CHAPTER TEN

BIRKERET, TING AND LOCAL PROCEDURE

The transfer of legal authority to royal officials or private jurisdictions, which to different degrees is known in more feudal parts of Europe before the year 1000,¹ is not found in Denmark until the middle of the fifteenth century. Here they were known as birke (more or less comparable with the English ‘peculiars’) and were characterised by a separation from the division into herreder since they were peculiar or special jurisdictions with their own ting. These jurisdictions could consist of a borough or a defined area of land surrounding a royal manor, a fair, a market, an ecclesiastical institution or a noble estate.² They enjoyed special protection by virtue of a royal privilege that had been issued for each peculiar. Such a privilege was the king’s recognition of the fact that the peculiar was

... a particular jurisdiction that enjoyed certain legal rules that differed from national laws and had its own court in which the inhabitants of the peculiar decide their business with each other and to which persons from the outside who wish to pursue the inhabitants of the peculiar must present their plea.³

The central content of the royal privilege was the right of inhabitants of the peculiar to be sued in the first instance only at their local birketing (‘the court of the peculiar’):⁴ a privilege that many freeholders seem to

¹ For the problems with a narrow definition of feudalism see Reynolds, Fiefs and Vassals.
² Peculiar law must not be confused with the so-called Gårdret (‘Farm Law’) given by Eric of Pomerania and Frederick II in 1400 and 1562 respectively, see DRL 2:3 (and renewed by Christian IV c. 1460, see DRL 2:29) and CCD 1:113. Frederick II’s Farm Law was valid in “all our and the crown’s castles and manors in our kingdoms Denmark and Norway as well as in the boroughs where we or our marshall with our hof-sinder and people dwell and also in the manors of the nobility…where they maintain a household or where their stewards and officials congregate with their people”, see the prologue to CDD 1:113. Thus the Farm Law followed the tradition of regulating royal retainers that is known all the way back to the lex castrensis, see Andersen, Rex imperator in regno suo, pp. 50–53; this is most explicit in CCD 6:248.
³ Lerdam, Birk, lov og ret, p. 22; for the unique rules found in Holstein, see this, pp. 25, 42–43, 61–76.
⁴ See for example KB 1556–60, p. 8 (1556).
have used at the royal peculiars. Meanwhile the king (probably seeking to protect his income from the fines given at the ordinary herredsting) vigorously tried to counteract the privileges of the noble peculiars.\(^5\) The law of the peculiars, however, seems only to have included a few jurisdictions, which must have meant that the law of the peculiars was subsidiary to the law of the land, i.e. that the peculiar was where the law differed from the law of the land.\(^6\)

It has previously been thought that the peculiars were a result of the attempt by various kings, prelates and nobles to transfer the rights and privileges that they enjoyed in boroughs—some of which had an identifiable individual law before they achieved their borough status—to their lands in the countryside. However, recent research has almost unanimously rejected this idea.\(^7\) Henrik Lerdam convincingly argues in what is so far the most thorough investigation of Danish peculiars and peculiar laws that the creation of rural peculiars was closely associated with the royal organisation of crown lands that took place in the High Middle Ages. He argues this because it was only the king who could exempt inhabitants from their duty to appear before the court and pay their fines to the ordinary court, i.e. the herredsting.\(^8\)

We find evidence in both the High Middle Ages and later of royal, ecclesiastical and noble peculiars. In these peculiars the king or a prelate or a noble was the birkepatron, i.e. the holder of the court of the peculiar. The oldest evidence for this dates from the reign of Valdemar II in the first half of the thirteenth century. It incorporates areas centred on royal manors, from which the king appears to have exercised his local authority and raised taxes, but the court of the peculiar is

\(^6\) Lerdam, *Birk, lov og ret*, p. 82, commenting on Christian IV’s Birkeret (‘Peculiar Law’), which is rather late in this context since it dates from 1623, see CDD 4:46, § 2. The most closely studied peculiars are in the jurisdiction of Old Copenhagen, see, Axel H. Pedersen, *Birketing i Gl. Københavns Amt 1521–1965* (Copenhagen, 1968), but there are very few surviving sources until the end of the seventeenth century.
\(^7\) Paulsen, “Den skånske birkeret”; Grethe Jacobsen, “Dansk købstadslovgivning i middelalderen”, *Historie* 3 (1992), pp. 393–439, esp. 426; Lerdam, *Birk, lov og ret*, who also has a comprehensive bibliography of previous studies. We do have concrete examples of the movement from rural areas to town, amongst others illustrated by the fact that Åkirkeby on the island of Bornholm was granted permission to use Skånske Birkeret (‘the Peculiar Law of Skåne’) in 1346, see DD 3:2:299.
\(^8\) Paulsen, “Den skånske birkeret”, p. 38. The following is based on Lerdam, *Birk, lov og ret*, pp. 22–76.