DANISH JOURNAL OF ARCHAEOLOGY, 2017
VOL. 6, NO. 2, 85–92
https://doi.org/10.1080/21662282.2017.1323993

Routledge
Taylor & Francis Group

RESEARCH ARTICLE



# From tribute to taxpaying: the changes in the understanding of private property in Denmark circa 1000–1250

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**ABSTRACT**

The focus of the paper is about how the concept of property and the possession of land changed in Denmark from c. 1000 to 1250. Until the mid of the twelfth century, we are mostly depending of the archaeological material and the few narrative sources, and they give an impression of a system where various persons could have rights and claims to the same landed property – the farmer who cultivated it, the local lord who had a right to tribute, and his lord – the king. This system was challenged when the Church was established in the eleventh and twelfth century and started to get large donations. The Church claimed full property right the donated land, something that lead to conflicts, and one response was the introduction if written laws with firm rules about transfer of landed property and ownership. The introduction of firm rules did not mean that kinsmen stopped questioning donations or sales of land to ecclesiastical institutions in the thirteenth century, but rather that the conflicts were legalised

**ARTICLE HISTORY**
Received 25 April 2017
Accepted 25 April 2017

**KEYWORDS**
Danish law; ownership to land; property; transfer of property; tribute; donations

In this paper I will venture out into very deep waters, not only trying to combine written and archaeological sources, but also trying to present a theory about how the concept of property, or more precisely the possession of land, changed in Denmark from the period often referred to as the Viking Age to the first half of the thirteenth century, when all the three provinces of the kingdom got written laws.

In the provincial laws' chapters on the transfer of property, we clearly see that they operated with an absolute concept of land possession – probably inspired by Roman law – even though the modern meaning of the word *ejendom* (property) had not yet found its way into the Danish language, and the laws talk about 'holding' rather than 'owning' (Fenger *et al.* 1982, Fenger 2000, see also Iversen 2011). But in the Law of Scania, probably written between 1202 and 1216, it was stated that it was possible to convey land to eternal possession (*Wærulzskøt*, literally meaning 'conveying for as long as the world exits' (Brøndum-Nielsen and Jørgensen 1933); see also Tamm and Vogt 2016). The Roman concept of absolute ownership to land was probably introduced into Denmark via the Church, which claimed full property rights over donated land.

In this context, the first question to ask is: What do we know about land structures and possession in Denmark in the Viking Age and early Middle Ages? The first part of the question is easy to answer. Archaeological excavations have shown the existence of villages, single farms and magnates' residences. But who owned the land: those who lived on it and cultivated it, local magnates or the king? This is discussed below.

Excavations have shown the existence of magnate or maybe royal residences (*kongsgårde*) from the Iron Age and the Viking Age in, among other places, Tissø and Lejre in Zealand. This clearly indicates that there was a group in society that benefited from the work of others, though it is not clear in what way. In Lejre, there are many traces of large-scale agricultural production (Christensen 1991), while at Tissø, vestiges of agricultural production are scarce. Part of the income at Tissø must have come from a seasonal market of which traces have been found, but that alone does not explain why there are indications that there was great storage capacity in the area. Lars Jørgensen initially suggested that the storage buildings were used for grain and other agricultural produce which the lord of Tissø received as tribute from the farmers in the

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area, which was why there was no need for large-scale agricultural production at Tissø (Jørgensen 1996). It is this idea of a tribute system that has prompted the idea that is the topic for this paper.

Subsequently Lars Jørgensen modified this picture. In an article, in 2001, he suggested that there were three phases in the economy of the magnate residences. In the first phase, tribute was the most important source of wealth, while in the eighth or ninth centuries, the magnates' economy became more influenced by their own agricultural production. The third phase, which took place in the high Middle Ages, consisted of the development of a manorial structure with tenants (Jørgensen 2001, pp. 73–74). If as Lars Jørgensen argues tribute gradually started to be replaced by the magnates' own agricultural production in around 800, why does the title of this paper refer to tribute at around the turn of the first millennium? Jørgensen proposes that tribute and agricultural production were not mutually exclusive. This is why there may be no contradiction between tribute – duties paid regularly by free farmers as a kind of tax – and domestic agricultural production on magnates' estates.

