: 1868), 77.

14 Åke Sällström, *Bologna och Norden, intill Avignonpåvedömets tid* (Lund: CWK Gleerups, 1957) and Mauno Jokipii and Ilkka Nummela, eds, *Ur nordisk kulturhistoria: Universitetsbesöken i utlandet före 1660*, I, XVIII Nordiska historikermötet (Jyväskylä: Jyväskylä Yliopisto, 1981).

15 *Quando etiam dompnus Waldemarus rex senior librum legis Danice Worthinborgh composuit et populo terre sue conseruandum commisit, ipse presens fuit, et consilijs suis pro maiori parte ipse rex obediuit.* M.Cl. Gertz, ed., *Scriptores minores historiæ Danicæ medii ævi*, II (Copenhagen: Selskabet for Udgivelse af Kilder til Dansk Historie, 1917–1922, reprint 1970), 274. This assumption has been questioned by Per Andersen, "Biskop Gunner, Jyske Lov og den lærde ret" in Per Andersen, Pia Letto-Vanamo, Kjell Åke Modéer and Helle Vogt, eds, *Liber Amicorum Ditlev Tamm; Law, History and Culture* (Copenhagen: DJØF, 2011), 23–33. But so far no other researchers have discussed his arguments, and the editors of this volume are not convinced.

Twelfth-century Denmark witnessed a wave of foundations of new abbeys. Most abbeys were founded by bishops, most notably Archbishop Eskil of Lund, the founder of eight abbeys of which the most important were Esrom and Herrisvad; or by the king, royal kinsmen or local magnates. The great majority of the abbeys were founded in the countryside and thus became neighbours to other landowners and participants in the rural life regulated by the laws. The Benedictine order was dominant in the first foundation phase. From around 1150 a new wave of abbey foundations started with the introduction of the Cistercians. From 1144 – when the first Cistercian abbey was founded at Herrevad in Scania – to around 1200, eleven Cistercian abbeys were founded in Denmark, among them Esrom and Sorø in Zealand and Øm and Løgum in Jutland. The Cistercian abbeys were for the most part founded by bishops, often in collaboration with their kinsmen, and many of them prospered from generous family endowments.[16] The major concern of the laws apropos the abbeys was to regulate donations and transactions with respect to property that took place when a person entered a monastery or a nunnery. More generally, the abbeys were not exempt from the law but had to comply with all the rules found in the laws about the regulation of village life and how to behave as to waters and fields and woods.

The laws have no specific regulations concerning ecclesiastical property, apart from one article in the Law of Jutland which, in accordance with canon law, states that whereas the Church gained prescription rights to land after thirty years of unchallenged possession, a secular party would have to possess land for forty years in order to obtain the same right. Unlike land belonging to a secular party, in which case the kinsmen had a pre-emptive right, the Church did not have to offer land to the kinsmen of the donor before selling it, "as all Christian men should be brothers".[17]

The laws

The four main Danish medieval laws translated and edited in this volume all date to the time often known as the "juridical century" (1150–1250),[18] a period characterized by the establishment of a legal profession in universities in Italy and France and by the writing down of the law all over Europe.[19] The texts of the Danish laws were all collected and written down in Danish. Each law has its own distinct features, but there are many similarities, and there is every reason to believe that those

16 On the Cistercian abbeys in Denmark see Brian P. McGuire, *The Cistercians in Denmark: Their Attitudes, Roles, and Function in Medieval Society*, Cistercian Studies Series 35 (Kalamazoo, MI: Cistercian Publications, 1982).

17 JL, I, 38.

18 Harold J. Berman, *Law and Revolution I: The Formation of the Western Legal Tradition*, (Cambridge, MA: Harvard University Press, 1985).

19 For a recent overview in German of the Danish and Nordic laws see Dieter Strauch, *Mittelalterlices nordisches recht bis 1500*, Ergänzungsbände zum Reallexikon der Germanischen Altertumskunde, Band 73, (Berlin/New York: De Gruyter, 2011).

who wrote down the later laws knew the texts of the laws which had already been written down and took inspiration or directly borrowed from them. The Law of Scania in particular seems to have served as inspiration for other works in the field. Even if each law was restricted to its own geographical area, they are all expressions of a similar legal order and, taken together, they may be thought of as a sort of Danish *ius commune*. Among the laws we can identify a number of minor legal differences and a few more significant ones, but the most pronounced differences are found with respect to special chapters of the laws which do not have parallels in the other laws. The most notable material differences are found between the Law of Jutland on the one hand, and the laws of Scania and Zealand on the other. Although several manuscripts from the Middle Ages contain more than one of the laws, it must be stressed that in principle, each province kept its own law until 1683. The Law of Scania and an early collection of Zealandic law, known as the Book of Succession and Crime (*Arvebog og Orbodemål*), are evidently the oldest still existing of the provincial laws, followed by Valdemar's Law of Zealand and finally, the Law of Jutland and Erik's Law of Zealand.

