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Day, David D., Ph.D.

Rice University, 1992

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"HAFA NŪ OND GEHEALD HŪSA SĒLEST": JURISDICTION AND JUSTICE IN BEOWULF

BY

DAVID D. DAY

A THESIS SUBMITTED
IN PARTIAL FULFILLMENT OF THE
REQUIREMENTS FOR THE
DOCTOR OF PHILOSOPHY DEGREE

APPROVED, THESIS COMMITTEE:

Jane Chance,
Professor of English, Director

William B. Piper,
Professor of English

Katherine Fischer Drew
Professor of History

Houston, Texas

May, 1992

ABSTRACT

"HAFA NŪ OND GEHEALD HŪSᴬ SĒLEST":
JURISDICTION AND JUSTICE IN BEOWULF

BY

DAVID D. DAY

Anglo-Saxon legal concepts, particularly the principles of feud and dispute resolution, have a demonstrable influence on the themes and narrative structure of Beowulf. Bēowulf's three main monster fights, with Grendel, Grendel's mother and the dragon, may be legally analyzed to determine why the hero has greater difficulties in each fight--in each, the hero's antagonist has a progressively stronger legal right to resistance, from the negligible legal position of Grendel up through the very ambiguous legal rights of the dragon in the final fight. An extremely important influence on each fight is the Anglo-Saxon concept of guardianship over place, or mund, which gives a legal dimension to the poem's emphasis on the sacrosanct and inviolable nature of the "close"--the great meadhall Heorot, or the gūðsele ("battle-hall") of the Grendel kin or the eorðsele ("earth-hall") of the dragon--and the relative justice of armed forays into such spaces.

ACKNOWLEDGEMENTS

I would like to acknowledge here the important influence of Dr. William Ian Miller on the genesis and theoretical approach of this dissertation. It was in his class on the Germanic bloodfeud, offered at the University of Houston Law Center in the spring of 1983, that I first became aware of the interpretive possibilities of considering Germanic literature in its legal context. It was also there that he first made me aware that Bēowulf's legal standing in each of his three great fights might be open to question, a notion that I have sought to build and elaborate upon at much greater length in this study.

I would also like to acknowledge the efforts and assistance of my committee members, particularly Dr. Chance for her painstaking proofreading and helpful suggestions at every step of the way.

Finally, I would like to dedicate this study to my wife Jan, without whose unfailing patience, support and understanding, it would never have been written.

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For Understanding Beowulf

After the feast welcoming Bēowulf to Heorot, Hrōðgār rises from his seat and prepares to leave the hall for the night. Before he leaves, however, he speaks to Bēowulf the following words:

> Nǣfre ic ænegum men ǣr ālȳfde,
> siþðan ic hond ond rond hebban mihte,
> ðrȳþærn Dena būton þē nū ða.
> Hafa nū on geheald hūsa sēlest,
> gemyne mærþo, mægenellen cȳð,
> waca wið wrāþum! Ne bið þē wilna gād,
> gif þū þæt ellenweorc aldre gedīgest. (655-61)[1]
>
> (Never before, since I might lift hand and shield, have I to any man entrusted the splendid hall of the Danes, but to you now. Have now and hold the best of houses, think on fame, show mighty valor, watch for the foe! There will be for you no lack of good things, if you survive this valorous undertaking alive.)

The reminder and exhortation are in keeping with the solemn, even grim, note on which the feast closes; Bēowulf is, after all, going to fight a monstrous foeman who has deprived the Danes of their hall for twelve years. But the passage is particularly interesting for several other reasons. With typical economy of statement, the poet introduces a strain of imagery which will continually reoccur in the coming fight with Grendel. Hrōðgār notes that never since he could raise his hand has he entrusted the hall to anyone else; he then

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[1] Unless otherwise noted, all citations to Beowulf are to Klaeber's third edition.

bids Bēowulf hold the hall against Grendel. This focus on having and holding introduces a string of hand references which, as many commentators have noted, continue to resonate throughout the rest of the Grendel section and indeed throughout the rest of the poem.[2] But the solemnity of the passage also arises from its seemingly ceremonial tone; it looks as if some sort of formal, perhaps legal, right of control is being passed from Hrōðgār to Bēowulf which will invest the hero, at least temporarily, with guardianship over the hall. And this conviction is strengthened by the fact that the legal right of guardianship over people and things was usually referred to in Germanic law as the right of mund,

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[2] Both James L. Rosier, in "The Uses of Association: Hands and Feasts in Beowulf," and Marilyn M. Carens, in "Handscóh and Grendel: The Motif of the Hand in Beowulf," trace the hand motif at some length; Rosier notes some 66 separate incidences of the motif in the poem, with the majority occurring in the Grendel section. However, neither critic hazards an overall interpretation of the motif; both limit themselves to occasional attempts to explain the significance of particular occurrences. But Stanley B. Greenfield, in "The Extremities of the Beowulfian Body Politic," argues that the references to hands (and feet) in the poem "resonate with the concept of thaneship" (2); he therefore sees the great concentration of hand references in the Grendel section as evidence supporting his idea that Bēowulf there represents the ideal thane. He sees the second fight dominated by the images of Æschere's and Grendel's heads, in which Bēowulf acts as counsellor to Hrōðgār and avenger, and the third, in which Bēowulf the king fights with the dragon, dominated by references to the heart, a symbol of kingship (11). However, Greenfield's theory, while interesting and provocative, fails to fully account for the multiple significance of the hand motif--it is just as applicable to the king as protector and gold-giver as it is to the thane as warrior.

meaning "protection," but drawn from the word for "hand" in most old Germanic languages (Huebner 585-87).

This coincidence of literary image with legal significance is, as I shall attempt to show in this study, by no means unique in Beowulf; recourse to the Germanic legal context can help explain many puzzling aspects of the poem. The present study will therefore systematically examine the sequential nature of Bēowulf's three main monster fights--with Grendel, Grendel's mother, and the Dragon--from a Germanic legal perspective. I will look at these conflicts not only as physical but as legal disputes, and thereby try to discover the degree to which the parties in each are legally justified. One chapter will be devoted to each of these three fights.

From one angle, such an analysis might seem merely silly. Bēowulf is the hero of the poem, after all, and the monsters are representative only of chaos and disorder--they are "outside the realm of rational, not to mention moral or legal justification" (Scheps 42).[3] But there are two ways to answer such an objection. One is to simply note, as many critics have, that while the poem demonizes the monsters to a

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[3] Ever since Tolkien placed the monsters at the center of critical inquiry into Beowulf, many critics have agreed with his assessment of the monsters as symbolizing simply "the powers of evil" (69). Thus Margaret Goldsmith finds in Bēowulf's fights with the monsters an allegory of man's spiritual "contest with the enemy" (76), while George Clark characterizes the fights collectively as a "clear cut opposition of order and violence" in which the reader feels "an undivided loyalty" (410), although he is willing to admit that other symbols in the poem, such as weapons, may have a more ambiguous meaning.

considerable degree, it seems to also strangely regard them as inhabiting a world reflecting the same values and social norms as the human society they oppose. Edward B. Irving, Jr., was among the first and most influential critics to argue that the monstrous and the human in the poem are rhetorically and thematically opposed to one another in ways which make them seem curiously akin at times; for example, the same heroic terminology used to describe Bēowulf is often appropriated to describe Grendel.[4] Grendel is thus at times characterized as

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[4] Some "heroic" terms used of Grendel include _æring_ or _hilderinc_, "warrior," "battle-warrior," and ambiguous terms such as _wræcca_, "exile" or "adventuring hero," and _wonsæli wer_, "unhappy man" (Dragland 610-13); Raymond Tripp has noted that most of the terms used of Grendel are at worst ambiguous or neutral, although editors usually gloss them with some demonic connotation ("Grendel Polytropos"). One such ambiguous term that is used of all three monsters as well as Bēowulf and Sigemund is _āglæca_, the meaning of which has spawned a small sub-genre of _Beowulf_ criticism all its own. The usual editorial practice has been to gloss it as "monster" when it refers to the monsters and "hero" when it refers to Bēowulf or Sigemund (Klaeber does this), but C.M. Lotspeich long ago took issue with this practice and proposed a meaning of "one who goes in search of his enemy" (1; concurred with by O'Keefe 485). Other meanings proposed have been "formidable one" (Dobbie 160), "troublemaker" (Carlson 359-60), "one who inspires fear by magical powers" (Huffines 74), "warrior," drawn etymologically from Middle Irish _oclach_, "young warrior" (Kuhn 221); and "one who strives against the law" (Olson 67). All of these meanings stress the neutral overtones of the word. For a rare dissenting opinion which defines it "monstrously," see Doreen M.E. Gillam's "The Use of the Term 'Aglæca' in _Beowulf_ at Lines 893 and 2592." Some critics have pointed out a general editorial tendency to demonize the monsters in glossaries by stressing the theological connotations of terms such as _feond_, which in Old English evidently meant little more than "enemy" but is usually glossed as "fiend," or "fifelcyn," usually glossed as "race of monsters," but evidently meaning little more than "race of fools" or "unenlightened." See in this regard Carlson, O'Keefe, and Thalia Phillies Feldman's "Grendel and Cain's Descendants." For other treatments of Grendel as a mock thane

a hall-thane; his final and fatal visit to Heorot is characterized at times as a noisy beer party ("Ealuscerwen" 164; Reading 15-22). The dragon is similarly characterized in terms that compare him as gold-giver to a human ruler:

> Just as Grendel sometimes functions as a mock retainer, the dragon is a little like a mock king. . . . he exists in something like a dynastic line; he sits in a hof, a castle, and devotes himself to guarding his immense treasure. He is of course an extremely stingy king, like the old Danish king Heremod, and therefore the model of a bad king. (Reading 209)[5]

Irving fits Grendel's mother into this framework of mock reference as the embodiment of "the fierce clan loyalty that upholds (and destroys) human societies" (Introduction 48); she

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or hall-guest, see generally Robert Howren's "A Note on Beowulf 168-169," Richard Ringler's "Him sēo wēn gelēah: The Design for Irony in Grendel's last visit to Heorot," and Steven C.B. Atkinson's "Beowulf and the Grendel Kin: Thane, Avenger, King." Much of the discussion centers around the term ealuscerwen which is used to describe Grendel's fight with Bēowulf; it can mean either "ale-dispensing" or "ale-deprivation," depending on whether scerwen is translated as "sharing" or "depriving." For discussions of the term and its ironic implications, see Carleton Brown's "Poculum Mortis in Old English," Rosier's "Uses of Association," Irving's "Ealuscerwen: Wild Party in Heorot," Robert W. Hanning's "Sharing, Dividing, Depriving--the Verbal Ironies of Grendel's Last Visit to Heorot," Martin Stevens' "The Structure of Beowulf From Gold-Hoard to Word-Hoard," Harvey De Roo's "Two Old English Fatal Feast Metaphors"; Joanne De Lavan Foley's "Feasts and Anti-Feasts in Beowulf and The Odyssey"; Frederic J. Heinemann's "Ealuscerwen-Meoduscerwen, The Cup of Death, and Baldrs Draumar," and Stephen O. Glosecki's "Beowulf 769: Grendel's Ale-Share." For remarks on the sacral nature of Germanic drinking customs, see Henry Winfred Splitter's "The Relation of Germanic Folk-Custom and Ritual to Ealuscerwen" and Paul Edwards' "Art and Alchoholism in Beowulf."