'Tribute' is a word archaeologists often use for the payment of duties to a lord or a king, but as the Danish historian Bjørn Poulsen has shown is it often difficult to distinguish between when a form of payment was called a gift, tax or tribute, in the Danish sources from the early and high Middle Ages (Poulsen 2011). Poulsen's work is very interesting because it illustrates the problems of trying to apply precise legal terms to a time where the concepts had not been developed, and the danger of interpreting the existence of a legal term in a source as evidence of learned legal thinking. As Chris Wickham has shown, this also applies to Anglo-Saxon England. The use of Roman legal terminology in the charters from around 700 cannot be taken as a proof that the legal concepts were understood in the same way as in classical Rome (Wickham 2005, p. 347).

Even though it can be questioned whether 'tribute' is the historically correct term, it is used here in the absence of a better word. Here, 'tribute' is defined as: Duties paid by the rural population to a lord for protection or in recognition of his suzerainty; the lord in turn could pay tribute to a king for the same reasons. 'Tribute' is a better word for these transactions than 'taxpaying', if used of a time where a royal tax system based upon land possession had not been developed.

This concept of the functioning of the tribute system is hardly controversial. It is shared by several Danish archaeologists, and Chris Wickham argues for the existence of such a system in Anglo-Saxon England, which supports the idea that it also existed in Denmark where he finds many of the same patterns as in England (*ibid.*: 321, 323, 371–373). The model for the payment of tribute presented here is of course an idealised model, used to explain the different claims on the usufruct of the land.

Most of the magnate or royal residences that had existed during the later Iron Age and the Viking Age were abandoned in the eleventh century; the majority of them were moved to new locations where new manor houses was constructed. Why? One answer could be that the magnates not only held their positions through financial and military power, but that they also played an important role in the pagan religion. The finding of sacral areas and sacrifices connected to the magnate residences could indicate this (Jørgensen 2009). The introduction of Christianity would have changed the magnates' roles with regard to religion, and it may have been problematic for them to continue to reside in a place that was closely connected with paganism. It may also have been a consequence of the changed functions of the magnates, so that the construction of a farm with a great hall at its centre lost its importance and they chose to move to smaller more exclusive manors, to places there were easier to defend or maybe there was simply a change in the fashion for aristocratic living.

What does the existence of a tribute system say about who owned the land? Was it the farmer who cultivated it and who could pass on the farm to his children or other relatives, the lord who had a right to collect tribute, or the king? Did it matter who owned the land – understood as having the unchallenged right to dispose over it – as long as all those who benefited from it agreed about the division of the rights? Serious problems only arose when land was taken out of this context by being transferred or sold to ecclesiastical institutions, which had a quite different and absolute definition of property, rooted in the Roman law. Furthermore, some monastic orders even went as far as to break up the farming

structure and replace it with *grangia* production. Briefly, *grangia* production was a form of production based on the dissolution of smaller production units, often one-family peasant farms, and combining them into huge units for large-scale farming. In *grangia* lay brothers, not tenants tilled the land, why the former farmers and their families had to leave the land.

Studies of early medieval charters mentioned in the donation books of Danish monasteries, especially Esrom Abbey a Cistercian monastery in Northern Zealand, support the theory that the concept of land ownership was vague and that exclusive property rights were new to Denmark in the twelfth century and had not won widespread recognition. Generations later the kin or descendants of vendors or donors might claim the land that according to the monks had been sold or donated to the monastery. The kinsmen could claim the land on the grounds that they had not agreed to the transaction or that it was against the laws and customs of the province or realm, these claims were taken seriously and often the donation, or sale was then renegotiated. At the same time, there seems to have been some confusion about the rights attached to land that a king had bought and later donated. Did the heirs of the king (whether the same king or his successor), the seller's heirs or the monastery have the right to the land? The letter books reveal that it was not uncommon to donate or sell not only farms but entire villages to a monastery, which tells us that there were magnates or kings who claimed to own land that was not tilled as a large-scale operation, but which they nevertheless claimed to own.

The problems for Esrom Abbey in upholding the property rights to its estate have been examined in detail by the Danish historian Kim Esmark (Esmark 2004). He has interpreted the conflicts in a legal anthropological context, since his aim was to investigate the conflicts in a broad sociocultural context and thereby get some glimpses into the understanding of law, politics, the economy and social structures. If one looks at the material to see what it says about property rights, it can shed some light on the transformation of the understanding of land-owning in twelfth century Denmark.