No text of any Danish medieval law exists that can be considered "original". Nor, indeed, do we know whether any such texts ever existed. Most texts we have today date from the time after 1300. A few manuscripts of the Law of Jutland survive from the late thirteenth century, but they still must be dated at some distance after the date when the prologue tells us the law was given (1241). Even the oldest manuscripts of a law may contain considerable changes and modifications with respect to the first draft of the text.[20]

Many questions as to the legal character of the medieval laws cannot be answered definitively. One important discussion concerns the issue of what kind of text we are actually studying when we read something that defines itself as the law of a certain area. Did the work consist of writing down previously existing rules that had been transmitted orally until then, or was new law being created, or both? Did the outpouring of legal work done in this period stem from important changes in society and a need to devise and keep a record of new rules? Or do the rules reflect old norms in newly written form? In modern legal history there is a tendency to see the medieval laws as not necessarily transmitting old law, but regulating society by laying down new and much more detailed rules.

Another question is the legitimacy of legal texts that were produced without any authority other than that of the text itself. Law in the Middle Ages was not necessarily based on the authority of a king or other ruler. Legitimacy of the law was not conferred by its origin stemming from a particular authority: the law had its own life. Only the prologue of the Law of Jutland (1241) identifies the law as being given by

20 In the case of JL, and maybe EsL as well, one possibility is that the law was modelled and adapted in the first decades after being written down and took on a more permanent form only in 1282, as part of a political compromise between the king and the magnates. Yet that is highly hypothetical. For 1282 see Helle Vogt, "'With the law the land shall be built': Danish legislation in the thirteenth century" in *Legislation and State Formation: Norway and its Neighbours in the Thirteenth Century*, ed. Steinar Imsen (Trondheim: Akademiska Publishing, 2013), 85–99.

the king. Although the other laws do not identify the origin of the initiative to write them down, a qualified guess is that persons related to the provincial assemblies and/or the bishops were responsible. In any case, the absence of a specific "law giver" did not diminish these laws' authority as the expression of the law of the land – or the power of the king and his officials, who are very much in evidence even in Erik's Law for Zealand. With respect to the Law of Scania, we know that royal legislation is incorporated into the text, and the considerable resemblance among the various laws indicates that the regulation of such key areas as succession and donations may have been loans from one province to another, or a result of the Church, the magnates and the royal power realizing their interest in fixed rules.

Those who wrote down the laws cannot be identified, but some of them must have had some knowledge of the learned law taught at foreign universities. We know of people who at that time had studied abroad and acquired legal qualifications, specifically members of the episcopal chapters. The precision of the language of the laws could not be imagined without some knowledge of Latin. It is, to a great extent, clear and professional and bears witness to its writers' familiarity with formulating sentences of some complexity. As the first extended texts in the Danish language, the laws are also monuments of Danish literature. Obviously, they also represent a first attempt to create a legal language, transforming ordinary words into words with a specific legal meaning.[21]

The medieval laws in Danish legal history

For centuries the study of the medieval Danish laws has been the core of Danish legal history. These laws continued to be in use until a Danish national law was issued in 1683, thus finally unifying the law of the provinces into which Denmark till then had legally been divided.[22] As early as the beginning of the seventeenth century, the Danish historian Arild Huitfeldt was reflecting on the origin of the Danish medieval laws, in particular the reasons for issuing the Law of Jutland. In the eighteenth century, the Danish historian and author Ludvig Holberg also quoted extensively from old Danish laws. It was the founder of Danish legal history, Professor Peder Kofod Ancher, who, in his critical editions and his great work on the history of Danish law (1769–1776), initiated scholarly research into the laws. This study was continued in the nineteenth century by J.F.W. Schlegel, J.L.A. Kolderup-Rosenvinge and their successors.[23]

German legal historians, especially Karl von Amira and Konrad von Maurer in the 1860s and 1870s, inaugurated a new era for the study of the old so-called Germanic laws. The Nordic medieval laws thus became the object of a new interest aimed

21 Ditlev Tamm and Helle Vogt, "Creating a Danish legal language: legal terminology in the medieval law of Scania", *Historical Research*, vol. 86, no. 233 (2013) 505–514.

