



THE DANISH CONSTITUTIONAL CHARTER OF 29 JULY 1282*

HELLE VOGT**

ABSTRACT

In 1282, the kingdom of Denmark received its first constitutional charter. The charter laid down the boundaries of the king's power, and established the governmental role for the 'best men' in the kingdom: i.e., the most prominent members of the elite, secular as well as ecclesiastical. The charter was the culmination of a long period of political conflicts between the king's and the magnates, about the king's right to legislate, judge and levy taxes and dues. In the charter, the king promised to rule together with the parliament, and that their consent was needed to new legislation, taxes and dues. The freedom of the church was secured, and a number of legal guaranties were given, for instance against arbitrary imprisonment and sentences.

Keywords: *Denmark, Parliament, Erik V, Lèse-majesté, Thirteenth century, Constitution charter, Taxes, Legal guaranties*

* This paper was written during my stay at the Centre for Advanced Studies in Oslo, as part of the project *Social Governance through Legislation*, 2021.

** Professor of Legal History, Faculty of Law, University of Copenhagen, PhD, helle.vogt@jur.ku.dk.

Vogt, H. (2023) 'The Danish constitutional charter of 29 July 1282' in Balogh, E. (ed.) *Golden Bulls and Chartas: European Medieval Documents of Liberties*, pp. 139–150. Budapest – Miskolc: Ferenc Mádl Institute of Comparative Law – Central European Academic Publishing. https://doi.org/10.47079/2023.eb.gbac.1_6

In 1282, the kingdom of Denmark received its first constitutional charter. The charter laid down the boundaries of the king's power and established the governmental role for the 'best men' in the kingdom: i.e., the most prominent members of the elite, secular as well as ecclesiastical.

The Danish realm, understood as a union consisting of the three provinces of Scania, Zealand and Jutland, can be traced back to the early ninth century.¹ 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. In times of peace, these kings did not claim sovereignty over all the Danes, but merely over one of the three provinces; conversely, warfare tended to flare up when two or more royal princes claimed kingship over the whole realm. In 1157, the dynastic strife ended, and Valdemar I (r. 1154/7–1182) became sole king. During his reign and that of his sons Knud VI (r. 1182–1202) and Valdemar II (r. 1202–1241), the kingdom experienced a time of internal peace, and the political landscape was characterised by cooperation between royal authority, the leading magnates and the Church.² It was probably during the reign of Valdemar I that the parliamentary system was first established. The parliament, in Old Danish *hof*,³ was an annual gathering of the most prominent men of the realm, lay and ecclesiastical, with the latter including all the bishops and abbots of the most important abbeys. Nobility of birth was only established in Denmark in 1522; thus, the lay members of the parliament were invited because of their local importance and power and/or their relationship with the king.⁴

Denmark was Christianised in the second part of the tenth century.⁵ The organisational structure of the Church developed in the eleventh century, and around 1060, during the reign of King Svend Estridsen (r. 1047–1076), Denmark was divided into nine dioceses. In the beginning

1 Scholz and Rogers, 1972, s.a. 809, 811, 90 and 93. For a historical overview of early Danish history in English, see, for instance, Sawyer, 1984.

2 On the Danish history of the twelfth and thirteenth century, see, for example, the articles of Skovgaard-Petersen, 2008, pp. 168–183 and 353–368.

3 'perlamentum, quod hof dicitur', § 1, p. 75

4 On the parliamentary system, see Hude, 1893.

5 On the Christianising process, see Berend, 2007.

of the thirteenth century, canon law was fully recognised in Denmark,⁶ and the Church held a position of considerable power.

There are probably many reasons for the dynastic struggles in twelfth-century Denmark, but one of the main reasons was undoubtedly due to the fact that Denmark was an elective kingdom until the introduction of Absolutism in 1660. All sons of kings and their sons had a claim to the throne, and all that was required to gain the title of king was to be elected at one of the three provincial assemblies situated in three major legal provinces: Scania, Zealand or Jutland. If two kings were elected at the same time at different assemblies, it often led to internal warfare. King Svend Estridsen had 14 sons, each of whom had his own sons as well: with so many potential claimants to the royal crown, the foundations had been set for civil war.