[5] For other discussions of the Dragon's character as an anti-gold-giving king, see Stanley Greenfield's "'Gifstol' and Goldhoard in Beowulf" and Steven C.B. Atkinson's "'Oð ðaet an ongan . . . draca ricsian': Beowulf, the Dragon, and Kingship."

is in this sense a sort of "anti-avenger." Jane Chance has further suggested that she inverts "the Germanic roles of the mother and queen" by "arrogating the masculine role of the warrior or lord" ("Structural Unity" 288-89). The inversion is given emphasis by comparing Grendel's mother with the various women of the poem, Wealhþēow, Hygd, and Hildeburh, who act as "peace-weavers" to prevent feud and warfare, rather than prosecuting it on their own behalf as Grendel's mother does (289-96).[6]

Irving suggests that these monstrous inversions of human roles represent "a rather complex objectification of antiheroic and antisocial forces intimately related by opposition to the positive heroic and social values of the poem," and notes further that this opposition "offers the modern reader familiar with Freudian theory the tempting conception of the monsters as embodiments of unconscious

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[6] For other discussions of Grendel's mother as an avenger, see John Leyerle's "The Interlace Structure of Beowulf" 11-12; Jeffrey Helterman's "The Archetype Enters History" 13-15, Elizabeth M. Liggins' "Revenge and Reward as Recurrent Motives in Beowulf," Atkinson's "Beowulf and the Grendel Kin," and James W. Earls' "The Role of the Men's Hall in the Development of the Anglo-Saxon Superego." For more general treatments of the ironic inversion theme as it relates to all the monsters, see John Gardner's "Guilt and the World's Complexity: The Murder of Ongentheow and the Slaying of the Dragon," Greenfield's "Extremities," and Leonard Frey's "Comitatus as a Rhetorical-Structural Norm in Two Germanic Epics." Many critics have also pointed out the way that the descriptions of the monsters' dwelling places--the Haunted Mere and the Dragon's barrow--as niðsele, hrofsele, reced, hus--ironically invert the social symbol of the hall. See in this regard Kathryn Hume's "The Concept of the Hall in Old English Poetry" and S.L. Dragland's "Monster-Man in Beowulf."

drives and the ravening id" (Introduction 48). He has been echoed in this view by Harry Berger Jr. and H. Marshall Leicester, Jr., who note of Hrōðgār's building of Heorot that "to create an inside is to create an outside, but an outside existing within the bonds of hall and family as well as beyond them" (41).[7] One might also add, in an appeal to deconstructive criticism, that this interrelation of human and monstrous societies represents the deconstructive potential of the numerous binary oppositions which the poem so obviously presents--light/dark, inside/outside, social/asocial, good/evil. This very provocative idea suggests that the monsters are the product of tensions inherent in heroic society--Grendel the disloyal thane and descendant of Cain, hence a kinslayer and a particularly abhorrent sort of criminal in the Germanic legal canon,[8] Grendel's mother as the

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[7] For other treatments of this idea, see George Clark's "Beowulf's Armor," 424; Jeffrey Helterman's "The Archetype Enters History" 11; Kathryn Hume's "The Theme and Structure of Beowulf" 6-21; Dragland's "Monster-Man," 606-7; James W. Earl's "Transformation of Chaos: Immanence and Transcendence in Beowulf and Other Old English Poetry," 181-82; and Norma Kroll's "Beowulf: the Hero as Keeper of the Human Polity," 118.

[8] Because the principles of collective security obligated the members of a kin group to seek compensation or vengeance for a slain member, and to support him in cases where he was himself the target of vengeance or lawsuits for compensation, these two obligations came into unresolvable conflict where one group member killed another--the burden of seeking vengeance fell on those who were also obliged to support its target. Thus the eventually lethal frustration of Hrēðel at Hæðcyn's accidentally killing Herebeald at 2435-2471. In connection with this particular episode, Dorothy Whitelock has also suggested that Hrēðel's inability to take vengeance is sharpened by comparing him to the old man of 2444 who cannot

vengeance imperative run amok, and the dragon as the Germanic king who will not give. The evil of the monsters is therefore constituted socially, at least in part,[9] and it is possible that their misdeeds will respond to a legal analysis, law being so firmly imbedded in the context of Germanic social structures and values.

A second reason for taking this legal analysis seriously is because it usefully qualifies earlier critical treatments of the feuds in the poem, treatments which have viewed them only as a species of lawless anarchy. E. Talbot Donaldson, in the introduction to his translation of Beowulf, claims that the feuds between men in the poem contribute strongly to the poem's pervading sense of deterministic gloom:

> "Men [in Beowulf] seem to be caught in a vast web of reprisals and counter reprisals from which there is little hope of escape. This is the aspect of the poem

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avenge his son hanging on the gallows, it being "a principle of Anglo-Saxon law that no vengeance could be taken for an executed criminal" ("Beowulf" 2444-2471; Audience 17-18).

[9] Irving also notes that the monsters are representative of a more primal sort of evil:

> . . . Grendel cannot be entirely understood in these sociological terms. He is also nonhuman and represents the disorder endemic in the non-human world; hence he is the enemy of life itself as well as the enemy of a particular social system. He is the Other, the Darkness; he is Death. This dimension of Grendel is less emphasized than his "social" dimension, but it is there and gives depth and power to the way Grendel is presented. (Reading 111)

Indeed, this ability to give the monsters multiple layers of symbolic significance, making them at once topically social and mythic, is one important facet of the poet's genius.

> which is apt to make the most powerful impression on the reader--its strong sense of doom. (Beowulf x-xi)

Stanley J. Kahrl has expanded this idea of the feud's determinism to the fights with the monsters, and argues that Bēowulf's exemplary nature lies in his termination of two of the greatest feuds, those of the Danes with the Grendel kin and that of his own people with the Dragon. Bēowulf's actions are, however, unable to alter the central reality of the feud, which can only be ultimately terminated by the rule of law:

> . . . the tragedy of the world in which this action lies is that surrounding Beowulf's exploits are the deeds of other men who go on creating, starting feuds by force . . . which neither they nor Beowulf could settle by force. Even with wisdom and fortitude the hero can only do so much. Beyond him must lie the law, the law of wergild, of treaties made and kept. (198)

Anne Leslie Harris has likewise stressed the tragic nature of the feuds, even when they are properly pursued; she sees them as one symptom of the overall weakness of the heroic society in which Bēowulf lives (417-420):

> Heroism in Beowulf is thus restricted by the very social tenets which brought it into being and which it defends. Whatever individual virtues or strengths a hero has--and for Beowulf they are clearly exemplary--they can never guarantee either defense of his society or his own survival. Instead, in adhering to a social code that stresses revenge and feuds as well as alliances and selfless courage, the hero is frequently at the mercy of forces beyond his control. (420)

David Williams, in Cain and Beowulf: A Study in Secular Allegory, has also examined the feuds in the poem, particularly as they involve the crime of kinslaying, invoked by the poet through the symbol of the archetypal kinslayer, Cain. He argues that under the influence of Christianity the

attitude of Anglo-Saxon lawmakers towards the feud shifted over time to one of condemnation, and that Beowulf is at least in part a record of this shift.[10]

All of these critics are correct, I think, that the poet stresses the tragic potential of the feud, but this perception leads them to accept unquestioningly an extra-legal view of the feud which has by no means been conclusively proved. They assume, as have many anthropologists and legal historians, that the bloodfeud was an unmitigated calamity for Germanic society, that it was by no means within the realm of law--it belonged instead to the realm of war and chaos.[11] Their view of the feud is typical of such scholarship, which rests its case on the escalation of violence that is at times a feature of bloodfeuds, and sees in the wergeld system a recognition of the feud's disruptive potential and an attempt to mitigate it.

But there is another way of looking at the feud in Germanic society, one which instead stresses its importance as a stabilizing force. For the Germanic bloodfeud was not merely a species of lawless anarchy. In most early Germanic societies, the power of the state to bring wrongdoers to justice and punish them was relatively weak, and the bloodfeud

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[10] Other treatments of the poem which focus on the feuds and their disruptive potential are J.L.N. O'Loughlin's ""Beowulf--Its Unity and Purpose," and Kathryn Hume's "The Theme and Structure of Beowulf."

[11] Various statements of this view may be found in Paul Bohannon's Social Anthropology 290-91, and A. Radcliffe Brown's Structure and Function in Primitive Society, 208.

or fear of it was the main deterrent to lawless behavior. Dorothy Whitelock notes that in Anglo-Saxon England, "the fear of the action of the kindred was originally the main force for the maintenance of order . . . " (Beginnings 39), and an appeal to either the sagas or Gregory of Tours indicates that among the Icelanders and Franks the feud similarly acted as a restraint on lawless behavior. J.M. Wallace-Hadrill points out that among the Franks the bloodfeud or the threat of it was the ultimate sanction behind the entire Frankish legal system, and argues that the institution of wergeld depended for its effect on the threat of violence: "Without the sanction of blood, composition would have stood a poor chance in a world lacking not simply a police-force but the requisite concept of public order" ("Bloodfeud" 126). The legal historian William Ian Miller makes a similar claim about the nature of the Icelandic bloodfeud as the ultimate sanction behind all arbitrations and settlements: "Ultimately the sanction behind all legal judgments or arbitrated settlements was the bloodfeud or the fear of it" ("Avoiding" 97).[12]

Both Wallace-Hadrill and Miller, one working with Frankish materials and the other with Icelandic, have pointed to the way that the feud usually did not stand outside of more

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[12] This assessment of the Germanic bloodfeud fits in well with similar conclusions of anthropologists working with contemporary "primitive" societies; see for example Jacob Black-Michaud's study of the Middle Eastern bloodfeud, Cohesive Force, 22-32, and also E.L. Peters' "Some Structural Aspects of the Feud Among the Camel-Herding Bedouin of Cyrenaica."

peaceful methods of dispute resolution, such as arbitration, composition, or even formal legal action, but was rather regarded as one possible weapon in an avenger's arsenal, the ultimate choice varying with the circumstances of the case. Of the feud of Sichar and Austregesil, described in the seventh book of Gregory of Tours' Historia, Wallace-Hadrill notes that:

> There is nothing clear cut about it from start to finish; the case drifts from blood to arbitration, and back again, without ever becoming what we would call legally clear. Royal intervention and court procedure are fluid; the transition from one type of procedure to another is bewilderingly easy; and this the Volksrechte and the formularies would hardly suggest. ("Bloodfeud" 142)

