

Képes, György¹**Erik Klipping’s royal charter of 1282:
background, provisions, significance²***Abstract:*

In the morning of 22 November 1286, a group of armed men dressed as monks murdered the Danish king Erik V known from his square-cut coins as “Erik Klipping”. The direct cause of the assassination was king Erik’s unpopular financial policy: he ordered all silver *pennings* circulating in his realm to be sent back to the royal treasury where they would be cut in order to mint new coins from the clipped parts,³ and imposed new taxes, too. However, another event made Erik even more famous in Danish history. He was the first king in Denmark who had to sign a royal charter (called “*håndfæstning*”), in many aspects reminiscent of the *Magna Carta Libertatum* or king Andrew II’s Golden Bull of Hungary.

Key words: Magna Carta, limits of royal power, limited monarchy, contractual monarchy

I. Political background: power struggles, internal and external conflicts

Erik V became king of Denmark as a child, in the middle of a political crisis, and his quarter-century reign was overshadowed by conflicts. His grandfather, Valdemar II made a typical mistake of medieval monarchs, that he did not want to exclude any of his sons from royal power.⁴ Thus, right after his death in March 1241, a chaotic period of almost hundred years followed in Denmark.⁵ As Helle Vogt cited the words of the medieval chronicle of the Ryd Abbey (*Annales Ryenses*) in her presentation at the Hungarian Academy of Sciences: “Most truly when he died, the crown fell off the head of the Danes. Since he died, the inhabitants started to quarrel and fight among each other, in all the neighbour countries they became a laughing stock”.⁶

In accordance with his will, two dukedoms were established in two separate regions of the kingdom. His eldest son called Erik became his successor to the throne of Denmark (as Erik IV), while his other two sons, Abel and Christopher became dukes. Abel received the dukedom of Slesvig (Southern Jutland), a territory repeatedly used for the purposes of *divisio regni*, while the youngest son Christopher became the duke of Lolland (an island located south from Zealand). The Valdemar-sons soon turned against each other, supported by magnates, who were

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³ According to Heikki Ylikangas, *klipping* (cutting of coins) was applied in Denmark in the early modern period, too. See Ylikangas, Heikki: The Crown and the Aristocracy in Co-operation in Denmark and Sweden (the “Aristocratic Regime”). In Kouri, Erkki I. – Olesen, Jens E. (eds.): The Cambridge History of Scandinavia. Vol. 2. 1520–1870. Cambridge University Press, Cambridge, 2016, 101–132., p. 131.

⁴ Kühle, Ebbe: Danmarks historie i et globalt perspektiv. Gyldendal, København, 2008, p. 65.; Findeisen, Jörg-Peter: Dänemark. Von den Anfängen bis zur Gegenwart. Verlag Friedrich Pustet, Regensburg, 1999, p. 64.

⁵ Vogt, Helle: The Danish constitutional charter of 29 July 1282. In Balogh Elemér (ed.): Golden Bulls and Chartas: European Medieval Documents of Liberties. Mádl Ferenc Összehasonlító Jogi Intézet, Budapest, 2023, 139–150., p. 141.

⁶ Annales Ryensis, A. 1241. See Pertz, Georg H. (ed.): Monumenta Germaniae Historica, Tomus XVI. Hahn, Hannover, 1859, p. 407. (Source of the English translation: the slides of Helle Vogt’s presentation, 30.03.2022)

granted with landed properties throughout Denmark for their loyalty.⁷ The reduction of royal estates, and the consequent weakening of central power led to similar social and constitutional developments, as we could see in many other countries in Europe.

The first son, Erik IV was murdered in 1250 by a man of his brother Abel,⁸ while the latter lost his life only two years later in a military campaign against Dithmarschen.⁹ This is how the youngest son Christopher I came to power. However, Abel had a surviving son, Valdemar, who was reconciled by Christopher with the dukedom of Slesvig, but he and his successors continued to fight for royal power for almost a whole century. In addition, a serious conflict emerged between the king and the Church.¹⁰ The Archbishop of Lund *Jakob Erlandsen* issued a decree in 1256 declaring the liberty of the Church from royal jurisdiction and any services due to the king.¹¹ The rivalry escalated to the imprisonment of the Archbishop by the king in 1256, that was avenged three years later by the Abbot of Ryd Abbey: he made Christopher drink poisoned wine at a communion.¹²

Under such circumstances ascended the 10-year-old Erik V the throne in 1259. In the first years, the kingdom was governed by his mother Margrethe, who released Jakob Erlandsen from prison, but the latter did not forgive Christopher's family and went to exile. The conflict between the Archbishop (supporter of the Abel-branch) and Margrethe went on in a legal way before the Holy See, which solved the dispute with the usual compromise: Erik V was recognised as the king of Denmark, while Abel's younger son (also called Erik) was reconciled with the dukedom of Slesvig.¹³ After the duke's death in 1272, the *ducatus* was inherited by his minor son Valdemar Eriksen. In 1274, the son of Erik V, the later king Erik VI was born, who was accepted as the successor to the throne in 1276 by the majority of an assembly of ecclesiastical and secular aristocrats called *Hof* ("royal court"). However, one of the participants, Marshal *Stig Andersen Hvide*, possessor of huge estates in Jutland, disagreed with the decision, and he also opposed the new procedural rules introduced by Erik V for the cases of *crimen laesae maiestatis*.¹⁴

A rebellion broke out in several parts of the country. Moreover, Valdemar Eriksen reached the age of majority in 1282, and urged Erik V to install him in the dukedom of Slesvig

⁷ Hørby, Kai: Royal Administration and Finances. Denmark. In Pulsiano, Phillip – Wolf, Kirsten: *Medieval Scandinavia: An Encyclopedia*. Routledge, New York, 1993, 538–539., pp. 538–539.

⁸ Abel took an (almost certainly false) oath with twelve oath-helpers to be innocent in his brother's assassination, that is why he could follow him on the throne. See e.g. Hoffmann, Erich: *Königserhebung und Thronfolgeordnung in Dänemark bis zum Ausgang des Mittelalters*. Walter de Gruyter, Berlin–New York, 1976, p. 128.; Andersen, Per: *Legal Procedure and Practice in Medieval Denmark*. Brill, Leiden–Boston, 2011, p. 16.