The three major legal provinces of Denmark each had its own provincial law – Zealand even had two – dating from the early to the mid-thirteenth century. The provincial laws were written down with the consent of – and probably on the initiative of – the Crown, the secular elite, and the Church.⁷ The laws are quite long and detailed, covering areas such as inheritance, property transfers, village organisation and agricultural matters, and what we would today call penal law. There are differences between the laws, but these are mostly insignificant and primarily concern procedural law.⁸

The stable domestic conditions and the close cooperation between the Church and the Crown came to an end after the death of Valdemar II in March of 1241. Subsequently, the sons and grandsons of Valdemar II started fighting in their bids to succeed to the crown.

During the civil wars of the twelfth century, magnates would often change sides, nor would they come to the rescue if the royal candidate whom they had supported failed to live up to their expectations. The same observation probably holds true for when the civil wars flared up again in the 1240s. In the 1250s, the first round of these new wars had

6 Bagge, 1981, pp. 144-145.

7 For the writing down and dating of the laws, see: Vogt, 2010, pp. 44-49, 64-72, and Andersen, 2006, pp. 77-86, 94-100, 140-142 and 164-166. For an English version of the laws, see Tamm and Vogt, 2016.

8 For the change in the procedural law, see Andersen, 2011.

been fought to a fatal end with the killing of Erik IV (r. 1241–1250), but political unrest continued to linger. Within such an environment, it was no wonder that the king wanted to strengthen his sanctions against magnates who might consider transferring their loyalty to one of the royal brothers or cousins, such as, for instance, the duke of Schleswig or any other of the royal cousins. King Abel (r. 1250–1252) and King Kristoffer I (r. 1252–1259), both sons of Valdemar II, tried to pass a special law on the crime of *lèse-majesté* which they included within a broader law that sought to regulate the relationship between the king and those of his men who had sworn an oath of allegiance to him. When Abel became king in 1250, the civil war between him and his younger brother Kristoffer on one side, and their older brother Erik IV on the other, ended with Erik's murder. But Abel only held the crown for two years before dying in battle himself. After his death, Kristoffer took the crown from under the nose of Abel's minor sons, thus paving the way for the next round of civil wars to kick off.

To treat offences against the king as a particular crime that justified particularly harsh punishment dates back to the Roman Empire; as Roman law came to be studied in the twelfth century, its principles increasingly formed part of royal legal ideology. *Lèse-majesté* was not originally a term found in the provincial laws, which instead referred to the crime of the *avighskjold*, which means literally 'an inverted shield': namely, someone turned his shield against his own side and led a foreign army into the kingdom.⁹ The special laws, in contrast, explicitly contained the crime of *lèse-majesté*, and an individual accused of such a crime could be convicted on suspicion alone. It gave the king, who appointed the nominated men who would investigate the case and present an oath on the question of guilt, a powerful tool to excise unwanted elements from among his magnates.¹⁰ The crime was sanctioned by the death penalty. In addition to this, the convicted person not only lost his personal property – consisting of moveable and acquired land – but his inherited land was also confiscated by the king, a punishment

⁹ *Danmarks gamle Landskabslove med Kirkelovene*, vol. V (Erik's Law of Zealand), ch. 2;27.