Miller likewise comments on the interdependence of law and feud in Iceland:

> A feud runs a varied course. In its various phases the parties involved may be seeking blood, going to law to get outlawry declared, settling differences by paying compensation, adhering to settlements, or breaching them and seeking blood or going to law again. ("Choosing" 172)

Even when the feud was practiced, there were important rules and norms which prescribed how vengeance could be taken and by whom.[13] In Iceland, the Grágás law books purported to regulate the times in which vengeance could be taken: blows which produced no bleeding or bruising were supposed to be avenged at the time and place they occurred, while those with bruises or bleeding could be avenged up to the next Alþing (Konungsbók 147, 149). Vengeance could not be taken in the

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[13] The material for this paragraph is drawn primarily from Miller's Bloodtaking and Peacemaking 192-210.

sanctuary of a church, or at holidays or assemblies. Most importantly, vengeance had to fall on someone who was associated with the wrongdoer, usually the wrongdoer himself or his brothers, although the sagas occasionally show first cousins being chosen as vengeance targets. Within these parameters, the actual target was often chosen as much with an eye to strategic and political advantage as to actual culpability. Thus Hrafnkel avenges himself not on Sámr, whom he regards as contemptible and thus a minor threat, but rather on his brother Eyvindr, who has been out of the country during their dispute but is "the better man" (Hrafnkelssaga 8).[14]

The principle of collective security, by which an individual relied on the support of his kinsmen or the members of other groups of which he was a member, such as the comitatus, to help him in obtaining legal redress, could also act to control the feud.[15] First, an individual would presumably have been hesitant to start a feud with someone who had a very large support network--an extensive kin-group, for example, or a powerful lord who might avenge him. Second, and perhaps more important, was the question of whether his own kinsmen would be willing to support or avenge him if he

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[14] Except where otherwise noted, all citations to the Icelandic family sagas shall be to the chapter numbers in the standard editions of the Íslenzk Fornrit series, which are retained in most modern English translations of the sagas. All citations to Sturlunga saga will be to the individual sagas in Guðni Jónsson's three volume edition.

[15] For a more detailed discussion of collective security, see pages 33-34, infra.

started a feud or were killed in its prosecution; the sagas indicate that people were often hesitant to support their kinsmen in feuds they considered ill-advised or against their interests, and troublesome kinsmen who were at fault in starting or prosecuting a feud often went unavenged.[16] Also, because the kin-group was collectively liable for the delicts of its individual members, it might act to police itself by exiling or expelling an especially troublesome member. This was apparently what happened to Bēowulf's father, Ecgþēow, when he killed Heaþolāf and so provoked a feud with the Wilfings, and was forced to seek the help of Hrōðgār, "ðā hine Wedera cyn / for herebrōgan habban ne mihte" (when the Weder-Geats might not harbor him for fear of war; 461-62).[17]

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[16] For example, Þorþr's failure to enlist his kinsman Ásgrímr to attack Kolbeinn in Þórðar saga kakalla 5; Ásgrímr refuses to help both out of legal obligation and self-interest. As for the kin-group's failure to prosecute the feud for a troublesome member who only got what he deserved, see Gunnarr's refusal to take vengeance for the death of Sigmundr in Njálssaga 117-118, or the similar lack of enthusiasm displayed by the kinsmen of the slain Vigfúss in Eyrbyggja saga 27.

[17] Sally F. Moore considers the sanction of expulsion an important means by which the principle of group liability is limited in primitive cultures, yet another instance of how rationality and equity are incorporated into seemingly unforgiving legal systems (89-90). There are also instances of repudiation in the sagas, for example the public declaration by Hallgerðr's family that her new husband, Glúmr, may kill her trouble-making foster-father, Þjóstólfr, if he stays with them for more than three days (Njálssaga 13); kinsmen might also encourage troublesome relatives to go abroad to avoid the feud, as Óláfr does with Þorleikr in Laxdæla saga 38.

Both Williams and Kahrl also accept unquestioningly the idea that royal and ecclesiastical authority was hostile to the feud. But this notion is very problematical. Numerous scholars have pointed out instances where royal authority continued to coexist with the feud, not only in Germanic cultures but in later medieval societies as well.[18] Where royal authority did limit the feud, the rules seem to have been imposed to remedy certain of its particularly disruptive aspects, leaving its function as ultimate sanction largely intact. For example, the laws of Ælfred forbid vengeance against a man who fights on behalf of his lord (42 §5), and those of Æþelstan forbid vengeance for a thief (II 6 §2), or for one put to death for insubordination to the king (II 20 §7). Implicit in such provisions is the continuing right of feud in cases where they do not apply.[19]

The evidence of ecclesiastic disapproval is more clear-cut but nevertheless somewhat mixed. Wallace-Hadrill points out that Gregory of Tours, himself an ecclesiastic, seems at times to take the prosecution of the bloodfeud for granted as

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[18] For Anglo-Saxon England, see Whitelock, Beginnings 43-45; for the Franks, see generally Wallace-Hadrill, "Bloodfeud." For later medieval and early modern states, see Jenny Wormald's "Bloodfeud, Kindred and Government in Early Modern Scotland," and Stephen D. White's "Feuding and Peacemaking in the Touraine Around the Year 1100."

[19] II Eadmund 1 §1, dating from the second half of the tenth century, is the first Anglo-Saxon attempt to completely curtail the feud; it forbids vengeance against any but the wrongdoer himself, and then only if he cannot pay composition within a year of the offense.

a necessity of enforcing justice, and even tells of other ecclesiastics who felt no need to give up the right to take vengeance for their wrongs ("Bloodfeud" 126-27).[20] He also notes that when Gregory speaks of divine vengeance he usually does so in terms of the feud: "as nothing less than God's own feud in support of his own servants . . . " ("Bloodfeud" 127).

Also somewhat problematic is the characterization by Williams and Kahrl of the wergeld institution as an innovative attempt to control the bloodfeud:

> A common fallacy in the interpretation of barbarian legislation is that the various compensations decreed for killing, wounding, rape, insult or theft represent attempts by the legislator to 'limit the feud' by substituting monetary composition for the shedding of blood. Given the evidence of Tacitus that such compensation were [sic] established among the Germans of the first century A.D.,[21] we should never have needed anthropologists to demonstrate that the principle of compensation is an inherent part of any feuding system, and cannot represent an innovation by christianized authority. (P. Wormald, Lex Scripta 111)

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[20] Bishop Badegysilus of Le Mans, whom Gregory quotes as saying "Non ideo, quia clericus factus sum, et ultur iniuriarum mearum non ero?" (Shall I not, therefore, because I have become a cleric, avenge wrongs done to me? Historia VIII, 39). The sagas likewise show a continuing expression of Christian mores side by side with those of the feud, for example in Njálssaga 106, where the blind Ámundi, refused compensation by his father's killer, Lýtingr, prays to God for his blindness to be lifted. A miracle occurs and his sight is momentarily restored, whereupon he rushes upon Lýtingr and buries his axe in his head. For discussion of this and similar incidents, see Miller, Bloodtaking 190-92.

[21] Tacitus, Germania 12: "equorum pecorumque numero convicti multantur, pars multae regi vel civitati, pars ipsi, qui vindicavit, vel propinquis eius exsolvitur" (those convicted are fined a number of horses and cattle, part of which goes to the king and part to the person who himself brings the charge or to his relatives).

As Wallace-Hadrill and Miller have noted from the Frankish and Icelandic materials, even when compensation was paid, it rarely terminated a feud, but rather formed one phase of its prosecution.[22] And there is even some evidence that the payment of compensation may have been an important part of the economies of Dark Ages societies, the feud thus forming an important ideological framework for the passage of goods and money from one feuding community to another (Grierson 136-37).[23]

There is thus a very great need for a study of the feuds in the poem which treats them not as mindless carnage but as part of a system for resolving disputes, a system which obeyed certain rules. This study will attempt to do this in part by

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[22] Indeed, some anthropologists looking at contemporary feuding societies contend that because compensation is frequently paid out in installments over time, it acts as a mnemonic device for keeping the conflict alive rather than terminating it (Black-Michaud 116-17). It was, of course, possible for a sufficiently strong royal authority to prefer settlement by compensation rather than the feud, as was the case with the Lombards: "De feritas et conpositionis plagarum, quae inter hominis liueros eueniunt, per hoc tinorem, sicut subter adnexum est, conponantur, cessantem faida" (in the matter of composition for blows and injuries which are inflicted by one freeman on another freeman, composition is to be paid according to the procedure provided below and the bloodfeud shall cease; Rothair 45, emphasis added). But this royal appropriation of an ancient remedy need not indicate innovation. Nor did all medieval governments share this Lombard antipathy to the feud; as we have seen, many even of those with a strong central authority continued to tolerate the feud well into the Middle Ages and beyond.

[23] That the feuds in the poem provide a sort of ideological framework for the exchange of property is noted by both Berger and Leicester (43) and, generally, Silber.

paying close attention to the practices and norms of the Germanic bloodfeud in the legal analysis of all three monster fights.

In the fight with Grendel, there can be little real question of justification for the monster; the poet paints him in the most villainous colors and seems to take a certain degree of grim pleasure in his undoing.[24] But this does not mean that Bēowulf's own legal position versus the monster is without interest--it is indeed precisely the strength of his legal "case" against Grendel which arguably makes his victory so easy.

In the chapter on Grendel's mother, the analysis of the feud will be complicated by other considerations, among them the degree to which Grendel's mother is justified in seeking vengeance at all for her evil son, and the whole question of the legal rights of women in the feud. There is a particularly strong need for such an analysis of Grendel's mother's legal position; most critics seem to have assumed that her legal status as a female avenger is rather unproblematical. Liggens notes that the poet treats her as an

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[24] For an interesting legal analysis of Grendel's status as an outlaw, see Joseph L. Baird's "Grendel the Exile." Baird uses the Germanic law of outlawry to shed light on the probable attitude of the poem's audience towards Grendel, arguing that he would have been particularly horrifying not just as a monster but also as an outlaw who refuses to pay compensation for his crime. But Baird also contends that his status as an exile--the type of pathetic figure speaking in elegies such as The Wanderer and The Seafarer--would have mingled the audience's horror with some degree of pity.

avenger but says nothing about the legal status of women in the Germanic bloodfeud (200-2); Chance argues that her status as avenger conflicts with the usual womanly role of peace-weaver portrayed in Old English literature, but gives no legal basis which might sharpen this inversion ("Structural Unity" 292; Woman as Hero 101); while Atkinson argues that her prosecution of the feud is tainted by the generally unjust nature of the Grendel kin's feud with God and man, but says nothing about her legal status as a feminine avenger ("Beowulf and the Grendel Kin" 62). And yet it is clear from the sagas and other legal materials that women were under strong social and often legal restraints to act through men in the feud. They were legally barred from taking part in it by the Lombards (Drew, "Class Distinctions" 72-73), and the sagas give some examples of women who did take vengeance on their own behalf, usually treating them as a joke (Miller, "Choosing" 185, n. 107; "Gift, Sale" 31, n. 35). Closer examination of these materials gives a deeper understanding of Grendel's mother's legal position.[25]

In the chapter on the Dragon, the analysis of the feud will focus on the question of the theft and the excessiveness of the Dragon's retaliation for it. There have been various

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[25] In an interesting, if rather light-weight, piece proposing a delict for Bēowulf which might explain his difficulty in the fight with Grendel's mother, E.G. Stanley has examined the fight to see if Bēowulf might be guilty of feaxfeng, "hair-pulling," a particularly heinous form of personal wrong among some of the Germanic peoples ("'Feaxfeng'").

legal treatments of the theft and of the entire question of title to the treasure. Earl R. Anderson seeks to legitimate Beowulf's claim to the dragon's treasure by the law of treasure trove, which he argues existed in Anglo-Saxon times. Theodore Andersson, in "The Thief in Beowulf," has examined the individual who steals the cup and sets the feud with the dragon in motion, whose precise nature has so long been a subject of dispute because of a lacuna in the manuscript referring to him only as a "þ---." Andersson, arguing cogently on the basis of the Germanic law of theft, contends that the word in question should be þeof. His essay is particularly interesting because it looks primarily to the Scandinavian law of theft, which he derives in part by reference to material in the sagas, and his legal analysis of the Germanic law of theft will be examined in detail in this chapter.