22 At this point Denmark consisted of only two legal provinces, since in 1658, Scania had been conquered by the Swedes.

23 For the references see the bibliography.

at establishing what could be considered the original Germanic law, the *Urrecht*. In this connection the Nordic laws, which unlike most of the Germanic tribal laws were written in the vernacular and not in Latin, were seen as models. During the late nineteenth century and up into the twentieth century there was an exchange of ideas between Nordic and German scholars. A late example was Claudius von Schwerin, who edited a complete translation into German of the text of the Book of Succession and Crime, the Scanian Church Law, Erik's Law of Zealand and Knud VI's Ordinance on Homicide, published in the series *Germanenrechte* by the Academy of German Law in 1938.[24] Despite the publication's clear and unpalatable ideological purpose of the series, the translation is absolutely reliable, in a scholarly sense. Later in 1960 the German philologist Klaus von See published a translation of the Law of Jutland.[25] Apart from these German translations, only fragments of the Danish medieval laws have been translated into other than Nordic languages.[26]

Since the 1920s a new school of Danish legal scholars has turned away from the "Germanistic" approach and has rather chosen to read the laws as texts that comprise various layers reflecting changes in the law. In a series of articles, Poul Johannes Jørgensen made a critical analysis of various elements such as the handling of homicide, witnesses and other proofs and crimes, and was able to identify what he considered to be different stages of the law as written down in the existing texts. Later, Stig Iuul and Ole Fenger studied the family and criminal law respectively. Their studies were based on the idea that the laws did not reflect old oral traditions but rather, could be seen as products of a period in transition with a need for both stability in the law and new rules to address new situations.[27] Contemporary legal historians such as Per Andersen, Michael H. Gelting, Ditlev Tamm and Helle Vogt have analysed questions of the dating and the contents of the law from a more comparative aspect, stressing their European context.[28]

The law texts

The medieval laws translated here were in force for more than four hundred years. A large number of manuscripts of the laws from various times have survived. Most of them date from the later Middle Ages and the early modern period. As noted above, none of them can be dated as far back as to the first half of the thirteenth

24 Claudius Frh. von Schwerin, trans., "Dänische Rechte" in *Germanenrechte*, vol. 8 (Weimar: Verlag Hermann Böhlaus Nachfolger, 1938).

25 Klaus von See, *Das jütsche Recht. Aus dem Altdänischen übersetzt und erläutert von Klaus von See* (Weimar: Hermann Böhlaus Nachfolger, 1960). In addition to the translation, von See has published a glossary with thorough explanations of the legal concepts.

26 SkL is also found in a modern Swedish translation, Åke Holmbäck and Elias Wessén, trans. and eds, *Svenska Lanskapslagar*, vol. 5 (Stockholm: Hugo Gebers Forlag, 1946).

27 Ole Fenger, *Fejde og mandebod. Studier over slægtsansvaret i germansk og gammeldansk ret* (Copenhagen: DJØF, 1971); Stig Iuul, *Fællig og Hovedlod. Studier over Formueforholdet mellem Ægtefæller i Tiden før Christian V's Danske Lov* (Copenhagen: Nyt nordisk Forlag, Arnold Busck, 1940).

28 See the bibliography for a full list of works by these historians.

century, when the laws were first written down. With the exception of the Law of Jutland, of which the oldest manuscript probably dates from 1276 or slightly before, the oldest manuscripts of the other provincial laws all date to the 1280s or later. In the years from 1933 to 1951, three to five manuscripts of each of the old laws were transcribed and published in the eight volumes of *Danmarks gamle Love med Kirkelovene* (The Old Laws of Denmark with the Church Laws). The editors of *Danmarks gamle Love* chose to publish a number of different manuscripts of the same law. In their edition, the text designated as Text 1 reflects the oldest manuscript tradition that exists for each law. This text is supplemented in each case by two to four manuscripts from later periods, chosen to reflect variations and the development in the language and understanding of the rules. The edition also has an extensive *apparatus criticus* that covers not only the printed laws but the entire corpus of manuscripts.