¹⁰ Fenger, 1991, p. 50.

almost unheard of compared to the sanctions for other crimes. In this way, the king acquired a powerful tool to discipline not just a single magnate, but his entire family, by removing from the next generation the family's economic foundations. The legislation was probably never enforced, due no doubt to the strong resistance against it on the part of the magnates. However, it offers a very good example of why the elite wanted to limit the king's legislative power. The dynastic and civil wars continued on and off until the beginning of the 1270s, when King Erik V (r. 1259–1286), Kristoffer I's son, won a decisive legal victory over the rebellious eastern bishops.¹¹ As a result of the strengthening of royal power, Erik V in 1276 tried to have his two-year-old son Erik crowned as co-ruler by the parliament, a practice introduced in 1170 and used as a method to try and pacify rival royal lines in case the king died before his son had established a powerbase that could secure his election.¹² The sources offer scant information about the parliament of 1276,¹³ but we are informed that many of the lords were present and that they did homage to the infant prince, with the exception of the lord high constable (*marsk*) Stig Andersen. Here, we get a glimpse of the political disagreement between the king and some of his magnates. At this same parliament, a royal ordinance on *lèse-majesté* was presented to those attending. This ordinance was subsequently abolished in 1282.

The Ordinance consisted of five paragraphs.¹⁴ The first addressed the procedure to be followed and the punishment for cases of plotting against the king's life, while the second paragraph set out what would happen if one neglected to inform the king about planned marriages between foreign royals. The third paragraph was about illegal and secret connections to foreign lords; the fourth concerned acts that could harm the king; and the fifth paragraph outlined the punishments incurred for certain aggravated killings.¹⁵ At the end of § 4, the Ordinance stated:

11 On the civil wars, see Hørby, 1977.

12 The Danish kings were elected, but from 1170 and up to Erik V's failed attempt in 1276, the kings usually crowned their eldest son as king during their lifetime.

13 For a discussion about whether it took place at the same parliament or not, see Holberg's convincing arguments. Holberg, 1895, pp. 19–20.

14 DDR 1971, pp. 60–61.

15 For further information, see Fenger, 1971, pp. 444–447.

‘what is said above, that the king as plaintiff should nominate the jurors, was not accepted by anyone in the realm (*regno*), except those few that attended the council (*concilio*), but they [the realm] insisted that the accused should nominate them [the jurors]’.¹⁶ That the accused nominated the compurgators was normal procedural practice at the public assemblies that also functioned as courts. Exactly how the term ‘realm’ should be understood is open to interpretation, but it seems likely that it meant the best men of the realm, that is, the parliament.¹⁷ Only one manuscript of the ordinance has been preserved, and the notice gives a clear indication that the procedural system was not accepted by the elite. The sources preclude any deeper insight that might let us see what took place at that parliament, nor do we know if the ordinance ever *de facto* came into force.¹⁸ One may wonder why the king found it necessary to issue an ordinance on *lèse-majesté*, when there was, at the same time, opposition among the magnates to letting the king strengthen his power over his men and the appointment of Erik VI as co-ruler. As stated above, the sources are very scarce, but they could indicate that there was a power struggle between the king and some of the magnates. Although the sources are silent about events in the following years, they clearly show that the conflict of interests between the king and the leading members of the elite increased. The events leading up to the parliament of July 1282 are not known, but the yearbook from the Abbey of Ryd tells of some further strife that arose between the king and the princes.¹⁹ Which princes this might refer to is not mentioned, but it seems likely that they included the sons of the dukes of Schleswig and Northern Halland who had demanded the dukedoms that their fathers

16 ‘Quod autem supradictum est, scilicet quod rex quasi actor n[omina]ret purgatorias supradictos, nullis placuit de regno[exceptis] paucis, qui tunc dicto concilio inferuerunt; set affirma [uerunt], quod reus debeat eos nominare’, DDR 1971, pp. 60–61.

17 That those present at the parliament were seen as the *regno* is strengthened by the prologue of Erik V’s Ordinance of Vordingborg, known from a later Danish translation: ‘wfftær alle danæ rat hoc danæ togæ withær’, DDR 1971, p. 62.