In all three analyses of Bēowulf's conflicts with the monsters, careful attention will be paid to the question of how the legal claims against the monsters come to be vested in Bēowulf in the first place, a question which, so far as I am aware, critics of the poem have largely ignored. Among the early Germans, legal claims were not (as they indeed are not today) rights which anyone could prosecute. They inhered in the injured party and to some degree the collectives of which he was a part, and reference to the legal materials indicates that at least some of the Germanic peoples had fairly

sophisticated ideas of the negotiability and transferability of legal claims.[26] In two of the monster fights, with both Grendel and Grendel's mother, Hrōðgār is the party who has first been injured, not Bēowulf, and the ways in which the poet transfers the claims against the monsters from king to hero are most interesting. Likewise, in the fight with the dragon, Bēowulf is not at first responsible for the theft of the cup, but the Germanic rules of vicarious liability provide some indication of how he eventually becomes responsible.[27]

Another area of law which I will examine in looking at the question of legal justification in all three monster fights is the law of guardianship over place, or mund. Where

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[26] Staðarhólsbók 307 details a procedure by which the principal in a case could handsel, or assign, his right to prosecute an action to another. In Njálssaga 64-65, Njál assigns several of his own actions against Gunnarr's enemies to Gunnarr, and has Gunnarr procure from others several more actions against them. When Gunnarr threatens to prosecute his accusers on these actions they are forced to settle and Gunnarr is able to obtain favorable terms by setting these claims off against those of his enemies.

[27] Critical opinion has varied on whether Bēowulf is responsible for the theft, partly because the hlāford of line 2283 to whom the thief gives the cup is never absolutely identified as Bēowulf himself. William Lawrence noted the ambiguity of the situation but concluded that the lord was probably Bēowulf himself (551-52), and Michael Cherniss agreed (481-82). E. Anderson disagreed, arguing that the passage at 2403-2405, describing how Bēowulf became aware of the feud, indicates he did not receive the cup until after the dragon's attack (154-55). But Pierre Monnin has argued that the hlāford is Bēowulf because this term is habitually used of him in the poem's second half (117). As I shall attempt to show in the chapter on the dragon, this debate is not really important given the Germanic law of vicarious liability for theft, which would implicate Bēowulf regardless of which interpretation one accepts.

the monster fights take place and who has the legal right of control over the place of the fight is an important consideration in judging the legal position of the parties in each conflict. I am not entirely original in this argument; William A. Chaney comes close to the connection between legal guardianship and the Grendel episode when he argues that Grendel cannot approach the gifstōl of line 168 because, as the symbol of Hrōðgār's kingship, it is protected by the sacrosanctity surrounding Germanic kingship in general ("A Legal View"). One piece of evidence which Chaney uses to support the idea that Germanic kings and their artifacts were sacred is the idea of the King's Peace, a concept of Anglo-Saxon law which imposed special penalties for breach of the king's mund, his right of protection over places ("A Legal View" 515-16).

Various critical problems with the poem may be resolved by this sort of legal analysis. Some of these involve local textual cruces and I will address them when I discuss the part of the poem where they occur. But an important critical issue which should be kept in mind throughout is the question of why Bēowulf has progressively greater difficulty in each fight. Tolkien proposed the simple one of age and time: "In its simplest terms it [Beowulf] is a contrasted description of two great moments in a great life, rising and setting; an elaboration of the ancient and intensely moving contrast between youth and old age, first achievement and final death"

(81). Both John A. Nist and Marion Lois Huffines argue that Bēowulf's moral position deteriorates over the course of the three monster fights, but neither make any claim about his legal justification. John Leyerle argues that there is a contradiction between the roles of Germanic hero and Germanic king to which Beowulf falls prey in the last half of the poem ("The Interlace Structure of Beowulf" 8-10; "Beowulf the Hero and King"). Walter Scheps argues that the monsters become less individualized and more symbolic of a formless, cosmic variety of evil as the poem progresses, and Daniel G. Calder echoes this idea when he argues that the places where the hero fights the monsters become more limitless and less confined by space and time as the fights progress. Stanley Kahrl, Kathryn Hume ("Theme and Structure") and Patricia Silber all feel that Beowulf has more difficulty as he becomes progressively more involved in feuds and in his society's plunder and raid economy, although they feel that this ultimately is more of an indictment of heroic society than it is of Bēowulf himself. Robert Finnegan argues that Beowulf has progressively greater difficulties with the monsters because he moves away from his original trust in the armor and weapons of God (bare hands and skin) to a progressively greater involvement with weapons, armor and the feuding imperatives of heroic society. And both Stanley B. Greenfield ("Extremities") and Stephen C.B. Atkinson ("Beowulf and the Grendel Kin") argue that his difficulties increase as the

roles he is required to play in each section of the poem become more politically difficult.

A legal interpretation need not conflict with these other explanations to any great degree--it may, in fact, complement or even reinforce them. For I am not claiming that Bēowulf becomes progressively more at fault as the poem goes on, but that the monsters have a progressively stronger case for resisting him, and the distinction is not merely legalistic. Virtually all legal disputes involve a battle between two parties, both of whom have at least something good in their positions, and it is the job of the judge and jury to sort out who has more good on his side than the other, and so who will prevail. That ultimate decision has already been made by the Beowulf poet when he gives the fights the outcomes they have, but that does not make the uncertainties of these cases, the relative strengths of each side in the controversy, any less fascinating an area of inquiry.

Chapter 1:

Establishing the Legal Context

Of Beowulf

I have said that placing Beowulf within its Germanic legal context helps illuminate the meaning of the poem. But "Germanic legal context" is precisely the sort of conclusionary phrase which beginning law students are often warned against, and before I proceed further with a legal reading of the poem, I should perhaps define my terms.

Defining "Context"

What constitutes the "context" of a literary work and how literary works relate to the context of which they are a part is a question which has been debated in medieval literature for at least a hundred years. For the first four decades of this century, medieval literary scholarship tended to be dominated by "historicist" modes of interpretation which sought to explain the literary artifact in terms of the past era which produced it; the task of the literary critic was the recovery of this past and its use in explicating the text (Patterson, Negotiating 14-16). The problem with this approach was that literary historians all too often came to see the recovery itself as scientifically objective and its results as objectively true:

> Believing that natural science was successful because its methodology partook of the certainty and universality of the natural laws it sought to uncover, historicism in its positivist phase assumed for itself a similar methodological purity. Since the results of its investigations were thus thought to be untouched by human

> hands, historicism ascribed to them an unqualified objectivity and an explanatory power that no merely thematic interpretation could possibly attain. In thus privileging extratextual data, historical criticism came to depend upon an unreflective factualism that foreclosed interpretive possibilities. (Patterson, Negotiating 15)

There have been various attempts in literary criticism to avoid this problem of the relationship of context to text. One was the New Criticism of the 1930's and 1940's, which reached the medieval community in the 1950's. This sought to avoid the problem of context altogether by concentrating on the work's formal aspects in an attempt to discover its transhistorical, human values; to, in E. Talbot Donaldson's famous formulation, allow medieval literature to "say what it means and mean what it says, and not what anyone, before or after its composition, thinks it ought to say or mean" ("Patristic" 2).

In the medieval academy, New Criticism was soon challenged by another variety of contextualist criticism known variously as Exegetics or Patristics, or sometimes Robertsonianism after its founder and most famous practitioner, D.W. Robertson, Jr.[1] Exegetics seeks to explain medieval literature by subjecting it to the same sort of allegorical analysis prescribed by medieval theologians,

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[1] D. Robertson was a most prolific scholar and virtually all of his criticism was dominated by this exegetical approach, but its most famous formulation was in A Preface to Chaucer. His later work argues that Exegetics should be supplemented by a broader contextualist treatment of the literature; see for example "Simple Signs From Everyday Life in Chaucer."

especially Augustine and his followers; the approach sees "the entire exegetical tradition as a sort of massive index to the traditional meanings and associations of most medieval Christian imagery" (Kaske 28).[2] The problem with Exegetics, however, is that it tends to regard its understanding of the medieval context in the same terms that positivist historical criticism regarded its own--as an absolute index to meaning and a control on interpretation: "exegetical interpretations typically display the same reductive geneticism and factualism as dominated this earlier, self-defeating historicism" (Patterson, Negotiating 35). In exegetical criticism, the medieval context is all too often seen as a monolithic whole in which meaning is pre-determined by reference to a consistently accepted system of symbolic value--the possibility that a literary work might run counter to this controlling system of interpretation is often not even

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[2] In Beowulf scholarship, the most famous and in many ways typical exegetical treatments of the poem are Margaret Goldsmith's Mode and Meaning in Beowulf and Bernard Huppé's The Hero in the Earthly City. Neither is the last such treatment, however; this type of approach continues to be applied to the poem even today. For some more recent exegetical treatments of the poem, see Stephen C. Bandy's "Cain, Grendel and the Giants of Beowulf," John Golden's "A Typological Approach to the Gifstol of Beowulf 168," Judson Boyce Allen's "God's Society and Grendel's Shoulder Joint," Robert Emmet Finnegan's "Beowulf at the Mere (and Elsewhere)," Marijane Osborn's "The Great Feud: Scriptural History and Strife in Beowulf," Malcolm Andrew's "Grendel in Hell," Sylvia Hunt Horowitz's "The Ravens in Beowulf," and David Williams' Cain and Beowulf. Such treatments characteristically see the poem championing the newer, Christian values of charity and forgiveness against the older, pagan heroic values of honor and vengeance.

entertained (Patterson, Negotiating 31-33). This totalizing tendency is also displayed in the rather narrow range of materials which Exegetics includes in its definition of context--the almost exclusive focus on religious texts at times leads to an interpretation which is questionable when considered against a wider context of legal, economic or social concerns.[3]

The problem with this unquestioning acceptance of context, displayed by both positivist historicism and Exegetics, is a disregard of the fact that context is itself the product of interpretation, and so subject to all the prejudices and presuppositions of the interpreter. The necessity of developing a critical strategy to deal with this contextual fallacy has become more urgent in recent years with the advent of deconstructive criticism, which preaches the textuality of history itself; following Derrida, critics have come to see the historical context as no less a text, no less a tissue of signs and signifieds, than the text it is used to explicate (Patterson, Negotiating 58-61).