In the charters, the Latin[1] term *calumnia* was used about lay peoples' claims over land held by ecclesiastical institutions. *Calumnia* means a false legal claim, and it is the standard term used for that kind of claims.[2] Some examples from the Esrom Abbey donation book will be presented, and through them, an attempt will be made to give a picture of conflicts about ownership of land and what these conflicts say about the understanding of property rights in the mid-twelfth century.

The Cistercian Abbey of Esrom was founded in the 1150s by the Archbishop of Lund, Eskil. The first example of challenges to the abbey's possession right goes back to the foundation of the Abbey. A man had sold land to one of Eskil's kinsmen, Count Niels, who had in turn donated it to the Abbey. After Niels' death in 1156, the man and his son raised a claim on the land (Diplomatarium Danicum, 1938–1990, 1.2:127).

How come that the seller and his son could challenge the Abbey's possession and that the challenge was taken seriously?[3] It is difficult not to see the case as expressing that the original owner did not think that selling the land to Niels was the same as giving Niels the right to transfer the land to a third party. Like most cases of challenges to the abbey's possession, this one ended with a compromise. On the day of the consecration of the high altar in the Abbey church in 1158, the seller and his son donated the land to the Abbey and thereby obtained a share of the monks' intercessions, and made the monks and their patron saint – the Virgin Mary – their friends (White 1988). Only then was the Abbey's ownership of the land fully recognised.

In around 1150, Eskil had bought the village of Villingerød from a dean of the chapter in Lund, and later donated it to Esrom Abbey. The dean had inherited the land from a kinsman who had got it as a gift from King Erik III (*DD* 1.2:184). Eskil, who may have been unsure about the validity of the sale, got no less than two royal confirmations of the sale (Esmark 2004, p. 153). The first was given by King Svend Grathe between 1151 and 1157 (*DD* 1.2:107), and the second by King Valdemar I in around 1160. In Valdemar's charter, it is written that the king feared that either the heirs of the seller or future kings would challenge the Abbey's right to the village. To prevent this, Valdemar stated that King Svend had not only confirmed the donation, but also had actually donated the village to the Abbey with all royal rights. This donation was repeated by Valdemar, this time for the sake of

his own salvation and that of his kin (*DD* 1.2:129). Valdemar's double donation in both Svend Grathe's name and his own is very interesting, because it shows that rival claims to the village existed. As royal land, the king could give it away or sell it, but it was doubtful whether the sale or gift bound successor kings. When Valdemar wanted to relinquish whatever royal claims there were on the village (perhaps a right to tribute),[4] he had to secure it against claims by his successors. His own line would hardly question a donation given for the soul of Valdemar and his kin, which included themselves, but the civil war had only ended a few years previously, and Valdemar may not have been sure that his line would prevail, which was why he also tried to bind King Svend's linage.

Years later, probably in around 1170 but the dating is uncertain (for the dating see *DD* 1.2:184 + 337), the grandchildren of the dean who had sold the village claimed that it belonged to them according to their right of inheritance (*hereditario iure possidere debuerat*). Again, the claim ended in a compromise; the heirs conveyed the village to the Abbey, partly as a donation, and partly against a gift (*DD* 1.2:184 + 185). After a period of over twenty years, the ownership of the village was finally settled. This example shows how rival rights to the same village were negotiated and settled by compromise. Except for right of inheritance, there is no mention of legal rules and clearly there was no consensus about the grandchildren possessing that right.

The right of disposal over royal land is the theme for next example. In his letter of confirmation between 1151 and 1157 (for the dating see *DD*. 1.2:107 + 196) regarding Eskil's donation of the village of Esrom to the Abbey, King Svend Grathe noted that he gave the confirmation even though Eskil did not own the village, since he had got it as *precarium*[5] from Svend's predecessor, Erik III. Therefore, the donation, 'despite how it had been performed legally',[6] did not grant the monks possession of the village, which was why Svend Grathe donated the village to the Abbey – not for prayers and not for money, but because it would be for the benefit of the salvation of many (*DD*. 1.2:107). This case shows the uncertainty about the right to dispose royal land. Eskil clearly thought that he had got possession of the village, when and how it is impossible to know, but it could have been either when he received the village or through the abdication of Erik III, while Svend Grathe still considered Eskil's right to the land to be limited and personal.