⁹ Vogt, Helle: The Function of Kinship in Medieval Nordic Legislation. Brill, Leiden–Boston, 2010, p. 47.; Kjær, Lars: Feasting with Traitors. Royal Banquets as Rituals and Texts in High Medieval Scandinavia. In Jeziński, Wojtek et al. (eds.): *Rituals, Performatives, and Political Order in Northern Europe, c. 650–1350*. Brepols Publishers, Turnhout, 2015, 269–294., p. 285.

¹⁰ Findeisen: op. cit., p. 67.; Skovgaard-Petersen, Inge: The Danish kingdom: consolidation and disintegration. In Helle, Knut (ed.): *The Cambridge History of Scandinavia. Volume 1: Prehistory to 1520*. Cambridge University Press, Cambridge, 2003, 353–368., p. 353.; Bohn, Robert: *Dänische Geschichte*. C. H. Beck, München, 2001, p. 27.; Bagge, Sverre: *Cross & Scepter. The Rise of the Scandinavian Kingdoms from the Vikings to the Reformation*. Princeton University Press, Princeton, 2014, p. 159.

¹¹ Skovgaard-Petersen: op. cit., p. 365.

¹² Hundahl, Kerstin: Placing Blame and Creating Legitimacy: the Implications of Rügish Involvement in the Struggle over the Succession amidst the Danish Church Strife c. 1258–1260. In Hundahl, Kerstin et al. (eds.): *Denmark and Europe in the Middle Ages, c.1000–1525: Essays in Honour of Professor Michael H. Gelting*. Routledge, London–New York, 2014, 269–286., p. 278. See also Findeisen: op. cit., p. 67.; Rying, Bent: *Danish in the South and the North. The Royal Danish Ministry of Foreign Affairs*, København, 1988, p. 45.

¹³ Hoffmann 1976, p. 134. (It should be noted that Erik Abelsen had already "inherited" the dukedom of Slesvig in 1257, with the death of his brother Valdemar (Abelsen), but then Christopher refused to install him.)

¹⁴ Hoffmann 1976, p. 135.; Vogt 2023, p. 143.

with full powers. For all these reasons, the meetings of the *Hof* were more frequently held.¹⁵ On 19 March 1282, at such an occasion, the king solemnly promised to convene the *Hof* at least once a year. Four months later, at the subsequent meeting, the magnates managed to get the king to confirm his promises in writing. This royal charter dated on 29 July 1282 is the first royal charter in Danish history referred to as “*håndfæstning*”.¹⁶

II. Emergence of a new social and political elite in 13th century Denmark

The custom that all free men were entitled to take part in public affairs, whether the discussion was on a political issue, or it was about a criminal or private law dispute, was not just kept throughout the Viking age, but also at the time of Danish medieval monarchy. The traditional locations for discussing public affairs were the districtual and provincial assemblies called *ting*. Decisions of major significance, also including the election of kings, were made at the provincial assemblies (*landstings*) amongst which the *tings* held in Viborg (Jutland), Arnedal (Scania), and Ringsted (Zealand) had the biggest say.¹⁷ According to the Prologue of the famous law book *Jyske Lov* of 1241, “That law which was given by the king and taken by the land” could not be either changed or abolished by the king “without the consent of the land, unless [it] is openly against God”.¹⁸

This law book was promulgated by Valdemar II at a meeting with magnates. From this event, that strange duality can be well seen which had become a characteristic of Danish society until the middle of the 13th century. At the lower levels, the “democratic” traditions of the Viking society lived on, but the monarchs tended to discuss the “national” matters with the highest layer of their subjects, the ecclesiastical and secular aristocrats more and more frequently referred to in the sources as *meliores regni* (“best men of the realm”).¹⁹ Similarly to the contemporary Iberian kingdoms, England or Hungary, the perception prevailed that these “best men” represented the whole population.²⁰

The layer of magnates started to stand out from the other free men. They were the ones who owned the largest landed properties in the country, and in the 13th century this was already a more significant factor than the military roles as it had used to be in the Viking age, for, as the prices of agricultural products increased, those who had the largest estates could realise an enormous fortune.²¹ This way, the class of free landowners split into two groups: magnates and

¹⁵ Bąk, Hubert – Gaca, Andrzej: *Håndfæstning* of July 29, 1282 and its significance for the development of Danish parliamentarism and other political changes in the Kingdom. In *Studia Iuridica Toruniensia*, no. 2020/2., 11–36., pp. 21–22.; Skovgaard-Petersen: op. cit., p. 362.

¹⁶ Bąk–Gaca: op. cit., p. 15.; Líndal, Sigurður: Early Democratic Traditions in the Nordic Countries. In Allardt, Erik et al. (eds.): *Nordic Democracy*. Det Danske Selskab, København, 1981, 15–43., p. 27.; Tamm, Ditlev – Jørgensen, Jens Ulf: *Dansk retshistorie i hovedpunkter fra landskablove til Ørsted*. II. Oversigt over retsudviklingen. Universitetsforlaget i København, København, 1975, p. 10.

¹⁷ Sawyer, Birgit – Sawyer, Peter: *Medieval Scandinavia: From Conversion to Reformation*. University of Minnesota Press, Minneapolis, 1993, pp. 81. and 84.; Hoffmann, Erich: The Unity of the Kingdom and the Provinces in Denmark during the Middle Ages. In Skyum-Nielsen, Niels – Lund, Niels: *Danish Medieval History*. New Currents. Museum Tusulanum Press, Viborg, 1981, 95–111., p. 97.; Thurston, Tina L.: *Landscapes of Power, Landscapes of Conflict*. State Formation in the South Scandinavian Iron Age. Kluwer, New York, 2002, p. 88.