One solution to the problem is simply to admit and

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[3] This problem is clearly displayed in Willem Helder's "Beowulf and the Plundered Hoard," which argues on the basis of biblical analogy that the thief who steals the Dragon's cup "in his exemplary theft . . . opposes the evil forces which ever threaten peace and brotherhood" (321). The fact that Helder can even combine the words "exemplary" and "theft" shows that he has completely ignored the tremendous social and legal stigma attached to the crime of theft in Germanic law--there were few worse offenses of which one could be accused, and in Grágás the very accusation opened one up to a counter-suit for slander (Andersson).

embrace it; such an approach brings with it certain advantages. Collapsing the ontological distinction between history and literary text can have liberating effects for both historians and literary critics, and forms part of the conceptual framework behind the work of New Historicist critics working in both Renaissance and, more recently, medieval literature.[4] One such important liberation is the theoretical legitimation of medieval literary texts as historical sources, a point of which I shall say more shortly. But this liberation brings with it the problem of having to abandon the prospect of achieving certainty in literary interpretation--contextual criticism can no longer treat the literary artifact as a puzzle which may be deciphered by the application of the correct historical key, for the key is itself a puzzle which may be solved by reference to the literary artifact. And a conscientious practitioner of contextual criticism must also pay close attention to the scholarly controversies which surround the sources forming the intertextual matrix of the literary work--in the case of Beowulf's legal context, what historians, legal scholars, anthropologists, have to say about the documents comprising it--for his own work is intertextual and his interpretations

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[4] For a full discussion of New Historical critics working in the Renaissance, see Patterson, Negotiating 57-68. Recent works in medieval literature which might be termed "New Historicist" include Jesse Byock's Feud in the Icelandic Saga and Medieval Iceland: Society, Sagas and Power, and, although with a decidedly less theoretical bent, the works of William Ian Miller on Icelandic society and the Icelandic bloodfeud.

cannot rest on some overgeneralized, homogeneous understanding of the texts making up the context.

The legal "context" of Beowulf is therefore intertextual and derives almost entirely from the various written records from which early Germanic legal practices may be derived, certainly the laws and legal documents of the Anglo-Saxons and their continental and Scandinavian relatives, but also their literatures, of which Beowulf is itself one specimen. At times I will be using this context to illuminate Beowulf and at times Beowulf to shed light on the law. And I will always try to discuss the problematic nature of the documents which surround the literary artifact, which are themselves texts of considerable scholarly controversy.

Many newer practitioners of contextualist criticism in the medieval academy argue that admitting the contingency of context is not enough; any understanding of context is, they believe, ultimately motivated by ideological concerns, and these must be made explicit in any sufficiently self-informed contextualist criticism. Thus, David Aers in a recent paper presented at the 1989 MLA conference in Washington argued that the exegetical understanding of medieval literature is motivated primarily by an ideological agenda of authoritarian anti-modernism, and called for a more diverse, individualistic (and probably Marxist) reading of medieval literary contexts.[5]

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[5] Aers' paper was entitled "Some Reflections on Ideology and Criticism in Reading Late Medieval English Writing," and was presented as part of a session entitled "Politicizing the

If one admits the contingency of context, frankly admitting the ideological motivations behind one's understanding of context is in principle unobjectionable, although it can (and usually seems to) introduce an unseemly level of polemic into the debate over how to characterize the Middle Ages. Because I am a lawyer and trained in the methods of professional skepticism and respect for the contingency of truth which are part of a typical American legal education, my own understanding of the context of Beowulf is of course legalistic.

One might wish to question at this point the wisdom of specifically stressing the legal context of a literary work; how is this any different from stressing its Augustinian context, as Exegetics does? Does a narrow focus on law not run the risk of distorting the poem as much as a narrow focus on Augustine? There are several answers to this question. One is simply to admit that it has a degree of justification--the best contextualist criticism would, after all, be that which examined a literary work in its entire intertextual matrix--legal, religious, economic, social--from all the disciplinary angles from which a work may be viewed. Such a work is unfortunately beyond the scope of both the present

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Middle Ages in Theory and Practice." Papers were also delivered by Sheila Delaney, "Thoughts on Politicizing the Middle Ages," and Lee Patterson, "Further Negotiations of the Past: Some Non-Chaucerian Examples." Similar viewpoints are expressed by Patterson, Negotiating 70-74, and in the collection of essays edited by Aers, Medieval Literature: Criticism, Ideology and History.

study and the limits of my scholarship, and so I will reluctantly look only at the legal issues in the poem because I am best qualified to comment on them and they have been little commented on by others. And yet, given the nature of early Germanic law and the definition of it which follows, a legal examination of Beowulf may look at social issues seemingly far beyond the scope of what we usually consider "law." A study of the legal issues is therefore not that narrow after all.

Defining "Law"

The definition of "law" has itself been the focus of considerable debate among legal historians and anthropologists. The problem is doubtlessly more apparent than real to the nonspecialist in legal history, but it stems from a very understandable desire to categorize the restrictions which human beings place upon themselves as social creatures; the question is whether all such restraints on behavior are specifically legal, or only some of them. For example, the failure to return gifts is not punishable by law in our society, and yet the threat of social ostracism which could result from habitual failure is probably a more serious deterrent to this sort of behavior than some legal sanctions might be. The distinction between legal sanctions and those which are merely "social" or "customary" is in this case relatively clear; in our society, we do not throw people in jail for habitual discourtesy.

After looking into these sorts of distinctions in our own society, legal historians from Roscoe Pound on have used what might be called the "force" definition of law to distinguish the social from the legal: law is "the systematic and formal application of force by the state in support of explicit rules of conduct" (Redfield 4-5).[6] There are several problems with this definition, however, particularly when it is applied to societies with a less formally organized central authority with power to enforce its laws. Most early Germanic societies were of this sort; the police power of the state was relatively undeveloped, and the degree to which an individual could attain redress for his injuries depended on the concept of collective security (Loyn 202-3). His ability to protect himself was a function of (1) the strength in numbers and influence of the corporate bodies which owed him support, and (2) the corresponding strength and influence of the corporate bodies owing support to the man who injured him. A man with no kinsmen to turn to, or with no group to which he was bound by oaths of commendation (such as the comitatus), was in a perilous position indeed, for he could be killed or otherwise wronged without hope of redress (a perhaps more concrete reason for the plight of the exile lamented in The Wanderer and The Seafarer).

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[6] For a fuller discussion of how this definition came about and its origins in the legal positivism of Pound and others, see Simon Roberts, Order and Dispute, 184-206, and Richard Abel, "Dispute Institutions in Society," 221-23.

Societies dependent on collective security typically rely on self-help remedies such as the bloodfeud (or the threat of it) to maintain social order, rather than on the power of the state, and this is where the "force" definition of law begins to break down--anthropologists who sought to apply it to the primitive societies which they studied were frequently forced to conclude that such societies "have no law" (Evans-Pritchard 62). The trend in recent years has therefore been to focus less on a definition of law which is derived from our own social practices and more on one derived from close observation of how disputes are managed and order maintained in so-called "primitive" societies. Such approaches recognize that:

> In such primitive communities . . . law ought to be defined by function and not by form, that is we ought to see what are the arrangements, the sociological realities, the cultural mechanisms which act for the enforcement of law. (Malinowski lxiii)[7]

One important consequence of this broad conception of "law" for understanding the legal customs of the early Germans is that legal function may be found in what appear to be otherwise purely "social" phenomena. William Ian Miller, for example, has argued that the dreams and prophecies which occur in the Icelandic sagas may have served as a sort of pretrial

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[7] Recent treatments of this sort include Max Gluckman's The Ideas in Barotse Jurisprudence, Sally F. Moore's "Legal Liability and Evolutionary Interpretation," and Richard L. Abel's "Dispute Institutions in Society." For a general treatment of the overall controversy, see Simon Roberts' Order and Dispute, 184-206.

discovery device whereby prospective litigants could "float" questionable claims without opening themselves up to retaliation:

> Dreamers could test the waters with their dreams. Accusations of secret wrongdoing were not to be lightly made in early Iceland. Theft accusations or the request to conduct a rannsak [a legally sanctioned search for stolen goods] frequently had dire consequences for the accuser. The laws also recognized that a false accusation of theft could lead to a countersuit for slander. Given the riskiness of any accusation, it is not hard to see the role dreams might play in focusing suspicions without anyone's formally making an accusation. Dreams could thus be made up, or certainly doctored up, in order to elicit responses from the various audiences to which they were presented. ("Dreams" 106)

One example Miller discusses at some length is the secret killing or launvíg of Vésteinn in Gísla saga 13-14, a well-known "murder mystery" from the sagas which has never been altogether solved. Gísli, Vésteinn's brother in law, takes up the case against Vésteinn's killer but his task is complicated by the fact that the killing was conducted secretly and he cannot prove any suspicions he may have concerning the identity of the killer. However, he strongly suspects Þorgrimr, his sister's husband from the neighboring farmstead of Sæbol, who lives with Gísli's brother, Þorkell. Although Þorgrimr and Gísli are on bad terms, Þorgrimr and Þorkell are great friends as well as kinsmen by marriage and Gísli must be concerned about his brother taking up the case against him should he act against Þorgrimr. At Vésteinn's funeral, Gísli tells Þorkell of two dreams he had on the two nights before Vésteinn's murder: in one a wolf and in the other a serpent

came "af einum bœ" (out of a certain farmhouse) and bit Vésteinn to death. Gísli says that he has not told his dreams to anyone because he "vilda at hvárrgi réðisk" (wanted no one to interpret them), and Þorkell is quite concerned that Gísli should not "þetta svá mikils fá, at men renni þar af því grunum" (make so much of this that men become suspicious); i.e., that he should put his dreams up for public interpretation which could lead to open conflict between Gísli and Þorgrimr. Gísli agrees, but only on condition that Þorkell promises to act with the same forbearance should something happen to him in the future that seems as important to Þorkell as this seems to Gísli. Þorkell agrees in relief, little suspecting that he has thereby bound himself not to take legal action against Gísli if he should kill Þorgrimr, which of course he does a short time later (Gísla saga 13-14).

