THE POWER TO JUDGE: JURISDICTION IN PROPERTY CONFLICTS IN THIRTEENTH-CENTURY DENMARK

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“Pactum . . . Legem Vincit et Amor Judicium”1—an agreement supersedes the law and amicable settlement a court judgment. This title, used by Stephen D. White in his famous article on dispute settlements in eleventh-century France, has often been used as a slogan by legal anthropologists working on the Middle Ages in support of the idea that the medieval mentality was anti-legalistic because compromise and concord frequently were preferred to lawsuits and judgments. Often contrasted with this “traditional” way of understanding justice is the learned law with its more legalistic approach, including a corpus of written law and a well-developed court system. This idea of a contradiction between a high frequency of compromises and cases settled outside the court on the one hand and a highly developed legal thought and system on the other will be questioned in this paper. Even today, most conflicts regarding private law in the Western world end with a compromise instead of a judgment,2 and we can hardly call our systems anti-legalistic.

This paper examines jurisdiction in property conflicts in thirteenth-century Denmark, investigating who had the power to judge or settle these conflicts and how that power was used. As always when working with Danish medieval history, the focus is decided by the sources. In this instance, there is over-representation of sources for cases regarding land conflicts between lay people and ecclesiastical institutions, and cases that were dealt with by an ecclesiastical court. In Denmark—unlike England, for example—it was recognized that church courts had full jurisdiction over both land and chattel in conflicts over wills, and many conflicts

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2 Patrick J. Geary, “Living with Conflicts in Stateless France: A Typology of Conflict Management Mechanisms, 1050–1200,” in Living with the Dead in the Middle Ages (Ithaca: Cornell University Press, 1994), 125, n. 2. The difference now is primarily within the field of penal law, where private compromises started to disappear in the early modern era due to the state’s efforts to secure a monopoly on adjudicating violence.
arose from disputes over donations, whether they were made *inter vivos* or *mortis causa*. Even though a substantial proportion of the Danish sources from the last part of the twelfth and the thirteenth centuries consists of charters detailing land conflicts, not much attention has been paid to the legal questions. Instead, these documents have mostly been seen as portraying conflicts between secular magnates and the greedy church, with its so-called dead hand.3 Hardly any attention has been paid to the fact that whereas no Danish ecclesiastical court records of justice from the Middle Ages are preserved, these charters give a glimpse of ecclesiastical legal practice and the use of canon law. Yet it is commonly recognized among legal historians that canon law and ecclesiastical jurisdiction were already thoroughly accepted in Denmark in the twelfth century.4 The charters reveal glimpses of how both lay people and clerics used the church courts and the law—secular as well as canon—to further their own interests, and how in conflicts between a lay and an ecclesiastical party the outcome was by no means certain to benefit the latter.5

**Property Conflicts in Thirteenth-Century Denmark**

From the thirteenth century, we know of 74 instances of disputes6 over land and property from the kingdom of Denmark and the duchy of Schleswig that have survived the wear and tear of time. Even when one takes

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4 Areas covered by canon law such as marriage are hardly mentioned in the secular laws that were written down in the period from around 1170 to the mid-thirteenth century. Helle Vogt, *The Function of Kinship in Medieval Nordic Legislation* (Leiden: Brill, 2010), 61–73; Per Andersen, *Legal Procedure and Legal Practice in Medieval Denmark*, (Leiden: Brill, 2011), 71–83.

5 See for instance *Diplomatarium Danicum* (DD), (Copenhagen, Det Danske Sprog-og Litteraturselskab, Ejnar Munksgaard, 1938–2000 (different editors.) 1:7:27 (1239); 2:2:337 (1278); 2:3:141 (1285). This is probably just the tip of the iceberg, since the abbeys kept only the charters that could support their claims to the land, and charters that showed the opposite were destroyed. Brian P. McGuire, *The Cistercians in Denmark: Their Attitudes, Roles, and Function in Medieval Society*, Cistercian Studies Series 35 (Kalamazoo, MI: Cistercian Publications, 1982), 202–3.

6 In a few of the cases the conflicts continued for decades, but as long as no judgment was passed or a compromise entered into, they are still counted as a single dispute. Each settlement/judgment counts as one case even though the dispute at a later point was resumed, but it has been very difficult in some conflicts to decide if they should count as one or two, and thus the number must been seen as an estimate.