¹⁸ Strauch, Dieter (ed.): *Mittelalterliches nordisches Recht bis 1500: Eine Quellenkunde*. Walter de Gruyter, Berlin–New York, 2011, p. 52.; Líndal: op. cit., p. 23. Source of the English translation: Tamm, Ditlev – Vogt, Helle (eds.): *The Danish Medieval Laws. The Laws of Scania, Zealand and Jutland*. Routledge, London–New York, 2016, p. 242.

¹⁹ Feldbæk, Ole: *Danmarks historie*. Gyldendal, København, 2010, p. 38.; Tamm–Jørgensen: op. cit., pp. 17–18.

²⁰ Møller Jensen, Janus – Porsmose, Erland: *Danehoffet og Håndfæstningen 1282*. Potentialet i et stykke unik Danmarkshistorie. In *Nyborg - før & nu*, Vol. 15, 2012, 21–43., pp. 27–28.

²¹ Górski, Karol: *The Beginnings of the System of Estates (Ständewesen) in the Baltic Area and in Some East*

lesser farmers. The layer of magnates was quite small in number, and, as Per Andersen highlights, “they were often closely associated with the king through friendship or as foster-brothers”.²² As the result of this social process, the late medieval and early modern Danish social and political elite was formed.

III. Erik Klipping's *håndfæstning* of 1282

The charter of July 1282, referred to by Danish historian Erik Kjørsgaard in his book published at the 700th anniversary as *Denmark's Magna Carta*,²³ was “the result of a series of power struggles between the king and the great men”, enforcing the principle of the *Jyske Lov* of 1241 that “legal order should arise from a pact between the ruler and his people based on an objective and sovereign justice – in the Middle Ages, that of God”.²⁴ From the antecedents of the charter, Peter Kurrild-Klitgaard highlights the division of the country “into semi-sovereign dukedoms, which were given as feudal fiefs to the younger sons” that undermined the basis of royal power in a period when the magnates became stronger and stronger.²⁵

In the turmoil of the throne strifes of the 1250s, these aristocrats joined one or the other royal faction as allies, while the currently ruling king tried to exercise a stronger control over them, sometimes even with an arbitrary enforcement of his penal power, thereby violating the old customary law.²⁶ Because of this, the magnates – probably following the English example – were attempting to extort guarantees from the king against the abuses of royal power.²⁷ As we mentioned above, in March 1282 Erik V undertook to convene the “best men of his realm” to his court at least once a year. They did not have to wait for one year: the next meeting was already summoned for July 1282, and the king had to sign there the first written document of Danish history on the limitations of royal power, in line with the promises he had already made in March.²⁸

The charter had originally no title, but at another assembly held in 1284 it was already referred to as “*håndfæst*”.²⁹ This word, or rather its longer form “*håndfæstning*” was being kept in use for centuries. The origin of this denomination is the Low German word *handveste*.³⁰ This term could mean in the German medieval legal language each kind of document confirmed by its signatory with his own hands, while in its Danish form it “merely meant a document that tied the king’s hands”.³¹ In medieval German law a *handveste* could also be the reinforcement of a private law agreement (e.g. on an engagement or a lien), however, from the 13th century it was more and more frequently applied to privileges granted by the king to different feudal

European Countries. In Górski, Karol: *Communitas, Princeps, Corona Regni. Studia Selecta*. Państwowe Wydawnictwo Naukowe, Warszawa–Poznań–Toruń, 1976, 1–12., p. 12.

²² Andersen: op. cit., p. 18.

²³ See Kjørsgaard, Erik: *Denmark's Magna Carta*. The Royal Danish Ministry of Foreign Affairs, København, 1982.

²⁴ Møller Jensen–Porsmose: op. cit., pp. 27–28. See also Gelting, Michael H.: *Leges Iutorum: The Medieval Latin Translation of the Law of Jutland*. In Benham, Jenny et al. (eds.): *Law and Language in the Middle Ages*. Brill, Leiden–Boston, 2018, 52–82., p. 57.

²⁵ Kurrild-Klitgaard, Peter: *The Constitutional Economics of Autocratic Succession*. In *Public Choice*, no. 2000/1–2., 63–84., p. 76.

²⁶ Vogt 2023, p. 142.

²⁷ Tamm, Ditlev: *Juraens 100 bedste historier: Rettens kulturhistorie fra middelalderen til i dag*. 21. Danmarks første grundlov. Gyldendal, København, 2016, 98–99., p. 98.; Vogt 2023, p. 143.

²⁸ Vogt 2023, p. 145.

²⁹ Møller Jensen–Porsmose: op. cit., p. 28.

³⁰ Bąk–Gaca: op. cit., pp. 13–14.; Tamm–Jørgensen: op. cit., p. 19.

³¹ Vogt 2023, p. 145. (footnote No. 26)

communities, confirmed “with his own hands” for eternity. In the German territories these were primarily town privileges.³²

In the closer sense, as the word has become well known in Danish constitutional history (a written statement of the king about the *conditiones* he would have to keep during his reign), it is the document signed by Erik V on St. Olaf’s day of 1282 that can be considered the first *håndfæstning*. Despite the choice of this word, the document itself was a much closer relative of contemporary European royal charters as the *Magna Carta Libertatum* or the Golden Bull of 1222 than any of the above mentioned German letters patent.³³ While the existence of an actual historical connection between the English and Hungarian royal charters is unlikely, in the case of the document signed by Erik V, the presumption is strong (but still not proved to date with primary sources) that it had actually been prepared following the English model.³⁴

Unfortunately none of the original deeds containing the *håndfæstning* of 1282 has survived. However, many transcripts remained available. The oldest one written in Latin language can be found in the collection of late medieval documents related to the Diocese of Ribe called *Ribe Oldemoder*.³⁵ The transcript was made by Magister *Aastred*, canon of the chapter of the diocese, without any indication of date. As his name appears first among the manuscripts in 1291, we may presume that the transcript of the *håndfæstning* was also prepared sometime in the 1290s.³⁶ A critical edition of this Latin text (with comments) was published in the second series of *Diplomatarium Danicum* in 1939.³⁷

IV. Obligations assumed by the king in the *håndfæstning*

Erik V’s charter of 29 July 1282 is not just shorter than the *Magna Carta* but also than Andrew II’s Golden Bull of 1222: it consists of eighteen points only. According to the known transcripts, the original Latin text did not contain any numbering, but the sections can be well divided logically and typographically as well (starting with capital letters). In the following, we will go through the provisions in the order they follow each other in the document. When we cite the words of the royal charter, we will use Matthew McHaffie’s modern English

³² Armgart, Martin: Handfeste. In Cordes, Albrecht et al. (eds.): Handwörterbuch zur deutschen Rechtsgeschichte (HRG). Band II. 2nd edition. Erich Schmidt Verlag, Berlin, 2010, pp. 735–736.

