INTRODUCTION

There are at least two good reasons to study the development of secular legal procedure in medieval Denmark. Firstly, because it is clear from the Danish sources how the Fourth Lateran Council’s prohibition against the participation of clerics in trial by ordeal was implemented in Danish secular law in the years following 1215 and that it required both a fundamental restructuring of legal procedure and an entirely different approach to jurisprudence. Secondly, because secular legal procedure in the Late Middle Ages was conservative and consistently based on procedure that was a consequence of the radical changes of the thirteenth century. While torture, with its background in inquisitorial procedure, was introduced as a commonly permitted instrument to force confessions from otherwise recalcitrant suspects in many places in late medieval Europe,¹ the Danish way was to turn to torture after sentencing—and then only after permission for its use had been granted by the king.

The problems created by the sudden fall from favour of trial by ordeal were solved in Denmark by introducing juries, just as had been done in, for example, England. However, in Denmark, in contrast to England,² they were clearly a new jurisprudential institution whose introduction made it possible for royal power to change large parts of Danish procedural law and refashion it in closer accordance with contemporary learned law: the learned law that was used and developed in ecclesiastical contexts and taught at universities in southern Europe. Over a few decades Danish procedure focused on: securing an evidentially correct summons of the defendant; introducing and enforcing time limits to avoid long-drawn-out litigation; and establishing the truth in a specific matter rather than letting it be decided by formal proof. The first evidence to survive concerning the structure of legal procedure in Denmark dates from the end of the twelfth century,

and from this it is clear that procedure was fundamentally accusatory: each party presented proof for their positions. It was still this procedure that was the foundation of Danish legal practice after 1215 but, in accordance with contemporary ecclesiastical norms, the requirements of proof were changed so that it became the duty of the recently introduced juries to examine the positions and proofs in order to find the substantial truth in the case at hand.

These phenomena and developments are not unique to Denmark: they are seen in several places in medieval Europe, although developments in the later Middle Ages seem to be more conservative in Denmark than in most other places. What seems to separate Denmark from many other places is, on the one hand, the thoroughness with which the new norms and reforms were introduced and, on the other, the total absence of learned juristic terminology, which one would have expected in connection with the thirteenth century’s extensive change of procedure and jurisprudence. In the Danish sources there are virtually no (immediate) traces of the activities of legally trained personnel acquainted with learned Roman-canonical procedure and its attendant terminology in Denmark or the Danish central administration surrounding the king. This observation was formerly used by Danish legal historians and historians to support the claim that Danish social structure and legal institutions of the Middle Ages were unique in comparison to most of Denmark’s European neighbours. The same is the case with regard to legal procedure, which was quoted as evidence of a uniquely Danish (partly Nordic) way of conducting court cases.

This common idea, which has of course also been accepted by international research and is mirrored in its understanding of the development of law in Denmark in the Middle Ages, will hopefully be killed off or, at least a considerably more complex picture will be conveyed, by this study. The starting point for this is a different methodological approach to the Danish sources than has previously been practiced. First of all, I approach the problem of the possible uniqueness of Danish procedure from the ‘outside’: before reading the Danish sources, I learned how Roman-canonical procedure functioned and developed from the end of the eleventh century onwards. From this starting point, I have tried to guard against the same mistakes made by my predecessors, who seem to have studied Danish procedure without a previous knowledge of the legal procedure that may have formed the model for, or inspired, development in Denmark. Secondly, I have