18 For a discussion of the notice and the ordinance, see Vogt, 2013, pp. 85–99.

19 Ryd Abbey’s yearbook, *Annales danici medii ævi*, 1920, p. 62, ‘Lit oritur inter regem Ericus et principes’.

had previously held.²⁰ Taking subsequent events into consideration, it is evident that the strife was not only between the king and his royal cousins: many displeased magnates either joined the struggle or used the unstable conditions as an opportunity to express their discontent with the king. One later source from the sixteenth century can be interpreted as proof that the magnates stirred up the peasants against the king, but this remains doubtful.²¹ The uprising was successful and the princes finally obtained their dukedoms in 1283.²² This was the culmination of a longer political process starting in March 1282, when the king issued a provisional decree wherein his power to judge, legislate and collect taxes without parliament's consent was significantly reduced.²³ The decree was promulgated by the king on 'the advice of all Danes and all Danes agreed',²⁴ and in addition to bishops and princes, the decree mentions that it was witnessed by 'the best men of the kingdom, both learned and lay'.²⁵

Later this year, in July, the parliament assembled again in Nyborg and there Erik V issued the charter that had been promised in March. The charter, now known by the misnomer 'Eric V's coronation charter'²⁶ –

20 King Abel's descendents were made dukes of Schleswig, and the descendents of Valdemar II's illegitimate sons were made dukes of Northern and Southern Halland.

21 The Danish history writer Arild Hvidtfeld wrote in his *Chronicle of the Danes*, under the year 1282, that the nobility stirred up the peasants against the king: Matzen, 1889, pp. IX–XI; this has convincingly been rejected by Holberg, 1895, pp. 53–55.

22 This was just a short respite before the duke of Schleswig again saw his dukedom confiscated in 1285. However, after the murder of Erik V in 1286, he was given back all of his privileges and even formed part of the regency.

23 The Danish legal historian Poul Johannes Jørgensen did not think that it was the rebellion of the princes that made the king issue the decree, but instead that he was forced to do so by the magnates after a political defeat, the nature of which he does not define: Jørgensen, 1940, pp. 74–76. Nevertheless, most historians see a link between the two events.

24 'efttær alle Danæ rath oc Danæ togæ withær', DDR 1971, p. 62.

25 'bæstæ mæn aff rigæt bothæ lærtæ og legtæ', *ibid.*, p. 65.

26 'Erik Klippings Håndfæstning', at the time when Erik V issued the charter, 'håndfæstning' merely meant a document that tied the king's hands. However, later in the fourteenth century it began to be used exclusively for coronation charters. Printed in DDR, 1971.

constitutional charter is much more fitting, and will be used here – is found in many medieval and renaissance manuscripts, both in the Latin original and in Old Danish as well as in Low German translations. In these manuscripts, the charter appears together with other legal texts. It is not surprising that the charter can be found in legal collections, since it kept its legal importance until the introduction of Absolutism in 1660. It is also quoted in many judgments passed by the courts in the sixteenth and seventeenth centuries.

Erik V's constitution charter is comprised of four parts. The first part gives general protection against the king's arbitrary use of power²⁷. It falls into two parts §§ 1-5, and 10-13 and 16. The first provision states that a parliament should be held once a year. Most of the paragraphs then concern the use of royal letters in the prosecution process, and also revoke all laws that were in conflict with the laws of King Valdemar. At the time of the charter, the laws of King Valdemar probably referred to non-royal legislation, i.e. the provincial laws, and to the royal legislation given before the death of Valdemar II in 1241, which later became a symbol of the 'good old laws'.²⁸ Concerning the administration of justice, it is stated that no one could be imprisoned unless he confessed or was caught red-handed, nor could anyone receive a punishment other than what was stated in the laws. The king's officials could only summon individuals to the ordinary assemblies, which presumably meant that they were not allowed to hold private courts. No man could have his land confiscated for a crime, with the exception of *lèse-majesté*. If someone wanted to raise a claim against the king for unlawful possession of land, the matter should be decided by the parliament. Finally, the king was not allowed to build on private land unless the owner agreed to it, and all confirmed privileges should stand.