³³ Bagge, Sverre: The Scandinavian Election Charters in the Later Middle Ages. In Foronda, François – Genet, Jean-Philippe (eds.): Des Chartes aux Constitutions. Autour de l’idée constitutionnelle en Europe (XIIe-XVIIe Siècle). Éditions de la Sorbonne – École Française de Rome, Paris, 2019, 139-147., p. 145.; Bąk-Gaca: op. cit., p. 25.; Oestreich, Gerhard: From contractual monarchy to constitutionalism. In Collins, James B. – Taylor, Karen L.: Early Modern Europe. Issues and Interpretations. Blackwell Publishing, Malden–Oxford–Carlton, 2006, 317–331., p. 317.; Borgolte, Michael: Die Goldene Bulle als europäisches Grundgesetz. In Hohensee, Ulrike et al. (eds.): Die Goldene Bulle. Politik – Wahrnehmung – Rezeption. Band II. Akademie Verlag, Berlin, 2009, 599–618., p. 602. (footnote no 15); Tamm-Jørgensen: op. cit., p. 19.

³⁴ See e.g. Andersen: op. cit., p. 17. (footnote no 9); Bagge 2014, p. 149.; Tamm, Ditlev: The History of Danish Law. Selected Articles and Bibliography. DJØF Publishing, København, 2011, p. 13.; Feldbæk: op. cit., pp. 36. and 38.; Hørby: op. cit., p. 129.; Orfield, Lester B.: The Growth of Scandinavian Law. University of Pennsylvania Press, Philadelphia, 1953, p. 18.; Møller Jensen–Porsmose: op. cit., p. 28.; Rying: op. cit., p. 45.; Riis, Thomas: Skandinavien im Spätmittelalter. Zwei Königreiche und eine halbe Republik. In Historische Zeitschrift. Beihefte, New Series, Vol. 40, Europa im späten Mittelalter. Politik – Gesellschaft – Kultur, 2006, 125-143., pp. 128–129.

³⁵ In printed version see Nielsen, Oluf August (ed.): Samling af Adkomster, Indtægtsangivelser og kirkelige Vedtægter for Ribe Domkapitel og Bispestol nedskrevet 1290-1518, kaldet »Oldemoder« (Avia Ripensis). Thiele Bogtrykkeri, København, 1869, pp. 25–27.

³⁶ Møller Jensen–Porsmose: op. cit., p. 36.

³⁷ Afzelius, Adam – Blatt, Franz (eds.): Diplomatarium Danicum, 2. rk. bd. 3: 1281-1290. Munksgaard, København, 1939, pp. 45–53. (document no 45)

translation.³⁸

(1) Once a year, in the middle of lent, a parliament, which is called the Hof, should be held.

This is undoubtedly the most frequently cited provision of the charter. The king undertook to convene the „*parlamentum, quod Hof dicitur*” at least once a year.³⁹ As we may know from the famous medieval chronicle *Gesta Danorum*,⁴⁰ similar assemblies had already been held in the 12th century. Until the 1250s, the *parlamenta* had been irregular and their function had been limited to giving advice to the king, but their significance and frequency increased at the time of the throne strifes, and the rivalry between the king and the Church.⁴¹ After 1252, Christopher I started to convene the meetings annually, in 1256 especially in order to “discuss and dispose on the affairs of the realm” (*tractaturi et ordinaturi cum ipso super negotiis regni*).⁴²

From Point 1 it is unclear for what purpose the aristocrats had urged these meeting to be convened in every year. While the Hungarian Golden Bull indicated a general judicial function (“in order to hear the [legal] cases”), and the English *Magna Carta* mentioned the decision on imposing the *scutagium* and other taxes in Article 12, in the Danish document of 1282 only the advice of the “best men” on the necessity of revocation of privileges, and hearing their complaints about unlawfully confiscated properties were mentioned in two later points (12 and 16). However, we will see that the assemblies later referred to as “the court of the Danes” (*Danehof*)⁴³ will have an importance way beyond these specific cases of advices and complaints.⁴⁴

(2) No one is to be held in captivity unless he confesses of his own free will at the public assembly, is lawfully convicted, or is caught in the act, for which according the laws of the country he is to lose his life or his limbs. But if he is lawfully convicted, let him have safe passage to flee the kingdom, as is found in the law books.

This point formulates a principle well known from many contemporary European documents: the procedural guarantee referred to in English law as “*habeas corpus*”, or in Poland as “*neminem captivabimus nisi iure victum*”.⁴⁵ By virtue of this, personal freedom of a free man could only be restricted if he had been convicted in a due process of law. The last sentence of Point 2 refers to a characteristic institution of medieval Danish law deriving from the Viking age. If someone had been declared “*frithløs*” (“peaceless”), he became outlaw and had to leave

³⁸ The author of this study would hereby like to thank Dr. Matthew McHaffie of the University of St Andrews and Prof. Helle Vogt of the University of Copenhagen for the honour to have received an unpublished version of this English text.

³⁹ Vogt 2023, p. 146.

⁴⁰ In Latin and English languages see Saxo Grammaticus: *The History of the Danes*. Books I–IX. Vol. II. Commentary. D. S. Brewer, Cambridge, 1980, pp. 1506–1507. (Book XVI, Chapter 4.2)

⁴¹ Bąk–Gaca: op. cit., p. 23.; Hoffmann 1976, p. 136.; Schück, Herman: *Royal Assemblies (Parliaments, Estates)*. In Pulsiano, Philipp – Wolf, Kirsten: *Medieval Scandinavia: An Encyclopedia*. Routledge, New York, 1993, 544–545., p. 544.