This is a relatively minor but very telling example of the way that social and legal institutions could blend into one another to keep order in Germanic society. We shall throughout this study be examining others at some length, particularly the institution of the bloodfeud which was inextricably linked to the legal process in most Germanic cultures. Legal functions could therefore be deeply buried in seemingly non-legal social practices of the early Germans, so that the "force" definition of law is inadequate for describing their legal practices. I shall therefore be using the terms "law" and "legal" in a relatively broad sense in

this study, to refer to a spectrum of practices by which order was maintained in Germanic societies.

One important consequence of using a broad understanding of law is that the sources for inquiry into legal phenomena are greatly expanded beyond purely normative legal compilations such as the law codes. The literature, as an important repository of the social customs of the early Germans, can itself explain and be explained by Germanic legal practices.

The Sources of Early Germanic Law

1. The Law Codes and Other Legal Documents

By "Germanic" legal practices I mean those which may be derived by referring to the written sources left to us by the various Germanic peoples of Europe, particularly the Anglo-Saxons who produced Beowulf but also, where they have demonstrable relevance, the legal sources of the continental barbarian peoples, the Visigoths, Burgundians, Lombards, Alamannians, Bavarians and Franks, most of which were written down between the late fifth and mid-eighth centuries. Keeping the same standard of demonstrable relevance in mind, I shall also look at legal principles contained in certain medieval Scandinavian sources, which provide invaluable evidence of how Germanic law worked in practice as well as in theory.

In choosing to look at not only Anglo-Saxon legal materials but those of other Germanic cultures, I of course

assume a degree of continuity between these cultures which is, to say the least, problematic.[8] I do not wish to thereby minimize the very considerable material and temporal differences which separate the cultures of, say, the fifth century Visigoths and the twelfth century Icelanders, and I will try to always acknowledge the differences between the legal approaches of the various Germanic cultures I discuss. But I do believe that there are similarities between the legal practices of the various Germanic peoples of northern Europe in the first half of the Middle Ages, similarities which allow us to clarify the lacunae in one legal system by referring to analogous procedures more clearly expressed in another. And as long as this practice is engaged in with some caution and is limited to establishing the "parameters of the possible," as two recent Icelandicists have put it, it presents no danger (Andersson and Miller xii).

The various Germanic peoples of Europe left behind them

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[8] The notion of a single, homogeneous Germanic culture comprising all the different Germanic peoples of northern Europe was popular among German scholars working in the 19th and early 20th centuries, and was bound up with the nationalistic desire to legitimate the unified German state; it has been considerably discredited since the end of the Second World War. In the area of legal history and philosophy, the "Germanistic" scholars of the German historical school of law sought to trace Germanic legal institutions through the barbarian and Scandinavian codes, and in the controversy over which legal system should prevail in the new German state, they championed this reconstituted "Germanic" law against the advocates of Roman legal principles. (Maitland xv-xviii; Vinogradoff xxvi-xli; Stein 51-68). Among the notable Germanists of the historical school were Otto Gierke, Rudolph Heubner, and, in Icelandic studies, Konrad Maurer and the Swiss scholar Andreas Heusler.

a large body of written laws. The earliest of these are usually referred to collectively as the leges barbarorum or barbarian laws, and they come down to us from the peoples who settled and established kingdoms in areas formerly ruled by the Roman Empire: the Visigoths in Spain and southern Gaul, the Burgundians in south eastern Gaul, the Lombards in Italy, the Franks in northern Gaul, and the Anglo-Saxons in Britain.[9]

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[9] The standard editions of the Visigothic, Burgundian, Lombard, Frankish, Alamannic and Bavarian laws are still to be found in the Leges volumes of the Monumenta Germaniae Historica. More up to date and handy editions are available in the Germanenrechte series published in its pre-World War II numbers by the Akademie für Deutches Recht and since the war by the Historiches Institut des Werralandes, most of which have the added advantage of an accompanying German translation. I have used these texts in this study. Useful English translations of the Lex Gundobada of the Burgundians, the various Lombard laws, and the Pactus Legis Salicae and the Lex Salica Karolina have been made by Katherine Fischer Drew. Pactus Legis Salicae, Lex Ribuaria, Pactus Legis Alamannorum, Leges Alamannorum and Lex Baiuvariorum have all been translated into English by Theodore John Rivers, while the Leges Visigothorum have been translated into English by S.P. Scott. Translations of the Leges Alamannorum and Lex Baiuvariorum also exist as an unpublished Rice University master's thesis by Floy King Rogde, and another master's thesis from the same institution contains a translation of the Lex Ribuaria by James P. Barefield. For the Anglo-Saxon and Anglo-Norman laws, the standard edition is still F. Liebermann's Die Gesetze der Angelsachsen, although useful editions of the Anglo-Saxon and Anglo-Norman laws with accompanying modern English translation have been published by F.L. Attenborough, The Laws of the Earliest English Kings, and by A.J. Robertson, The Laws of the Kings of England from Edmund to Henry I, both of whom base their texts on Liebermann. A. Robertson's edition unfortunately does not include the lengthy Anglo-Norman Leges Henrici Primi; for this code one must refer to Liebermann or to the dual Latin-English edition by L.J. Downer. Finally, Dorothy Whitelock's English Historical Documents 500-1042 contains selected translations from the Anglo-Saxon laws. Quotations from the codes will be made in the original language but with accompanying English translation, checked wherever possible against the listed English translations.

Because these peoples settled in areas with a Romanized population, speaking various Latin dialects and using Roman law, all of the barbarian laws display varying degrees of Roman influence, the most obvious aspect of which is that most of them are written in Latin. However, Patrick Wormald has observed that this Roman influence seems to decrease the farther north in the Empire that the Germans settled ("Lex Scripta" 135), and this certainly seems to have been the case with the Anglo-Saxon laws. They display relatively little influence from Roman law and are besides the only barbarian codes to be written largely in the vernacular.

The earliest Anglo-Saxon laws are those of the Kentish king Æðelbirht, which were set down sometime between the kingdom's conversion to Christianity in 597 and Æðelbirht's death in 617; they thus rank as the earliest Old English prose documents we possess (Attenborough 2-3). The second surviving series of Kentish laws are those attributed to the kings Hloþhære and Eadric; Hloþhære ruled from 673 to 686 when he was deposed by his nephew, Eadric, who ruled for a year and half (Attenborough 2). It is not certain whether Eadric worked with his uncle on the laws before they fell out or if Eadric confirmed laws which Hloþhære enacted alone (Attenborough 2). The final set of surviving Kentish laws are those of Wihtræd, Eadric's brother, who came to the throne in 690 following a brief period of unrest after Eadric's death;

his laws were issued in 695 (Attenborough 2-3). Like many of the barbarian codes, the Kentish laws are very selective in their coverage, although they seem to build upon one another in a manner analogous to that of the Lombard laws. Æðelbirht's laws consist almost entirely of a composition schedule listing the amounts due for various delicts, while those of Hloþhære and Eadric were enacted specifically to extend "þa æ, þa ðe heora aldoras ær geworhton" (the laws which their predecessors made; Hloþhære and Eadric, Pr.), covering originally or in greater detail such matters as delicts by servants, theft, and slander, while those of Wihtræd treat extensively of crimes against the church and its decrees.

The other Anglo-Saxon kingdom to leave behind extensive written laws was Wessex. The earliest of these are the laws of Ine, enacted between 688 and 694 (Attenborough 34); they are particularly incomplete and disorganized, although they contain many interesting if somewhat obscure provisions on such matters as the treatment of foreigners and thieves. There were evidently no further laws promulgated in Wessex until the time of Ælfred the Great, who issued what is probably the most famous and certainly most influential of the Anglo-Saxon laws during his reign from 871-899 (Attenborough 34-35). The contents of Ælfred's laws are, again, somewhat disorganized and incomplete, but they pay an unusual amount of attention to "legal pedigree," containing an interesting

prologue with translations of the Ten Commandments, parts of the Book of Exodus, an account of the acts of the Apostles, and passages on the growth of church law, together with acknowledgements of their indebtedness to the laws of Ine, the lost laws of the Mercian king Offa, and the laws of Æðelbirht. The prologue seems intended to confer prestige on Ælfred's laws by portraying them as the logical and legal end result of a long line of both secular and religious legislative enactments. After Ælfred, almost all the rulers in the West Saxon line promulgated laws which were seen as outgrowths of his: Eadward (899-924), Æþelstan (924-940), Eadmund (940-946), Eadgar (959-975), and Æþelred (978-1016), while the Anglo-Danish king Cnut enacted a code which gathered together and recapitulated the laws of his predecessors (Pollock and Maitland 1: 20). Also of some use in illustrating Anglo-Saxon legal practices are the various compilations of Anglo-Saxon law made during the early Anglo-Norman period, most importantly the Latin and Norman French Laws of William I and the Latin Leges Henrici Primi of his son; both like the laws of Cnut attempted to recapitulate Anglo-Saxon law (Holdsworth 2: 151-154).[10]

The Anglo-Saxon laws of course provide the most useful

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[10] There are some doubts concerning the authorship of both these codes; historians generally do not consider the Leges Henrici Primi to have been an "official" enactment but rather the compilation of a private individual, and there are similar concerns about the Laws of William I. It is still generally agreed, however, that both codes are relevant for the study of Anglo-Saxon legal usages.

compilation of legal usages for interpreting Beowulf, but they nevertheless do not answer or answer incompletely many questions about the legal practices of Anglo-Saxon society, particularly those concerning land tenure and the legal competence of women. An invaluable resource for discovering legal usages in these areas are the Anglo-Saxon wills and charters.[11] These documents were originally prepared to record royal grants of land to religious institutions, but as the Anglo-Saxon period progressed they were more generally used to record transfers of land and rights in land by the wealthy and powerful.[12] They usually consisted of six sections: the Invocation, "In nomine Dei"; the Proem, often consisting of various religious commonplaces about the transitory nature of the world and the flesh; the Grant, in which the rights and boundaries of the land transferred are described; the Sanction or Anathema, which condemns to eternal damnation those who presume to interfere with the transfer; the Date; and finally, the Signatures. Some at least of the

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[11] The material for the rest of this paragraph is drawn from Holdsworth 2: 25-31.

[12] The most comprehensive compilations of wills and charters remain John M. Kemble's Codex Diplomaticus Aevi Saxonici and Walter De Gray Birch's Cartularium Saxonicum, although Benjamin Thorpe's Diplomatarium Anglicum Ævi Saxonici contains most of more important charters with accompanying English translations, while A.J. Robertson's Anglo-Saxon Charters and Dorothy Whitelock's Anglo-Saxon Wills contain the bulk of the vernacular charters and wills along with English translations. Whitelock's English Historical Documents 500-1042 also contains translations of some of the more important charters and wills.

charters have proven to be later ecclesiastical forgeries, made by religious institutions to preserve their title to land, but such incidental problems in no way nullify the value of many of the documents. The identity and sex of the grantor and grantee are often the only evidence we have of the rights women had over the disposal of property. Another advantage of the charters is that they occasionally recite the legal history of the property being transferred, giving fairly detailed descriptions of the litigation which arose over title; such "court transcripts" often give us the clearest impression we are ever likely to get of how Anglo-Saxon law functioned in practice.