The second part of the charter, §§ 6-9, was about the protection of the peasantry.²⁹ These provisions regulated the paying of tax; stated a general prohibition against forced labour except in times of need,

27 Ludvig Holberg offered a very thorough analysis of the different parts, Holberg, 1895, pp. 99-101, 111-115.

28 On the laws of King Valdemar, see Hørby, 1989, pp. 45-47, who sees it as a sign of the emergence of thinking like a state, and Fenger, 1971, pp. 448-449.

29 Holberg, 1895, pp. 101-111.

which should probably be understood as referring to the construction of fortifications during times of war; and stipulated that no one should be forced to give poultry or other gifts to the king's table.³⁰ § 9 granted free farmers the right to take possession as estate managers (*bryti*) as long as tax was paid of the land they owned.

The third part of the charter, §§ 14-15, was concerned with the protection of merchants.³¹ It was detailed that the law given earlier that year about shipwreck should be observed, and that no new duties should be imposed on the merchants. The fourth and final part, §§ 17-18, regulated the protection of the Church and clerics.³² Prohibitions were given against violent guests; these paragraphs detailed that a guest should be content with what the host offered, and neither demand more nor take it violently. This paragraph applied to both lay and cleric. However, the problem with travellers who violently took what they wanted if they were not content with what they had been offered seems to have been a problem primarily faced by ecclesiastical institutions. And finally, the Church in Denmark should have all the freedoms it had held in the time of King Valdemar II. The charter not only bound Erik V, but also whoever would succeed him as king; the charter thus had the character of providing a constitutional document for the whole of the realm.

Erik V's constitutional charter was by far the most important constitutional legislation in medieval Denmark, both in the long and in the short term. The constitutional charter, as shown above, weakened royal power and put a stop to royal attempts by the kings in the second half of the thirteenth century to strengthen their power through unilateral legislation applicable to the whole realm. The constitutional charter strengthened the power of the elite, both lay and ecclesiastical, by protecting them against the king's despotic actions and by giving them the final say in matters of new legislation and new taxes and duties. Parliament, and later from the early fourteenth century, the council of the

30 That it could sometimes be difficult to distinguish between voluntary gifts and duties can be seen in Erik's Law of Zealand, where in book III, ch. 63, it is stated that if the householders did not voluntarily give a gift to the king's official they could not count on his help if they came into trouble. DGL vol. V, pp. 357-358.

31 Holberg, 1895, pp. 116-120.

32 Ibid., pp. 120-122.

realm, maintained this position – with a few brief exceptions³³ – right up until the rise of Absolutism in 1660.³⁴

The weakening of royal power and concurrent strengthening of the power of the magnates does not make it sound like this legislation designed for the whole realm united the kingdom; nevertheless, it is my claim that this was precisely what Erik V's constitutional charter did. Theories about state-building view constitutional legislation as an important step in the direction of turning a kingdom into a state. The power struggles in the second half of the thirteenth century were not so much about the content of the laws, but more about who should have the right to the administration of justice – the king or the courts – and whether or not the king should be bound by the law. The legal and economic systems that formed gradually during the century became so well established that the administration of justice, taxes, trade and so on continued uninterrupted well into the seventeenth century. And this is despite the fact that in the fourteenth century, the kingdom was pawned to foreign princes and also experienced an interregnum.³⁵

33 For instance, one such exception occurred during the reign of Valdemar IV. After he had gained control over the whole kingdom, he started a campaign to increase the crown's possessions by summoning political opponents to his court, *kongens retterting* (the king's court), where they were judged to lose their land on very thin legal bases.

34 Bishops lost their place in the council of the realm during the Reformation.

35 During the reign of Erik VI (1286–1319), expensive wars were partly paid for by pawning parts of the kingdom to German princes. At his death, Erik VI's brother Christopher II took over a realm with its finances in ruin, and when he died in 1332, a new king was not elected. The western provinces were under the rule of the mortgagees, and Scania submitted to the Swedish crown. In 1340, Christopher's son Valdemar IV became king of Northern Jutland and gradually, by redeeming the mortgages and winning military victories, he managed to re-unite the kingdom and considerably strengthen royal power.

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