⁴² Hoffmann 1976, p. 136.

⁴³ Andersen: op. cit., p. 400.; Bąk–Gaca: op. cit., p. 24.; Schück 1993, p. 544.; Skovgaard-Petersen: op. cit., p. 362.; Wendt, Frantz: *Constitutional History*. In Rying, Bent (ed.): *Denmark. An Official Handbook*. The Royal Danish Ministry of Foreign Affairs, København, 1970, 107–113., p. 107.

⁴⁴ One of the main complaints of the magnates was that the assemblies had not been regularly held before 1276, see Bąk–Gaca: op. cit., p. 22.

⁴⁵ Bąk–Gaca: op. cit., p. 24.; Pietrzyk-Reeves, Dorota: *Magna Carta and the Rise of Anglo-American Constitutionalism*. In Górniewicz, Arkadiusz – Szlachta, Bogdan (eds.): *The Concept of Constitution in the History of Political Thought*. De Gruyter Open, Warszawa–Berlin, 2018, 63–74., p. 67.

his community within a given period of time. If he had fled, his relatives had to pay two-third of the *wergeld* (blood money) to the victim's family, while should he not have fled, anyone could take his property, capture, beat, or even kill him.⁴⁶

(3) *No one is to be punished or fined with a monetary penalty or some other penalty beyond what is stated in the laws, unless he is lawfully convicted of whatsoever offence.*

In this point we can read the two most important principles of modern criminal law: *nullum crimen sine lege* and *nulla poena sine lege*. The concept that no one should get a more severe punishment than provided in the laws, had already been known in the Roman Law.⁴⁷ However, the direct antecedent of the above cited point of the *håndfæstning* can be found in Article 39 of the *Magna Carta*: “No free man is to be arrested, or imprisoned, or disseised, or outlawed, or exiled, or in any other way ruined, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land”.⁴⁸ From the expression “*pro quacunque causa ultra id quod in legibus expressum*”⁴⁹ we may draw the consequence that not just the punishment, but also the crime (as the “*causa*” of the punishment) had to be in line with the provisions of the laws.

(4) *No one is to request royal letters against someone else in any case whatsoever unless the case has first been aired and discussed in the assemblies [...]*

At the period of throne strives after the death of Valdemar II it became a practice that the kings gave so called “royal letters” (*kongebreve*) to their loyal people, in the possession of which their legal claim could be directly enforced, without the necessity of bringing the defendant to justice. This obviously caused a prejudice to the defendant, who had no possibility to defend himself at the local or provincial assembly, while if he resisted against the royal letter, he could be declared outlaw, and his property could be confiscated.⁵⁰ At the *Hof* held in March 1282, the magnates requested the king to abandon this practice. This promise was reinforced in the great charter of July 1282.⁵¹ This meant that the king would no longer be entitled to issue *kongebreve* deliberately, only after a due process of law that should happen in the presence of free men summoned at the competent assembly.⁵²

The remaining part of Point 4 (not cited above) dealt with the cases when the defendant did not appear before the assembly despite several summons, and how those persons would be punished who unlawfully acquired royal letters, misleading the king about the conduct of a preliminary legal process. The charter envisaged severe punishments for both illegal behaviours. Concerning these provisions, two interesting aspects are to be mentioned. First, regarding the execution of fines, the Danish charter protected the real properties in a similar way as we can see in the *Magna Carta*: the debts should first be collected from the moving assets of the given person. Secondly, the charter repeatedly used the word “*bonde*” (literally:

⁴⁶ Båk–Gaca: op. cit., p. 25.

⁴⁷ Molnár Imre: Büntető- és büntetőeljárásjogi alapelvek római jogi előzményei. In Tóth Károly (ed.): Emlékkönyv Dr. Tokaji Géza c. egyetemi tanár 70. születésnapjának tiszteletére. SZTE Állam- és Jogtudományi Kar, Szeged, 1996, 167–182., p. 170.

⁴⁸ Source of the English text: The Magna Carta Project, <https://magnacartaresearch.org/> (21.11.2022)

⁴⁹ Møller Jensen–Porsmose: op. cit., p. 37.

⁵⁰ Båk–Gaca: op. cit., pp. 22–23.

⁵¹ Båk–Gaca: op. cit., p. 22. See also the explanation to article ‘Erik Klippings håndfæstning, 29. juli 1282’ at Danmarkshistorien.dk, <https://danmarkshistorien.dk/leksikon-og-kilder/vis/materiale/erik-klippings-haandfaestning-1282/> (21.11.2022)

⁵² Andersen: op. cit., p. 223.; Båk–Gaca: op. cit., pp. 25–26.

peasant landowner) but this actually comprised all free men having own property.⁵³

(5) In addition, we decree and resolutely promise to keep inviolate the laws of King Valdemar of outstanding memory in the way that they are contained in his law books [...]

The lack of permanent legal order was a characteristic of law in Denmark as well as in all other medieval states. Therefore, Erik V had to promise in this point explicitly to keep Valdemar II's laws intact, "*prout in suis libris legalibus continentur*".⁵⁴ This provision refers to the three great provincial law books of the early 13th century,⁵⁵ later often mentioned as "the good old laws".⁵⁶ According to Per Andersen, with the confirmation of the "perpetual" force of "Valdemarian laws", the co-existence of separate provincial laws was conserved. Maybe Erik had earlier had different ideas, but he had to "abandon all attempts to harmonise the law of the kingdom".⁵⁷ All in all, Denmark will not have a uniform law until as late as 1683.

Further provisions of the same point (not cited above) explicitly prohibited "*omnes abusiones et dissuetudines contra leges*".⁵⁸ From this wording, we may draw the consequence that there had been some "abuses and malpractices", from which Sverre Bagge highlights the unlawful enforcement of debt payments referred to under Point 4,⁵⁹ while Point 5 of the *håndfæstning* itself gives the example of carting duties to be provided to the king and the royal family. In the final sentence, the so-called *ægt* (delivering crop and food for the king's family) was reinforced in a way that Erik V promised not to force anyone to do this beyond the frontiers of the administrative and judicial district (*herred*) he was living in.