The principle behind the choice of text for the present volume has been to translate a single manuscript of each law published as Text 1 of *Danmarks gamle Love*. Thus, each text published here is a specific manuscript of a text that was once in actual use, rather than an ideal law text created by mixing or combining several texts. For the most part, minor variations and omissions are not noted, although in a few cases variants are given in the footnotes. An example is the ordeal by hot iron. Although this ordeal is found in cases of suspected adultery in the old manuscript of the Law of Scania used for the present translation, it appears in many more places in manuscripts that rely on another transcription tradition. In the notes we have marked the places where "nominated men" in the manuscript are replaced by "ordeal by hot iron" in these other manuscripts. Those who wish to acquaint themselves with the full scale of variants are referred to the *apparatus criticus* in *Danmarks gamle Love.*

Translating medieval laws

How to translate a law text from Old Danish to modern English? That is a fundamental question to ask when a project like this is undertaken. Translation in itself is a matter of delicacy. Translating texts from Old Danish into understandable English poses quite a few additional questions, not only as to which manuscript or manuscripts the translation should be based upon but also, and especially, as to what we can term the "style" of the translation. Should it be as literal as possible, or should concern for comprehensibility lead to a freer version of the text? And what to do with words that have no equivalent in modern English? Should an attempt be made to translate them, or should they be kept in the original language? The translations presented here tend to be as close to the original as possible without losing legibility. Some of the Old Danish grammatical constructions therefore have been abandoned for the sake of clarity. For example, we have had to eliminate double negatives ("deny that he did not . . . "), used in Old Danish to intensify negation, because in English a double negative carries a positive sense. Some sentences are obscure in themselves, and in those cases the translators have

tried not to guide the reader to a certain understanding. Even where the text may be unclear and difficult to understand, it is nevertheless to be hoped that the translation can give an idea of the original way of presenting the law and be read with pleasure for its contribution to our understanding of medieval society and its regulations.

Many words in Old Danish have no equivalent in modern English. Nevertheless, in order to allow the reading of the law to be more fluent and to give a sense of the original rhythm of the law text, no words are kept in the original Old Danish. For example, one archaic term found in the laws is *lindebot* – literally, "belt-fine" or "belt compensation" – which refers to a situation in which persons who are unable to pay a full compensation are stripped of what they own until only the belt is left. In this case the word is translated as "belt-fine", with an explanatory note given in the terminology and the original term given in the Old Danish–English glossary.

In other cases words are identical or similar to old Anglo-Saxon terms, without necessarily having had the same meaning in thirteenth-century Danish as they did in medieval English. For example, the compensation to be paid by the killer and his kinsmen in case of homicide is called *manbot* in the provincial Danish laws. Although the word *manbot* is also found in the *Leges Henrici Primi* (c.1115), in the English context, *manbot* was a fine paid to the lord of the killed person and not to his kinsmen. In old English law, payment to the kinsmen was known as *were* or *wergeld*, and often this is the word used by legal historians for any type of compensation for killing.[29] In order to avoid misunderstanding we have chosen to translate *manbot* as "man's compensation" and not as "wergeld". In a similar vein, we have avoided using words that have a clear and different connotation in the context of common law, such as "jury" and "ombudsman".

The language of the laws

In the Law of Scania we find a total of 994 different words. Of these, 53 per cent are nouns, 10.5 per cent are adjectives, 20.5 per cent are verbs, 6 per cent are adverbs and 10 per cent comprise of other forms.[30] The presence in the text of only a limited number of legal terms[31] indicates that at this time a fully developed, formal legal language – distinct from ordinary or everyday language – was unknown. It should be noted that the legal language seems to have been more highly individuated within the area of criminal and procedural law than within private law. Surprisingly few words found in the law can be considered as loan words, only about 3 to 6 per cent. Since little is known of the Danish language before the twelfth century, it is impossible to know how many of the words have

29 J.L. Downer, trans. and ed., *Leges Henrici Primi* (Oxford: Clarendon Press, 1972), 87, 4, 266.

30 Peter Skautrup, "Fra Guldhornene til Jyske Lov" in *Det Danske Sprogs Historie*, vol. 1 (Copenhagen: Gyldendal, 1944), 284.

31 E.g. *arv* (inheritance), *skøte* (convey) and *manbot* (man's compensation).

come into the language from, say, German dialects or English, which belong to the Germanic language group along with the Nordic languages. Because many words in this group are quite similar, it is often difficult to determine whether a word has a Danish origin or whether it has come into the Danish language from one of the other Germanic languages. There are hardly any loan words from Latin or any other language, and the few that can be found are not legal but ecclesiastical words that all derive from German, such as *biskop* (bishop) and *kloster* (monastery or abbey).[32] In the later Law of Erik the number of loan words, especially from German, had increased. It is also possible that there are loans of legal words from Norway or Iceland, where a legal terminology was established earlier than in Denmark, but much work still needs to be done to establish the relationships among the legal terminologies in the Nordic laws. The language spoken in Denmark around 1200 was a variation of the language common in the Nordic area and sometimes known as the "Danish tongue". Differences among the Nordic dialects, however, were already such that direct borrowings from the legal languages of either Iceland or Norway – both of which had developed a legal vocabulary and already had written legislation – would not easily have been understood in Denmark. It seems that the Danish legal language was created by attaching new legal meanings to ordinary words,[33] or in some cases by combining everyday words to create a new legal term. An example of the latter is the word *flatføre* (literally, "to house-lead") created by combining the word *flat* (house) and *føre* (to lead) to describe a legal practice by which a person was allowed to give up free status and property in return for maintenance by his relatives or others.