Another valuable resource for "filling in the gaps" in our knowledge of Anglo-Saxon legal usages are analogous practices in the continental barbarian codes. However, one must be especially careful when consulting the continental codes, for in most cases they were more heavily influenced by Roman legal practices and an apparent answer gleaned by reference to them may have been a Roman legal importation.[13]

In most of the continental barbarian kingdoms, the ruling Germanic elites had imposed themselves on a heavily Romanized

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[13] On the problem of Roman influence on the Visigothic, Burgundian and Lombard codes, see for the Visigoths Ernst Levy, "Reflections on the First 'Reception' of Roman Law," and more generally the same author's West Roman Vulgar Law; see also Katherine Fischer Drew, "The Barbarian Kings as Lawgivers and Judges."

native population with a long legal tradition of its own.[14] The barbarian kings did not in these cases try to impose their own law on their Roman subjects; the laws they wrote down were usually intended for disputes between barbarians of the same people and, in some cases, disputes between barbarians and Romans. Law was therefore a personal matter in these kingdoms and many of the barbarian laws applied only to their Germanic inhabitants.

This personality of law is well illustrated in the earliest surviving compilations of Visigothic law. The first of these are fragmentary laws of king Euric, who ruled from 466 to 485; they were probably issued about 481, and were primarily Germanic customary law intended for use in disputes between Visigoths and Visigoths and between Visigoths and Romans. The Visigoths also attempted to codify the law of their Roman subjects in the Breviary of Alaric or Lex Romana Visigothorum, enacted by Alaric in 506, which was a redaction of Roman law intended for use in disputes between Romans. The Visigothic rulers were unusual among the barbarian kings in attempting to write down not only their own law but also that of their Roman subjects; in most cases the barbarian kings legislated only for their barbarian subjects and it is uncertain what compilation of Roman law, if any, was used by the Romans in their kingdoms. Both the Breviary and Lex

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[14] The material in this and the next three paragraphs was drawn from Drew's "Barbarian Kings" 10-19.

Romana Visigothorum were superseded by the Leges Visigothorum or Forum Judicum in 654, during the reign of Recceswinth, although the Breviary continued to be used in southern Gaul and Burgundy, by now under Frankish rule. The Leges Visigothorum are unusual among the Germanic law codes both in their heavy Roman influence and the fact that they were regarded as territorial and not personal in scope--they applied to all inhabitants of the Visigothic kingdom.

The Burgundian kings Gundobad and Sigismund also issued codes for both their Roman and German subjects. The Lex Burgundionum or Lex Gundobada dealt with the Burgundians and was issued in several sections between 483 and 532, while the Lex Romana Burgundionum covered their Roman subjects and was issued around 500. When the Franks conquered the Burgundians in 534, the Lex Romana Burgundionum was replaced for the Roman population by the Breviary of Alaric, although the Lex Gundobada continued to apply to Burgundians living under Frankish rule. The laws of the Visigoths and Burgundians were fairly heavily influenced by Roman law. Both Euric's laws and Lex Gundobada, for example, reflect considerable Roman influence in their recognition of written wills and expanded provisions for the testamentary disposition of real property.

Perhaps surprisingly, given their authors' similar experience in settling one of the more heavily populated and Romanized areas of Europe, the Lombard laws reflect less of

this Roman influence. The Lombards did not enact a separate compendium of Roman law and recognized only Lombard law in their courts, although they left their Roman subjects free to apply Roman law in disputes among themselves. Nevertheless, the codes they enacted for their own people are among the more imposing pieces of barbarian legislation in their detail and breadth of coverage.

The earliest set of Lombard laws, Rothair's Edict, was enacted by King Rothair in 643, with additions made by his successors, Grimwald (668), Liutprand (713-735), Ratchis (745), and finally Aistulf (750 and 755) (Drew, "Barbarian Kings" 24-25). The Lombard kings were unusual in that their codes built on one another, covering the omissions of previous codes with new legislation; later enactments therefore tend to cover specific problems not addressed in a predecessor's code but which had (presumably) become something of a problem since the earlier code was enacted. One such fascinating provision occurs in the laws of Liutprand:

> 141. III. Relatum est nobis, quod aliqui hominis perfidi et in malitia astuti, dum per se no presumpsessent mano forti aut uiolento ordinem intrare in uicum aut in casam alienam, timentes illam conpositionem, que in antiquo edicto posita est, fecerunt collegere mulieres suas, quascumque habuerunt, liberas et ancillas, et miserunt eas super homines, qui minore habebant uirtute, et adprehendentes homines de ipso loco et plagas fecerunt, et reliqua mala uiolento ordine plus crudeliter quam viri exercuerunt. . . . ita prospeximus in hoc edicto adfigere: Ut si amodo mulieres hoc facere in qualecumque locum presumpserit, primum omnium decernimus, ut si aliqua iniuria aut obprobrium, aut plagas aut feritas, aut mortem ibi acceperint, nihil ad ipsas mulieres aut ad viros aut ad mundoald earum conponant illi, qui se defendendum eis aliqua fecerint lesionem aut

internicionem.

> (141. III. It has been related to us that certain perfidious and evil-minded men, not presuming themselves to enter armed into a village or into a house of another man in violent manner since they fear the composition which has been set up in an earlier law [Rothair 279, 280], gather together as many women as they have both free and bond, and set them upon weaker men. Seizing these men the women rain blows upon them and commit other evil deeds in a violent manner more cruelly than men might do. . . . we add to the edict that if, in the future, women presume to do this, if they receive any injury or dishonor, wounds or injuries, or even death there, those who, in defending themselves, inflicted this injury or caused destruction to them shall pay no composition to the women themselves or to their husbands or to their mundwalds [guardians].)

This provision not only illustrates an interesting tendency to "close gaps" in Lombard legislation, it also says some interesting things about the participation of women in the feud, an area which I shall be explore more fully when discussing Grendel's mother. It also points to the ingenious ability of Germanic lawyers to bend the legal rules to their own benefit, taking a loophole in the earlier law's gender specification and exploiting it to their benefit.

Betraying even less Roman influence than the Lombard laws are the various legal compilations which came out of the empire of the Merovingian Franks. It is usually assumed that the earliest recension of the Frankish laws, the 65 title text of Pactus Legis Salicae, was written down in the very early sixth century, during the reign of Clovis.[15] Various

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[15] The factual material in the remainder of this paragraph is drawn from pages 52-53 of Drew's introduction to her translation of the Salic laws. Drew notes that establishing an authoritative text of the Salic laws is especially

capitularies were added to the original text later in the sixth century by Clovis' sons Childebert I and Chlotar I, and by his grandson Chilperic I, all of which brought the text to over 150 titles. This collection of laws was subsequently revised and reissued under the Carolingian king Pepin I as the 100 title Lex Salica Emendata, and the 65 title text with one or two additions was revised and reissued by Charlemagne as the Lex Salica Karolina. Because these later recensions largely restate what is contained in the original sixth century compilation of Pactus Legis Salicae, I have referred only to the cumulative sixth-century text in this study.

Unlike the Visigothic or Lombard compilations, Pactus Legis Salicae is very spotty in its coverage. For example, ordinary marriages are left largely unaddressed, although considerable attention is paid to rape, adultery and the remarriage of widows (Wormald, "Lex Scripta" 113), giving one the impression that the laws were written down to address exceptions to what were otherwise commonly known legal rules. Even so, Pactus Legis Salicae provides a wealth of detail about some of the otherwise less well-attested facets of Germanic law, for example a fascination with legal ritual, observed in the following ceremony for binding one's kinsmen to assist one in paying a judgment:

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difficult considering the number (over 80) and variety of manuscripts in which they were written.

LVIII. De Chrenecruda.

§1. Si quis hominem occideret et, totam facultatem datam, non habuerit, unde tota lege impleat, XII iuratores donet, quod nec super terram nec super terram nec subtus terram plus de facultatem non habetat, quam iam donavit.

§2. Et postea sic debet in casa sua intrare et de quatuor angulos terrae in pugno colligere, et sic postea in duropello, hoc est in limitare, stare debet, intus in casa respiciens, et sic de sinistra manu de illa terra trans scapulas suas iactare super illum, quem proximiorem parentem habet.

§3. Quod si iam pater aut mater seu frater pro ipso solverunt, tunc super sororem matris aut super eius filios debet illam terram iactare; quod si isti non fuerunt, super tres de generatione patris et matris qui proximiores sunt.

§4. Et sic postea in camisa discinctus <et> discalci<at>us, palo in manu <sua>, sepe sallire debet, ut pro medietatem, quantam de conpositionem diger est aut quantum lex addicat, et illi tres solvant [de materna generatione]; hoc et illi alii, qui de paterna generationed veniunt, similiter facere debent.

(LVIII. Concerning the Chrenecruda [i.e., involving the kin in the payment of composition for homicide]. §1. If anyone has killed a man and does not have in his whole property enough to pay the entire judgment, let him offer twelve oathhelpers who will support his oath that he does not have more property either above the earth or below the earth than that which he has already given. §2. Afterwards he must enter his house and in his fist collect earth from its four corners and stand on the threshold and, seizing [the earth] within, with his left hand he should throw the earth over his shoulder onto him who is his closest relative. §3. If his father or mother or brother has paid [part of the fine], then he should throw the earth onto his mother's sister or over her children, that is, over those three of the father's and the mother's kin who are most closely related. §4. And afterwards, without a shirt and barefoot with a stick in his hand, he should jump his fence so that those three shall pay half of the amount set for the composition or the amount of the judgment [and the other half shall be paid] by those other [three] who come from the father's kin.)

The exact symbolic value of this ritual is probably

impossible to recover; it has often been asserted that the chrenecruda involved some kind of public assignment of the killer's interest in his property to his relatives (Murray, Germanic Kinship 148). But it may have even been intended in part as some sort of public humiliation for the man trying to bind his kinsmen; a public declaration of shameful penury, as it were. It also seems to preserve the vestiges of some sort of "magic gesture" which could legally bind others to one; the binding power of earth drawn from the precincts of the house over the kinsmen who dwell there is suggestive of some perceived magical or sacral power of the "close" over its inhabitants.

Similar in many respects to Pactus Legis Salicae and probably based in part on it are the laws of the Ripuarian Franks, Lex Ribuaria, and also the laws of the Alamans and the Bavarians.[16] Lex Ribuaria was promulgated specifically for the Ripuarian Franks living in northwestern Germany under Merovingian Salic rule, and it is usually attributed to the Merovingian king Dagobert I (629-639), at the time he invested his son Sigibert III as ruler of Austrasia in 633-634. Lex Ribuaria was heavily influenced by Pactus Legis Salicae; fully one third of its ninety or so titles are drawn directly from the earlier code, while many of its other provisions are influenced by Lex Burgundionum, perhaps due to the influence

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[16] The material for the rest of this paragraph is drawn from Rivers, Laws of the Salian and Ripuarian Franks 7-11.

of Burgundians in the Merovingian court.