The next example shows that royal gifts as well as other gifts could be questioned. After he had become sole ruler in 1157, King Valdemar donated one half of the village of Såne to Esrom Abbey. Såne used to belong to the kings, but according to the donation charter, it had been sold by one of Valdemar's predecessors. At the time for the donation, half the village was owned by a Peder Lagesen from whom Valdemar bought it, where after both the king and Peder Lagesen donated half the village to the Abbey (*DD*. 1.2.122; Fenger 2000, pp. 257–284, especially 265).

Almost 20 years later a man named Peder Scalle raised a claim in respect of half of the village of Såne, claiming that it was a part of his *patrimonium*. (Knudsen 1988) The sources do not reveal who this Peder Scalle was and why he raised the claim. Kim Esmark has suggested that he could have been the son of a brother of Peder Lagesen (Esmark 2004, p. 156). Whether he had his claim through kinship with Peder Lagesen or some other former possessor, the claim was taken seriously. In Valdemar's donation charter, it is written that Valdemar bought the village from a Peder Lagesen, 'who might have possessed it at that time'.[7] This could indicate that there had been other possessors or that Peder Lagesen's possession was challenged.

It took years to get a compromise, but in the end Peder Scalle conveyed and donated the village to the monks, first over the altar in the Abbey church and later over the high altar in Lund cathedral (*DD*. 1.3:45; 1.3:46). The king and a great number of bishops and magnates were present in Lund, and the way in which the charters emphasise that he did so of his own free will prompts the suspicion that pressure had been put on Peder Scalle to enter the compromise.

There are more examples of claims on donated land in the donation book of Esrom Abbey (*DD*. 1.2:130; 1.7:221.), but the above should suffice to give a picture of the state of the law. Clearly, there was a lot of uncertainty about how to get and how to keep unchallenged ownership or at least the right to use land.[8] Different claims could be raised (royal rights, rights of inheritance, sale or donation), and the various players were not more sure of their rights

than that they would ultimately enter a compromise. Very few charters on land conflicts have been preserved from the twelfth century, and all of these concern donations to ecclesiastical institutions. What has been preserved is probably just the tip of the iceberg, and the twelfth century must be seen as a transformative period during which the older understanding and definition of rights over land were replaced by a new understanding and definition.

This development is not just something that can be seen in the Danish material from the early Middle Ages; it can also be seen in the former Frankish realm. The Danish material is more recent than that seen in most of continental Europe, probably due to its late Christianisation and the lack of sources dating from before the 1150s. In France, donations and sales to ecclesiastical institutions were negotiated and redefined from the tenth to the twelfth centuries when they start to disappear, at about the same time as in Denmark.

The same structures are seen in both the Danish and the continental European cases, of which the most thoroughly investigated, and are those from France. Those who raised a claim on ecclesiastical land did not have a specific legal demand, but rather a moral one. The lack of a firm definition of possession of land meant that equally valid claims could be opposed to each other. Kim Esmark emphasises that to understand the claims, they should not be interpreted as capricious attacks on the Abbey's rights but as different and overlapping claims that arose 'in a society without a formalised legal order that is a society where prevalent law and rights as a starting point not is written down as abstract universal rules, but primarily existed as moral norms, narrative examples, proverbs, colloquialism and so forth, that thereby gives room for rival and all in their context equal valid claims'.[9]

It is hardly a coincidence that the claims on donated land, known in the donation books as *calumnia* begins to disappear in the second half of the twelfth century.[10] It is in this period that we see a flowering of legal studies, which not only influenced the learned elite but also reformed the legal basis for both canon and secular law by making legal thinking scientific. This flowering of legal studies was thanks to the rediscovery of the *Digest* in the last part of the eleventh century. The *Digest* was part of the Emperor Justinian's *Corpus iuris civilis* from the 530s. In contrast to the rest of the Roman law that was known in the West, the *Digest* was not just a collection of laws but the writings of jurists who discussed legal problems in a scientific way and showed how legal arguments could be used to solve disputes in cases where the law was insufficient or ambiguous. The discovery of the *Digest* not only revolutionised the study of law, but also the use and importance of the law. No later than the 1130s a new study of Roman law saw the light of day in Bologna and it spread throughout southern Europe (Stein 1999, Brundage 2008).