The vocabulary and the style of the law texts are two different matters. A traditional way of understanding the style of the text is that it contains reminiscences of spoken language – a way of viewing the law which suited the assumption that most of the written text was created on the basis of oral customs.[34] An illustrative example is found in chapter 102 of the Law of Scania, on "handless accidents" (*handløs vathe*): "For all handless accidents either three marks shall be paid or an oath of twelve be given, both for horns and for hoof and for a hound's tooth or any other handless accident."[35] It has been presumed that the alliteration originated in an oral tradition, but more recent research has shown that it does not necessarily have its roots in an old tradition of memorizing. Instead, it may well be a loose translation of a text of Augustine found in the *Decretum* of Gratian. The same alliteration is

32 Skautrup, "Fra Guldhornene til Jyske Lov", 285.

33 For example the word *vin*, friend, is used in the laws to mean a guarantor brought by a buyer to witness a sale, in case the buyer was accused later of having stolen the goods.

34 Skautrup, "Fra Guldhornene til Jyske Lov", 285.

35 Johannes Brøndum-Nielsen and Poul Johannes Jørgensen, eds, *Danmarks gamle Landskabslove med Kirkelovene*, I (Copenhagen: Det Danske Sprog- og Litteraturselskab, Gyldendal, 1933–1961), 1, chapter 102, 77.

found in the Lombard laws.[36] This is an example of how sentences which seem to have been written down to make it easier to remember a text can have another literary background. Alliteration and pleonasms such as *ja og vilje* ("yes and with consent") may well be examples of a literary style, rather than a reflection of an oral tradition.

Before the writing down of the laws, written Danish language was known only from texts on the runestones, and a Danish language written with Latin letters was still unknown. The time of the writing down of the provincial laws thus was also the time of birth of a written Danish legal language. We may presume that the language used at the assemblies mentioned in the laws was also Danish. Paradoxically, the early writing down of the law in the vernacular is not reflected in the use of Danish for other legal texts. For two centuries after the laws were written down, not only were all chronicles and other narrative texts written in Latin; so too were charters, wills and other legal documents. This remained the practice until around 1425, when we see a radical shift in the administration of justice at all levels, most thoroughly in the royal chancery, including the replacement of Latin with Danish.[37] The change from Latin to the use of the vernacular in legal documents took place later in Denmark than in most other European countries. The reason is not clear. It might have been expected that the existence of a secular legal system using the Danish language, one based on non-professional judges with no legal training and laws written in the vernacular, would have stimulated the use of and development of the Danish language in legal documents at an earlier time, as can be seen in the other Nordic countries and in areas of northern Germany. Apparently, the use of Danish in legal matters came to a halt after the effort in the first half of the thirteenth century, however, and it took some time until a Danish legal language began to develop once more. In 1683, when the provincial laws were abolished and national legal unity was introduced by the Danish Code, words from the medieval laws were still in use, and several legal concepts had no corresponding words in modern Danish. Only in the eighteenth and nineteenth centuries, under the influence of theorists of natural law and German legal science, did the Danish legal language become a real professional tool.

36 This alliteration used in connection with damage caused by animals is also found in *Laws of Early Iceland: Grágás* I, 148 (K 88): "horse or ox, dog or bear" and in the Norwegian Church Law of the Borgarthing, I 5, "hoof or horns or a hound's tooth", and may stem from St Augustine's "Ad Publicolam", epist. 154 ("*aut ideo non debent boues habere cornua, aut equus ungulas, aut dentes canes*"), quoted in the *Decretum Gratiani*, C.23 q.5, c.8. See Ditlev Tamm, "Med lov skal land bygges eller om dansk og fremmed ret", *UfR: Ugeskrift for Retsvæsen* (1988), 315–317; and Elsa Sjöholm, *Die Gesetze als Quellen Mittelalterlicher Geschichte des Norden* (Stockholm: Almqvist & Wiksell, 1976), 120ff, who takes this as a reference to Rotharic's *Edict*, chapter 326.