(6) Our studkorn is to be paid on the feast of St Andrew according to the custom of whichever province.

(7) Householders (bonde) are not to be compelled to build or repair courtyards, mills, or other things, nor even fortifications except in times of need, but in this [latter] case, let them do so according to what they were accustomed to do in the time of King Valdemar.

(8) Householders are not to be compelled under [the threat of] any penalty to give geese or chickens or other gifts to the royal table, except for those things they were accustomed to pay in the time of Valdemar. But householders can be asked [to give these things] as a gift or for free.

(9) It is permitted for householders who have their own lands to be steward (villicatio) [on other's] lands, provided that they pay their royal duties from their own goods.

These points contain several guarantees related to taxes and services due to the king.⁶⁰ The *studkorn* mentioned in Point 6 was a tax to be paid annually in crop (the word "*korn*" actually means corn in English).⁶¹ St Andrew's day is on 30 November, i.e. the charter

⁵³ See the article 'Erik Klippings håndfæstning, 29. juli 1282' at Danmarkshistorien.dk, <https://danmarkshistorien.dk/leksikon-og-kilder/vis/materiale/erik-klippings-haandfaestning-1282/> (21.11.2022)

⁵⁴ Møller Jensen–Porsmose: op. cit., p. 37.

⁵⁵ Andersen: op. cit., p. 230.; Båk–Gaca: op. cit., p. 26.

⁵⁶ Vogt 2023, p. 146.

⁵⁷ Andersen: op. cit., p. 79.

⁵⁸ Møller Jensen–Porsmose: op. cit., p. 37.

⁵⁹ Bagge 2019, p. 141.

⁶⁰ Bagge 2019, p. 141.; Båk–Gaca: op. cit., p. 26.

⁶¹ Møller Jensen–Porsmose: op. cit., p. 37.

guaranteed that no collection of taxes would happen before that date.⁶² Point 7 was also written in order to protect the interests of free landowners, prohibiting to force them to build on royal lands, or to “repair courtyards, mills, or other things” there, reinforcing again the good practice followed at the time of Valdemar II, and so did Point 8, in connection with the gifts to be presented to the monarch. Finally, Point 9 of the charter made possible for the owners of larger landed properties to employ stewards⁶³ to administer their lands, even another *bonde*. However, such duties must have not jeopardised the fulfilment of these other free men’s obligations towards the king.⁶⁴

(10) We are not to build in the property of another unless with the consent and wishes of the possessor.

Point 10 is also about abuses and trespasses of the king, however it is still worth mentioning it separately from the previous provisions, because its significance is higher. Although it literally speaks about building on the property of others,⁶⁵ it is not difficult (and maybe not far from truth) to see the protection of property in a broader sense in it.⁶⁶ The need for consent of the owner for using his property had already been reflected in the *Magna Carta*, namely in Article 30 for taking “any free man’s horses or carts for transporting things”, and in the next one, for taking “another man’s wood to a castle”.⁶⁷

(11) Our officials are not to summon anyone [to the assembly] except to the lawful (iusta) assemblies; nor [are they to summon anyone] before themselves.

After several points dealing with the rights of free men, the charter turns back to the crucial question of royal interference in the course of jurisdiction of the traditional courts. As Per Andersen highlights, Point 11 is to be interpreted together with Point 4, i.e. the problem of royal letters, as it is about the same abusive practice. By issuing royal letters, the king had deprived the counterparts of his favourites of their right to defend themselves before the suitable forum. In order to bring this practice to an end, the already cited Point 4 provided that, before the issuance of an enforcement order, the due process of law should be carried out before the local or provincial assembly. In Point 10, the king undertook that his officials would cite the defendant to the assembly. It means that the king had to respect the already established system of jurisdiction.⁶⁸ The expression “*ad iusta placita*”⁶⁹ means that the royal officials no longer had the authority to make judgments on their own.

(12) Letters patent and our privileges are to remain in force unless we are to learn from our faithful men in parliament which of them should be revoked.

This point has great importance, as it delineates one of the reasons why the *parlamenta* mentioned under Point 1 were to be held. The king was not entitled to withdraw any of the privileges and letters patent he had issued, unless “his faithful men” (*fideles nostri*) – that were the same people as the “best men of the realm” – gave their consent to the revocation.⁷⁰ Thus,

⁶² ‘Erik Klippings håndfæstning, 29. juli 1282’, Danmarkshistorien.dk

⁶³ With Helle Vogt’s words: “estate managers”, see Vogt 2023, p. 147.

⁶⁴ Båk–Gaca: op. cit., pp. 27–28.

⁶⁵ Bagge 2019, p. 141.

⁶⁶ Båk–Gaca: op. cit., p. 28.

⁶⁷ Source of the English text: The Magna Carta Project.

⁶⁸ Andersen: op. cit., p. 224.

⁶⁹ Møller Jensen–Porsmose: op. cit., p. 38.

⁷⁰ Bagge 2019, p. 141.; Vogt 2023, p. 146.

the king no longer had an unlimited power to change his earlier decisions to the detriment of its addressees. In addition to this, Point 12 also reflected the significance of the *Danehof*, saying that the king had to substantiate the good cause of the revocation (“*in parlamento docere poterimus, quod sint merito revocanda*”).⁷¹

(13) No one is to lose his land for any act of wrongdoing (delicto) unless he is convicted of the crime of lèse-majesté on the oath of the worthhæl, except in the case laid out above.

This is yet another important provision protecting free property, establishing a guarantee against unlawful punishments. According to contemporary Danish law, someone’s property including his inherited lands could only be confiscated in case of *crimen laesae maiestatis*.⁷² By virtue of Point 13, such punishment could only be imposed if the *worthhæls* had found the accused to be guilty.⁷³ The word “*worthhæl*” (used in the Latin text as well) meant the members of the royal retinue who were obliged to co-operate with the king in cases of high treason as a jury.⁷⁴ However, there is a reference in this point to another reason of confiscation, too: if the *ting* declared someone outlaw, his land also became free to be taken (see Point 2).

