PART TWO

LEGAL PROCEDURE AND PRACTICE IN LATE MEDIEVAL DENMARK
CHAPTER SEVEN

LEARNED TENDENCIES AND PRACTICAL CONSIDERATIONS

When the Western Church introduced inquisitorial procedure in 1215 it caused fundamental changes in the law of proof that had previously been used and promoted in Western Europe. Firstly, objective proof, which had previously decided cases by itself, was made obsolete and replaced by substantive proof, which was intended to decide whether a particular action had caused damage and, if this was the case, who had caused the damage. The aim was to find the truth in a matter, not ‘just’ to let the case of the plaintiff and the defendant’s failure to provide proof of the opposite form a decision. Secondly, new institutions for the administration of law were introduced to evaluate these substantive proofs and thus establish truth based on an unbiased approach to the question of guilt. This was a necessary consequence of the desire to establish the truth. Thirdly, the burden of proof was now reversed and lay with the plaintiff. In other words, the defendant was now innocent until proven guilty. The purpose of these changes was partly to ensure that innocent people were not convicted solely because of the plaintiff’s accusation and the defendant’s unsuccessful proofs of innocence and partly because of considerations of efficiency since these changes meant that there would be fewer speculative accusations and attendant cases.

As mentioned in the first part of this study, this fundamental rethinking of particularly criminal procedure also affected the development of a similar change of paradigm in secular law in many countries, Denmark not least amongst them. However, this did not mean the end of the influence from the learned ecclesiastical jurisdiction because around the same time the contours of a pair of other far-reaching characteristics began to take shape within the ecclesiastical administration of justice, inspiring similar developments in secular law: a centralisation and its attendant imposition of a hierarchy of courts with its systems of appeal and a demand for more effective procedure.