37 Anders Leegaard Knudsen, "Testimonia placiti: private charters as public instruments. A study in medieval Danish diplomatics", *Archiv für Diplomatik, Schriftgeschichte, Siegel- und Wappenkunde*, vol. 57 (2011), 163.

The law in the laws

The Danish medieval laws are rather similar in length, and each of them deals with essentially the same legal matters. All laws start out with regulation of the law of succession and family property. Next follows regulation of the village community and extensive rules on different kinds of acts for which compensation should be paid. A central role is played by the rules on homicide, theft, different kinds of bodily harm, adultery and arson. Gang crime has its own rules and was heavily fined. Later parts of the laws include regulations as to trespassing by animals, bees, woods, meadows, waters and wrecks. The way of presenting the rules is normally casuistic: a case is presented and from the case the rule is explained, sometimes followed by a short justification. Most regulations are procedural, in the sense that they prescribe the proof to be carried out in the case. Procedural rules also regulate delay, absence and other purely procedural matters. From the contents of the laws it seems evident that those who wrote them down had a working knowledge of how the law actually functioned when parties met at the assembly. Such knowledge could also have been used to clarify uncertainties and extend the regulation to areas which still needed a more extensive description. The rules seem to have been made for landowners who wanted to protect their interests against thieves, robbers, adulterers or untimely generosity by a family member towards the Church, and to extend their influence by acquiring new land or other goods by marriage, succession or sale. The law also reflects a society in which the peaceful solution of conflicts by compromise or before the local assembly apparently was preferred to violence and taking the law in one's own hands.

The household

At first glance the laws may seem to have been written for a society with few social distinctions. There are only slight hints as to the existence of an aristocracy with special privileges. At the top we find the king, bishops and archbishop, and the king's official or bailiff, who is particularly associated with abuse of power in Erik's Law. The central person in the laws is the householder (*bonde*), who owns his own house and is the head of a family household that normally consists of wife and children and sometimes sons- and daughters-in-law and grandchildren, as well as unmarried relatives. Servants were also a part of the household even though they were not a part of the partnership. Old people or others too poor to support themselves and their families had the option of giving up their belongings and legal status to be supported by family members and others, and the laws also mention people who live on rented land rather than land of their own. In the lower-status category we also find free household servants known as *leghehjone*, thieves and itinerant people. At the bottom are slaves, known as *thræls* or *anøthigh hjon.* This picture illustrates well how legal texts cannot be seen as true reflections of society, however. From charters we know about wealthy magnates who possessed whole villages and hundreds of farms, while the poor land workers are known

only indirectly as those tilling the land of magnates and wealthy farmers. The laws reflect the group of persons the laws were written for: the householders. In the later Middle Ages this word became synonymous with the farmer who cultivated the land. In the thirteenth century, however, the *bonde* could just as well be someone who lived by fishing or forestry. What made a man a *bonde* in our period was that he was the head of a household.

As the head of the household, the householder could dispose on behalf of the other members of the household. The core of the household was the family partnership, known as the *fælagh* (from *fæ*, movables or cattle and *lægge*, to lay, and thus "to lay goods together"). Partnership could be agreed partnership, in which case the part taken out when the partnership was dissolved would depend on the agreement. If a person brought in a large fortune, it could be agreed that he or she should take a larger share out of the partnership than the law prescribed. If no specific agreement was made, the rule of the laws was that division would be made according to the number of partners, with men and wives taking a double lot with respect to daughters and other women. It is likely that the construction of the partnership, like other areas of inheritance and family law, was a novelty in the twelfth century. The partnership was divided according to the number of heads. The central term used for the division of the partnership is *hovethlot*, capital lot. The capital lot functioned as a scale for distribution. The partnership covered the totality of goods brought into the household or acquired in the partnership except for land acquired through inheritance, which remained separate. The partnership consisted of movables and bought land.

The rules on partnership were roughly similar in all the laws. Minor regional differences existed, however. In Zealand, adult sons, and daughters upon their marriage, could demand their lot and leave the partnership. In the laws of Scania and Jutland, it was entirely up to the father's wishes whether the children could have their share of the partnership before he died. According to the Law of Jutland, if a father had given a lot to one child he could not deny the other children their lots. Another difference is that whereas in Jutland a daughter-in-law became partner in the partnership only if a special agreement was made, in the other provinces she became a member of the partnership unless it was otherwise agreed.