(14) For those who have suffered shipwreck, we wish to observe what is contained in the law books.

In this point we can find another promise the king had to make about respecting old laws, this time concerning shipwrecks.⁷⁵ In practice it was about the protection (preservation) of the property of those who suffered and survived a shipping accident, with the exception that the king had right to dispose of the equipment of, and other goods found on the sunken ship, in accordance with the *ius naufragii*.⁷⁶

(15) No new burdens are to be imposed on merchants visiting our kingdom and on our own [merchants]; they are instead to enjoy the liberties, which they had been accustomed to enjoy since ancient times, notwithstanding the customs observed in Skanør, which are to remain in force.

From the above cited points we could already see that the vast majority of the provisions of the charter dealt with the protection of personal freedom and property of rural landowners. Right until Point 15, there was no sign of any intention to protect the burghers’ interests, moreover, this one is the only point in the charter dealing with that. Even this provision primarily concerned foreign merchants, but from the Latin expression “*regnum nostrum visitantibus et nostris propriis*”⁷⁷ we may conclude that Danish merchants enjoyed the same protection. The king undertook not to impose burdens on merchants further to those based on the old customs, in particular not to change the custom duties applied in the Skanør fish market (an important place of exchanging goods of foreign merchants for salted herring).⁷⁸

⁷¹ Møller Jensen–Porsmose: op. cit., p. 38.

⁷² Bagge 2019, p. 141. According to Helle Vogt’s observation, this kind of punishment, introduced with royal ordinances by Valdemar II’s sons, was “almost unheard of compared to the sanctions for other crimes”. See Vogt 2023, pp. 142–143.

⁷³ Båk–Gaca: op. cit., pp. 28–29.

⁷⁴ ‘Erik Klippings håndfæstning, 29. juli 1282’, Danmarkshistorien.dk

⁷⁵ Bagge 2019, p. 141.

⁷⁶ Båk–Gaca: op. cit., p. 29.

⁷⁷ Møller Jensen–Porsmose: op. cit., p. 38.

⁷⁸ Båk–Gaca: op. cit., pp. 29–30.

(16) If anyone wishes to sue us concerning goods that have been taken unjustly [by us], we will submit [ourselves] to the counsel and decision of our faithful men at our parliaments, at the fixed times when they are held.

The structural desultoriness of the *håndfæstning*, the almost accidental order of its provisions, is well reflected in Point 16, that should have been closely connected to Points 1–4 and 13 as a very important guarantee of property rights, instead of following the protection of shipwrecked travellers and herring traders. Moreover, this is the only provision that created an actual right of decision making for the annual “parliaments”. Namely, those who suffered harm because of an unlawful confiscation of their property, could bring their case before the *Hof*, and the king obliged himself to discuss it with the assembly, and to accept its decision.⁷⁹ In contrast to Article 61 of the *Magna Carta*, the Danish charter of 1282 did not yet have a *ius resistendi* clause, however, Point 16 at least implied a power of the *parlamenta* to provide remedy to those who had been unjustly treated by the king.

(17) We wish that no one be given hospitality wantonly at monasteries, or at the residences of ecclesiastics or laymen; let him instead be content with what the inhabitant has and wishes to give him. [...]

The Latin text of Point 17 of the charter uses the word *nullus*⁸⁰ literally meaning “no one”, however, in the unanimous opinion of the historians it only, or at least primarily, meant the king himself and his retinue, because the kings had previously misused their privilege of hospitality called “*nathold*”.⁸¹ According to the remaining part of the text (not cited above), if anyone had suffered a harm exceeding the ordinary extent of hospitality because of the violence of his guests,⁸² such behaviour could be considered, depending on the number of the perpetrators, as *rapina* (robbery) or *hærwærk* (banditry), and the injured party became entitled to the corresponding compensation. Furthermore, if the victim was an ecclesiastical community or person, the perpetrators could also be excommunicated by the Church.⁸³

(18) The church of Denmark is to enjoy all liberties which ever flourished in the time of King Valdemar, who wished to preserve the Church’s liberty inviolate in all things.

The Danish kings’ position vis-à-vis the church was strong in the Middle Ages. As we could already see, in the 1250s a serious conflict emerged between the highest dignitary of the Danish Church and the king. The aspiration of the Archbishop of Lund to establish a Church independent of the royal power, was not successful. Nonetheless, we can find some provisions protecting the interests of the Church in Erik V’s *håndfæstning* as well, even if only at the very end of the charter. Already Point 17 was one of these, as the monasteries were especially affected by the unlawful hospitalities. Further to this, and finally, the king undertook in Point 18 to ensure “all liberties” to the Church it had enjoyed at the time of Valdemar II.⁸⁴ However, as Sverre Bagge points out, “it is striking that the Church is mentioned only once” in the charter.⁸⁵

⁷⁹ Bagge 2019, p. 141.; Båk–Gaca: op. cit., p. 28.

⁸⁰ See Møller Jensen–Porsmose: op. cit., p. 38.

⁸¹ Bagge 2019, p. 141.; Båk–Gaca: op. cit., p. 28.

⁸² Vogt 2023, p. 147.

⁸³ As Helle Vogt mentions, it were the ecclesiastical institutions that primarily suffered from the violent behaviour of their guests. See Vogt 2023, p. 147.

⁸⁴ Båk–Gaca: op. cit., p. 30.

⁸⁵ Bagge 2019, p. 142.

V. Significance of “Denmark’s Magna Carta”

Erik V’s *håndfæstning* of 29 July 1282 has similar importance in Danish constitutional history as the contemporary documents mentioned several times in this study, the *Magna Carta Libertatum* in England, or the 800 years old Golden Bull in Hungary, and this significance is beyond its own age. As Helle Vogt observes, already the fact that it not only bound Erik V, but his successors as well, gave the charter a “character of providing a constitutional document for the whole of the realm”.⁸⁶ Consequently, the first Danish *håndfæstning* is – in addition to being an important written source for learning about late medieval social and legal circumstances of Denmark – a fundamental document forming the constitutional tradition and way of political and legal thinking of the country. From this point of view, at the end of this study, we would like to highlight three aspects: (1) the concept of limited monarchy; (2) parliamentarianism, and (3) legal (constitutional) literacy.