In southern Europe, Roman law collections that did not need highly academically trained lawyers to use them had formed the basis of the legal system. But within one or two generations they were replaced by the *Corpus iuris civilis*. Nor was canon law, the legal system that regulated the Roman church, left untouched. Canon law had been developed through the centuries, and it consisted of a mixture of biblical quotes, the writings of the church fathers, decisions made in church councils and papal bulls. This meant that there could be many different answers to the same question, depending on which collection was consulted. Earlier attempts to standardise canon law under the Carolingians had failed, but it did not take the canonists – those who specialised in canon law – long to follow the new legal trend. Already in the 1130s, they began teaching canon law in Bologna and less than 20 years later came what became known as *Gratian's Decretum*, which very rapidly became 'the' collection of canon law. The original title was *Concordia discordantium canorum* – the harmonisation of disharmonised canons, and the name illustrates its method very well. In the *Decretum,* what appear to be contradictions are harmonised through scholastic dialectical analysis. They thereby reached reasoned solutions to theological problems that had troubled the church for centuries. The *Decretum* is highly influenced by the Romanists – those who studied Roman law – not just by their method but also by the Roman law as found in *Corpus iuris civilis*. Roman law was used as a direct source for canon law in places where authoritative theological texts were missing; the church developed its procedural system according to the Roman model, and it also used the Roman concept of property. In Justinian's

*Digest,* a distinction was made between exclusive ownership and a right to use, for instance, the fruits of the land. This distinction had disappeared in the West after the fall of the Western Roman Empire, and the single-term *possession* was used to describe any right to land. Yet the Romanists started with the starting point in the Digest 16.6.5.15 *Duo non possunt habere dominium eiusdem rei in solidum* – two persons cannot own the entirety of a thing at the same time – to claim that property rights could not be shared. Hence, when property first was transferred, it was irrevocable and with all rights. The distinction between full ownership and all other rights over land or movable property was gradually re-established in the twelfth and thirteenth centuries as *dominium directum* and *domininum utile* – superior ownership and the right to using property respectively, a division that influenced the law on land lease.[11]

The new scientific way of working with legal problems, with its basis in Roman and canon law, is normally called *ius commune*, which also had a strong influence in Denmark. In the twelfth century, the elite started to send their sons to continental Europe to study, especially those destined for a career in the church. Paris and Bologna were the most popular destinations, Paris for theology and canon law and Bologna for both Roman and canon law (Monumenta Germaniae Historica 1878, p. 77; Helk 1981, pp. 27–32; Sällström 1957). These young men, who eventually held high positions in the church and the chancery, brought home not only a new understanding of law and legal concepts, but also theological ideals about how a Christian prince should rule. In the twelfth century, there was an increased focus on the king as *rex iustus* – a righteous king, who should secure the peace and protect the church and the weak, and – which was very important – who should rule by law (see McSweeney 2012 for a comparison). The ideal of the king as peacekeeper and law-maker was soon to be found in Denmark (Vogt 2010).

It has been convincingly argued that around 1170 were strict rules on inheritance were introduced in Denmark probably via royal intervention, maybe in form of the Book of Succession (*Arvebogen*)[12] and the Church laws for the provinces of Scania and Zealand, the first written laws we for certain know about from Denmark.[13] Of course, it cannot be completely ruled out that there had been some earlier written law, but no trace of it has been found. As the name indicates, the main object of the law was to settle the right to inheritance. This is not surprising for several reasons. As long as there was no settled order of inheritance, each death could lead to conflicts about who had the right to the deceased's land and other belongings. Thus, firm rules of inheritance had a function of engendering peace, and one of the ideals behind the creation of the law was to strengthen the kinship rights of individuals and thereby create more a stable and peaceful society (Vogt 2010). To secure the children or kinsmen of an intestate person against the disposal of their estate, it was not enough to hand down laws on inheritance, since this only secured possession for the heirs after the death of the intestate person. However, laws on inheritance did not apply during the lifetime of a person, to prevent him donating his possessions *inter vivos* to an ecclesiastical institution or disguising a donation as a sale at a price far below its value or an exchange of property for inferior land. Not all the consequences of the new rules were foreseen in the Book of Inheritance, but it can be seen how the gaps were filled in, in the provincial laws of the first half of the thirteenth century. The provincial laws included not only rules about inheritance and donations, but also rules about kinsmen's pre-emptive rights to land, house-leading[14] and conveyancing.