When a man brought a wife into the partnership, he became her legal guardian (*wærjende*) and could dispose over her goods. As long as her husband was alive the wife was not entitled to challenge his economic dispositions, even if he sold land she had inherited. Only after his death could she raise a claim against his heirs to get the value back. A widow had a somewhat freer economic position, but she still had to have a legal guardian who could act on her behalf. Women could not make transactions at the assembly, but it was customary that a widow be present and hold the sleeve of her guardian to show that she agreed with his actions. As with other women, the widow's guardian was her closest male relative and heir; for example, her eldest son, or her father or her brother. If kinsmen on the mother's and father's sides were equally close, the father's side was preferred. Maidens and boys under the age of fifteen had to have a guardian as well, usually the father. For maidens

as well as for widows it was the father or the guardian who arranged their marriage. For married women the husband was their guardian. High mortality meant that widows with children rather often married into a new household, and in these cases the children's kinsman and not their stepfather was the preferred guardian. Remarrying seems to have been quite usual for both men and women, and in the laws we find several chapters on how to deal with blended families in which some of the children were the wife's, some were the husband's, and some had both the husband and wife as their parents.

Children born out of wedlock inherited from their mother and her kinsmen, but not from the father, unless he publicly acknowledged them as his at the assembly. In that case his illegitimate children, if they had legitimate siblings, were entitled to half the size of the inheritance that the legitimate siblings received. If the father had no legitimate children, the illegitimate ones could take all his property as inheritance.[38] The principle of *legitimatio per subsequens matrimonium*, i.e. that children born out of wedlock became legitimate if the parents later married, was not recognized or mentioned in the older laws, but the principle was recognized in the Law of Jutland, Erik's Law and later introduced in Scania.[39]

Besides the partnership members and the servants, a household could also consist of a "house-led" person (a direct translation of the Danish *flatføring*). House-led persons were those who could not maintain themselves because of old age or illness. In such circumstances they could convey themselves and their property to their heirs in return for maintenance. If the heirs would receive them, their belongings were divided among the heirs, and the house-led was led into a new household where he gave up his independent status and came under the guardianship of the householder.[40] The focus of the laws was on their property and the right of the heirs and not on the needs of old and sick persons; this is consistent with the general focus in the laws on the interests of the householder.

Regulations relating to slaves take up a surprisingly large part of the laws, especially when one takes into consideration that the institution was winding down when the laws were written. The words for slaves used in the laws are *anøthigh hjon*, *ambut* and *thræl*. *Ambut* was the word for a female slave working in the household, maybe originally used to denote women of higher social status who were made slaves after Viking raids. There is no perceptible pattern to when

38 If the children were born as a result of the mother's adultery or incest, they did not inherit. On illegitimate children see Helle I.M. Sigh, "Creating legal identities: children's property rights in Danish medieval law and the meaning of paternity" in *Arverettens handlingsrom: Strategier, relasjoner og historisk utvikling, 1100–2000*, ed. Per Andersen, Speculum Boreale 15 (Stamsund: Orkana Akademisk, 2011), 13–26.

39 JL I, 25, EsL I, 50; for Scania see the Statute of Dalby from around 1265, § 6 DgL, I, 1, 744.

40 On house-leading see Vogt, *The Function of Kinship*, 225–234; Helle Vogt, "*Fledføring*, eldercare and the protection of the heirs in medieval Danish laws", *Legal History Review*, vol. 76, no. 3–4 (2008), 273–281. In the Icelandic *Grágás* there is a whole section on itinerant dependents *(ómagi)*; see *Laws of Early Iceland: Grágás* II, 29 f. Icelandic law thus was quite detailed on the maintenance of those who could not feed or help themselves.

anøthigh and *thræl* are used, and no sources have survived that enable us to decide if there was a real difference between the status of an *anøthigh* and that of a *thræl*.[41] *Anøthigh* (from Old Norse *anaudigr*) is traditionally interpreted as referring to a person enslaved by force, i.e. a prisoner of war. *Thræl* was in its origin the appellation used for home-bred slaves. In the texts *thræl* is translated as "slave" and *anøthigh* as "unfree servant", not because we believe that there was any important difference between the two words when the laws were written down, but merely as a way to show the variation in the texts. Sometimes *anøthigh* is used in conjunction with the word *hjon*, "household". In these cases the text specifies that the unfree person was a household slave. This may indicate a distinction between field slaves and the more valuable household slaves. Regarding female slaves, the compensation to be paid for sexual intercourse with a household slave was higher than for other female slaves. The laws also mention free servants called either *leghehjone*, hired house servants, or *hjon frælse*, free household servants. Some provisions dealing with slavery, especially those found in the Law of Scania, may have been influenced by Roman slave law, and thus may reflect an intellectual delight in constructing a slave law more than they reflect slavery in practice.