Limited monarchy

By virtue of § 2 of the current constitution of Denmark adopted in 1953, “the form of government is limited monarchy”. The Danish royal power had always been limited until the introduction of absolute monarchy in 1660, and the concept of limited monarchy has been revived in 1848–49. Between 1282 and 1448 it varied if the kings had or did not have to sign a *håndfæstning*, but between 1448 and 1648 every single king had to sign one, as the precondition of his accession to the throne. By this custom, *håndfæstnings* became fundamental legal documents of Danish constitutional history.⁸⁷

Furthermore, between 1483 and 1648, *ius resistendi* as the guarantee of the obligations assumed by the king appeared in the Danish charters as well. Resistance was not an individual right of all subjects, but a collective right that could be exercised by the Council of the Realm (*Rigsråd*).⁸⁸ It was an emblematic event of the introduction of royal absolutism in 1660, when the Council was forced to solemnly give back to king Frederik III his *håndfæstning*. By this, the centuries-long practice of *håndfæstnings* came to an end and has never been renewed, but the concept of limited royal power lives on to date in the written constitution of Denmark of 1849 and the subsequent constitutions.

Parliamentarianism

Erik V’s *håndfæstning* provided that *parlamenta* should be annually held. The relating provision of the charter had consequently become an important point of reference in the history of Danish parliamentarianism.⁸⁹ The kings actually complied with this commitment, and the meetings of the *Hof* were regularly convened. Compared to the general assemblies of the Estates throughout Europe, these meetings had a much smaller number of attendants. Although “anyone” could be invited by the king, according the documentary sources, the number of attendants of the *Danehofs* varied between 60 and 120 noblemen, and we can just very rarely find any representatives of towns or peasants among them.⁹⁰ Later, the *Danehof* had gradually lost its importance, and in 1377 it decided to hand over its competences to the above mentioned

⁸⁶ Vogt 2023, p. 147.

⁸⁷ Andersen: op. cit., p. 17. (footnote no 9). For a more detailed summary, see Bagge 2019; for the social and political background: Maarbjerg, John P.: Regimen Politicum and Regimen Regale. Political Change and Continuity in Denmark and Sweden (c.1450–c.1550). In *Scandinavian Studies*, no. 2000/2, pp. 141–162.

⁸⁸ Andersen: op. cit., p. 235.

⁸⁹ Bąk-Gaca: op. cit., pp. 17. and 30.

⁹⁰ Górski: op. cit., p. 11.; Møller Jensen–Porsmose: op. cit., p. 34.

Rigsråd.⁹¹ By this resolution, the constitutional function of controlling royal power was taken over by the Council.

The general assembly of the Danish Estates had not developed from the *Danehof* (gathering the last time in 1413),⁹² but from a special event in November 1468 when king Christian I, in order to make decision in a legal dispute between him and some magnates, invited the representatives of the Church, the towns and the peasants to his castle as well as the noblemen, probably following a contemporary Swedish example. This meeting can be considered the first “Assembly of the Realm” (*Rigsdag*).⁹³ According to Herman Schück, *Rigsdag* remained a “sporadic royal assembly” in Denmark, and its role was “to support the royal power in extraordinary situations”.⁹⁴ The king had no obligation to convene its meetings: “rather, they acted as the occasion required”.⁹⁵ However, some of these “extraordinary” occasions had great importance in Danish history, and could serve as a point of reference in the renewal of parliamentary representation in the middle of the 19th century.

Constitutional literacy

Last but not least, we would like to refer to the old tradition of Danish legal history that the most important provisions are to be laid down in writing. This can also be traced back to the *håndfæstning* of 1282, and of course to the great provincial law books, too. A unique feature of Danish constitutional history is that not only the modern constitutional monarchy (1849), but also the absolute monarchy had a written fundamental law, almost a constitutional charter: the famous *Kongeloven* of 1665 called by Ernst Ekman as “the longest-lasting written constitution in modern history”.⁹⁶ Furthermore, as Ditlev Tamm emphasises, even if according to the modern definition the *Grundlov* of 1849 can be considered the first constitution of Denmark, the first written legal document outlining the limits of royal power was Erik V’s *håndfæstning* of 1282, that is traditionally respected as “*Danmarks første grundlov*”.⁹⁷

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⁹¹ Kühle: op. cit., p. 68.; Schück, Herman: *The Political System*. In Helle, Knut (ed.): *The Cambridge History of Scandinavia*. Volume 1: Prehistory to 1520. Cambridge University Press, Cambridge, 2003, 679–709., p. 682.

⁹² Andersen: op. cit., pp. 400–401.; Møller Jensen–Porsmose: op. cit., p. 35.; Sawyer–Sawyer: op. cit., p. 96.; Schück, 1993, p. 544.; Schück, 2003, p. 686.; Tamm–Jørgensen: op. cit., p. 18.; Ylikangas: op. cit., p. 113.

⁹³ Lindal: op. cit., p. 26.; Orfield: op. cit., p. 20.; Schück 1993, p. 544.

⁹⁴ Schück 1993, pp. 544–545.

⁹⁵ Lindal: op. cit., p. 26. For a list of general assemblies of the Danish estates see Képes György: *A Dán Királyság alkotmánytörténete a kezdetektől 1849-ig*. ELTE Eötvös Kiadó, Budapest, 2019, p. 189.

⁹⁶ Ekman, Ernst: *The Danish Royal Law of 1665*. In *The Journal of Modern History*, no. 1957/2., 102–107., p. 102. The Constitution of the United States of America was only 170 years old at the time when this study was published.

⁹⁷ Tamm 2016, p. 98. See also Båk–Gaca: op. cit., p. 17.; Møller Jensen–Porsmose: op. cit., p. 27.

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