In many ways, the rules in the provincial laws were a response to the transformation which Danish society had gone through from the tenth to the thirteenth centuries. Great changes had taken place. Most importantly, the church had been established and the magnates and kings saw their interest in establishing bonds with the ecclesiastical institutions, primarily the abbeys. This was not only for saving their souls, but also – at least if we can use a French parallel – because being on good terms with the patron saint and the monks gave a number of temporal advantages, as it meant being part of their network and being able to count on their support, for example, as a mediator in conflicts (White 1988, Rosenwein 1989).

To conclude, there was undoubtedly great uncertainty about ownership and how land could be sold, donated or exchanged and this may help explain why firm inheritance rules and subsequently kin's

rights to pre-emption of land and stipulations about donations were developed from the 1170s onward. As long as all the parties agreed about the rules in the continuing negotiations on the right to land and other property, the system might function and even be justified. It could be used to emphasise status and create close ties between large monasteries and magnates. But the system could not be sustained once the growing interest in Roman law and legal thinking which emerged throughout Europe in the twelfth century began to focus on property rights.

The introduction of the provincial laws did not mean that kinsmen stopped questioning donations or sales of land to abbeys or other ecclesiastical institutions in the thirteenth century, but rather that when raising a claim they took them more frequently to court, where disputes were settled either by a judgment based on the law or more likely via a compromise entered into with arbitrators whose main concern was to find a lasting solution, that could make both parties content and thereby prevent further claims from arising (Esmark 2013, Vogt 2013).

## Notes

1. For *calumia* claims in the other abbeys where the donation books are preserved see Esmark (2013) or Vogt (2013).
2. Esmark suggests that in early and high medieval Europe, it was understood more neutrally as a challenge. (Esmark 2004, p. 172) I do not agree with that there is no contradiction in that the abbeys found the challenge unjust and that they entered a compromise with the one who raised the claim.
3. That the Archbishop took the challenge seriously can be seen from the privilege letter he gave to the Abbey in 1158, where in the list of the Abbey's possession he did not mention the land in question, *DD* 1.2:126; see also Esmark (2004, p. 152).
4. According to the Danish historian Svend Aggesen, who lived in the second half of the twelfth century, in the old days the kings possessed all land in the kingdom with *iure dominii* which, among other things, gave them the right to collect taxes and demand that the population participate in the construction of defences (Gertz [1917-18] 1970, p. 112).
5. Meaning either the right of use (Skyum-Nielsen 1971, p. 207), or a certain kind of loan (Fenger 2000, p. 264).
6. 'Talem donavionem legittime quidem datam' (*DD*. 1.2:107 + 197).
7. 'Qui tunc temporis forte eam possidebat'.
8. The present author does not agree with Ole Fenger, who thought that the claims were raised because the church was not a natural person but an institution (Fenger 2000, p. 266). He is probably right that the ecclesiastical institutions were not regarded as legal persons in a modern sense, but as the French materials show, the patron saint was regarded as the recipient of the donation (White 1988).
9. Esmark (2004, p. 172): 'i et samfund uden formaliseret juristik, dvs. et samfund hvor gængs lov og ret som udgangspunkt ikke forefindes nedskrevet som abstrakte almengjorte regler, men primært eksisterer som moralske normer, narrative eksempler, ordsprog, talemåde og lignende, som dermed giver plads til konkurrerende og i hver sin kontekst lige gyldige diskurser'.
10. In a letter to the Pope Innocent III in 1198, Archbishop Absalon complained that donations to the church were sometimes questioned wickedly by certain *cauillotores* (i.e. quibblers)(*DD*. 1.3:238). The last example of challenge on donated land from Esrom's donation book is from 1249 (*DD*. 1.7:221).
11. For a detailed description of the development of Roman property concepts and how the change in the interpretation of the Roman law influenced the Norwegian provincial laws, see Iversen (2001, 2011). For the process of developing a distinguish, see Rüfner (2010).
12. For the dating and editions the Book of Inheritance see Gelting (2005), Vogt (2010, pp. 46–47), Andersen (2006, pp. 80–82).
13. On the dating of the Church laws see Andersen (2014).
14. Old Danish *fledføring*, from house and lead, it was rules for how old and sick people could get support without selling their land.

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