Slavery as an institution gradually disappeared in the twelfth and thirteenth centuries. As the Crusades and Christianization of the Slavic East came to an end, the supply of pagan war prisoners dried up, and the large slave markets around the Baltic Sea disappeared.

Freeholding was widespread in Scania and Jutland; however, the huge concentration of magnate property in Zealand indicates that many householders must have been tenant-farmers (*landboer*). It is noteworthy that the Zealandic laws do not, to the same degree as the Scanian and Jutlandic laws, require that oath-helpers or others giving witness or swearing on behalf of others should be landowning householders. According to the laws, a landlord and tenant-farmer entered into a contractual relationship between two equal partners. By the end of the thirteenth century, however, we can see a trend towards enhancing the landlord's position, as tenant-farmers came under his protection and gradually also his jurisdiction. The *garthsæte* – literally, "someone who sits at a farm" – was a tenant who rented a house on a farm and probably worked at the farm, but unlike the servants could have his own family. Below the tenant was the *innstman*, the in-dweller, a person who did not rent a house but merely a room at a farm. Very little is known about the in-dwellers, but it seems likely that they also worked as farm hands or casual workers.

The growing importance of the bailiff is obvious in the laws, since he is connected with many more functions in the later laws than in the older ones. Whereas a tenant-farmer rented a farm, the bailiff (*bryte*, related to breaking bread at the table)

41 On slavery see Ruth Mazo Karras, *Slavery and Society in Medieval Scandinavia* (New Haven/London: Yale University Press, 1988); and Stefan Brink, *Vikingarnas slavar: Den nordiska träldomen under yngre järnålder och äldsta medeltid* (Stockholm: Atlantis, 2012). An English version of the latter will be published by Oxford University Press in 2016.

managed a farm or estate on behalf of the owner, often the king or the Church.[42] We meet him as a person who acted on behalf of the landlord and not only managed his estates, but also had executive rights. Even though the bailiff could be an important and wealthy person, he was not considered as such a householder, because he was in charge of another's household and not his own. The king's official is an important figure in all the laws, but he plays a more pronounced role in the Law of Jutland and Erik's Law than in the others. In the Law of Jutland the official on behalf of the king took an active part in the administration of justice. He swore in the men of trust and the other nominated men to the standing boards. In the third book of Erik's Law there are quite a few provisions relating to the relationship between the householders and the official which have no correspondence in the other laws. This law, which like the others is clearly written from the perspective of the householders, indicates that the official could both demand bribes and abuse his power.

Courts and procedure[43]

In the language of the laws the word *logh* could mean several things: oath, proof and law. Cases brought before the assemblies were settled according to whether the proof given had failed or was successful. No professional judges took part in decisions made by the assemblies. However, court proceedings play an important role in the laws, as many articles describe a situation and how to resolve it by specifying who had the right of proof and who would have to carry the proof out. The laws specified the type of proof and which of the litigating parties should present the proof. In most cases it was advantageous to be the one presenting the proof (or, as described in the laws, to be "nearer to prove"), which most often took the form of giving an oath with oath-helpers (*tylftereth*, an oath of twelve). In such cases, eleven men swore together with the party who denied a general fact. The oath-helpers did not need to know about the case itself, but were instead supposed to swear as to whether the person accused was trustworthy. Though the oath-helpers' oath had to be unanimous, the possibility of perjury was nevertheless implicit in this indirect way of proving. Even if they were men of some stature in the community, the oath-helpers could be unduly influenced by the oath giver. Pope Honorius wrote a letter in 1218 to the archbishop Anders Sunesen in which he characterized the priests' use of the oaths with oath-helpers in courts as "this plague against all justice".[44] We have only the pope's letter and not Anders Sunesen's side of the correspondence, but it is not unlikely that Honorius was writing in response to the

42 Instances in both the Norwegian and Swedish provincial laws show that a *bryte* could be a slave. See, for example, Åke Holmbäck and Elias Wessén, trans. and ed., *Svenska Lanskapslagar*, vol. 1. (Stockholm: Hugo Gebers Forlag, 1933–1946), Östgötalagen, Köpmålabalken, XII: 168; *Norges gamle Love indtil 1387*, R. Keyser and P.A. Munch, eds, Frostatings-Lov, XI: 21, 234.

43 For a general introduction in English to the Danish court system see Per Andersen, *Legal Procedure and Practice in Medieval Denmark* (Leiden and Boston: Brill, 2011).

44 DD 28.5 1218, series 1 vol. 5 no. 140. It is not clear from the letter if this practice took place in ecclesiastical or secular courts, but presumably the ecclesiastical courts are meant.