Leges Alamannorum and Lex Baiuvariorum were enacted by two of the more powerful duchies encompassed by the Frankish kingdom, and like Lex Ribuaria both betray a good deal of Frankish influence, not surprising considering their promulgation at a time when both the Alamans and Bavarians were under Frankish domination.[17] The Alamannic compilation was made in Swabia around 717-719, although an earlier, fragmentary compilation of Alamannic laws known as the Pactus Legis Alamannorum dates from the time of Dagobert I. The Bavarian compilation was made in Bavaria between 744 and 748. The fact that these laws, together with the Salic, Ripuarian, Burgundian and eventually the Lombard laws, not to mention the Breviary of Alaric, were all in force at the same time in different parts of the Frankish empire indicates just how far the Franks carried the concept of personal law.

The law codes of medieval Scandinavia are not often included in the precise parameters of the barbarian laws, but they are nevertheless useful compilations of Germanic legal practices, particularly when considered in conjunction with Scandinavian literary materials. Because of the insight they give into the legal practices described in the Icelandic sagas, of which I shall say more shortly, I will refer at times to two very early Norwegian legal compilations,

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[17] The material in this paragraph is drawn from Rivers, Laws of the Alamans and Bavarians 24-25.

Gulathings-Lov and Frostathings-Lov, and also the Icelandic medieval compilations collectively referred to as Grágás.

On the continent, early Norwegian communities were grouped into "laws" or "jurisdictions" which functioned as judicial fora and law making legislatures much as the later bings of Iceland (Larson 6). Two of these assemblies committed the laws they enacted to writings which survive, Gulathings-Lov and Frostathings-Lov.[18] The best manuscript copy of Gulathings-Lov dates to the 1150's and that of Frostathings-Lov to the 1260's, but the laws they contain appear in many cases to be very archaic and they probably date from a much earlier period (Larson 7-27). The attitude towards the feud expressed in Gulathings-Lov, for example, appears to bear little if any of the negative royal bias sometimes encountered in the barbarian laws, providing that no one may take compensation more than three times without taking vengeance in the meantime (186). This legal enactment is particularly interesting considering the contempt frequently expressed in the sagas for those who "carry their kinsmen in their pockets" (too readily take compensation for slain kinsmen).

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[18] The Old Norse texts of the Gulathings-Lov and the Frostathings-Lov may be found in volume 1 of Norges gamle love indtil 1387, edited by R. Keyser and P.A. Munch. A convenient modern English translation of the texts found in this edition has been made by Laurence M. Larson in The Earliest Norwegian Laws, and because of the extremely difficult language of the legal texts, all English translations will be checked against this edition.

The other great compilations of medieval Scandinavian law which we shall consider are the Icelandic law books referred to collectively as Grágás.[19] According to Ari Þorgilsson, an Icelandic historian writing in Islendingabók in the early 12th century, the first laws of the Icelandic Commonwealth were brought back from Norway by a man named Úlfljótr in the early 10th century and were based on the Gulathings-Lov (Islendingabók 2). But just what this "bringing" consisted of is not said and it is improbable that the laws were written down at this time, since so far as we know the Icelanders did not acquire writing until the conversion in 1000. By the time the laws were finally written in the early 12th century, within Ari's own lifetime, they appear to have diverged considerably from the extant Norwegian Gulathings-Lov. At that time, in the year 1117 according to Ari, it was decided at the Alþing that the laws should be written down in a book at the house of Hafliði Másson, and at this time sections of the law dealing with homicide "and much else" were committed to writing (Islendingabók 10). The remainder of Icelandic law was written down at various times over the next century and a half, and two very large compilations of these laws survive today, the Konungsbók manuscript and the Staðarhólsbók manuscript of Grágás; fragments of a few others also survive.

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[19] The name means "grey goose" or "wild goose," and how it came to be applied to the Icelandic laws is unknown; it is also given to a later medieval Norwegian legal compilation and its use for the Icelandic materials may be a result of scribal confusion (Dennis, Foote and Perkins 9).

Of these two manuscripts, Konungsbók is more comprehensive, although where the two compilations overlap in their coverage, Staðarhólsbók is sometimes fuller in its treatment (Dennis, Foote and Perkins 13-16).[20] Together, Grágás represents one of the more exhaustive records of early Germanic law.

The law codes represent an invaluable resource for determining early Germanic legal practices, but the precise nature of the evidence they give us is a matter of some debate. Early scholars of Germanic law, particularly those associated with the German historical school, tended to regard them simply as authoritative codifications of Germanic law, intended by their compilers for use by judges and lawyers in determining the law much as modern codes are used today (P. Wormald, "Lex Scripta" 105). Some scholars have more recently begun to question this assumption. Patrick Wormald notes that although there are provisions in the Visigothic, Lombard and Burgundian codes exhorting their use by judges,[21] there is

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[20] Both Konungsbók and Staðarhólsbók are available in editions edited by Vilhjálmur Finsen; his third volume, Grágás: Stykker, som findes i det Arnamangnæanske Haandskrift Nr. 351 fol., Skálholtsbók, og en Række andre Haandskrifter, is a collection of legal provisions drawn from numerous fragmentary Icelandic legal manuscripts. A partial English translation of Konungsbók with accompanying material from Staðarhólsbók and other fragmentary sources has been made by Andrew Dennis, Peter Foote and Richard Perkins, and is entitled Laws of Early Iceland: Grágás. Because of the extremely difficult and crabbed nature of the legal prose in which Grágás is written, translations will be checked wherever possible against this edition.

[21] Leges Visigothorum II.I.IX; Rothair 388, Aistulf Pr.; Lex Gundobada Pr. 10-11.

little evidence that the codes were often used in this way among the Franks or Anglo-Saxons; legal custom, presumably preserved in the memories of men knowledgeable of the law, perhaps such as the rachimburgi mentioned in Pactus Legis Salicae LVII 1-3, must therefore have continued to be the main source of law used in day to day legal business ("Lex Scripta" 119-20). Indeed, the very fact that most of the codes were written in Latin, presumably not a language known to the majority of barbarian "lawyers," and the fact that some of the codes, particularly the Frankish and Anglo-Saxon, are so incomplete and disorganized, would seem to militate against their practical use for lawyers (119-25).

Other scholars have focused on the manuscript history of some of the barbarian codes, again showing that they were regarded as something other than authoritative legal works. Mary P. Richards has examined the various manuscripts of the laws of Ine and Ælfred, and discovered that the laws:

> . . . are never arranged chronologically in the manuscripts, nor do they retain a fixed shape through successive additions and recopyings. On the contrary, the legal collections are highly individual with respect to the particular selection of laws, the choice of non-historical accompanying materials, and the purposes for which they were made. (171)

The Parker manuscript of the laws of Ælfred and Ine, for example, contains not only the texts of the laws, interestingly with Ine coming second, but also a genealogy of the West Saxon royal line and a version of the Anglo-Saxon chronicle; the laws therefore appear recorded more as part of

a list of the achievements of the kings of Wessex than as authoritative statutes (Richards 173-4). When the Parker manuscript was recopied as part of Cotton Otho B. xi, the recorder seems to have wished to give the overall collection more of a religious slant, for he added a copy of the Old English Historia Ecclesiastica, papal and episcopal lists, the short poem Seasons for Fasting, and various herbal recipes, while the laws themselves are supplemented with specifically religious provisions taken from other legal collections (Richards 174-6). Rosamond McKitterick has examined Carolingian copies of the Frankish laws and has discovered the same puzzling combination of legal and non-legal materials; copies of Lex Salica, Leges Alamannorum and other legal codes are combined in the manuscripts with genealogies of Frankish rulers, cures for various diseases, and various pietistic texts. Therefore, at least the Frankish and Old English materials do not seem to have been intended as the barbarian equivalents of modern comprehensive law codes; they are more in the nature of private collections of legal memoranda, seemingly at times used for non-legal purposes.

Among the Scandinavian materials here considered, only Grágás makes any mention of how the written law was to be used in court:

> Þat er oc at þat scolo lög vera alanðe her sem áscrám standa. En ef scrár scilr á oc scal ðat hafa er stendr a scröm ðeim er byscopar eigo. Nu scilr en ðeira scrár á. þa scal sv hafa sitt mal er lengra segir þeim orðom er male scipta með monnum. En ef þær segia iafn langt oc þo sitt hvar. þa scal su hafa sit mal er iscalahollti er.

> Þat scal alt hafa er finz a scrö ðeirre er hafliðe let gera nema þocat se siþan. en ðat eitt af anara lög manna fyrir sögn er eigi mæli þvi igegn. oc hafa þat alt er hitzug leifir eða gløgra er. Nu þræta menn vm lögmal. oc má þa ryðia logrétto til. ef eigi scera scrár ór. (Konungsbók 117)
>
> (It is also prescribed that in this country what is found in books is to be law. And if books differ, then what is found in the books which the bishops own is to be accepted. If their books also differ, then that one is to prevail which says it at greater length in words that affect the case at issue. But if they say it at the same length but each in its own version, then the one which is in Skálaholt is to prevail. Everything in the book which Hafliði had made is to be accepted unless it has since been modified, but only those things in the accounts given by other legal experts which do not contradict it, though anything in them which supplies what is left out there or is clearer is to be accepted.)

It is clear from this provision that although, as a general proposition, the written law of Iceland was to be used in Icelandic courts, the wording and content of the lawbooks actually varied greatly and led to problems of authority. Indeed, the wide variation in wording and content between versions of laws in the two complete manuscripts of Grágás and the fragments of other medieval Icelandic lawbooks would seem to indicate that they were compiled not as authoritative statute books, but rather as personal reference works, the content of which varied according to the requirements of those by whom (or for whom) they were made; some, much like the manuscripts of the Anglo-Saxon and Frankish laws, even contain non-legal matter such as travel accounts (Dennis, Foote, Perkins 10-12; Jóhannesson 93).

Why then were the law-codes made? Katherine Fischer Drew has suggested some reasons for the commitment of barbarian law

to writing. The Germanic peoples settling in the more Romanized areas of the empire must have felt some pressure to preserve their legal customs in the face of the more clearly articulated written law of their subjects ("Legal Materials" 33-34). And there were also many new situations which must have arisen in their newly-settled areas which required some degree of legal innovation that was best preserved and popularized by means of writing (34). Patrick Wormald has also suggested various reasons for the codification of Germanic law, most of which complement Drew's; indeed the two taken together give some indication of the complex motivations which must have lain behind the codifications. One might have been the prestigiousness of following the Roman examples of monarchical legal codification; if this motive were present, it might also help explain the choice of Latin, the language of Roman law, for most of the barbarian codes ("Lex Scripta" 125-30). There may also have been the prestige value of Biblical legislative examples; Ælfred goes to some length to associate his code with Mosaic law, perhaps even to the extent of basing its 120 chapter division on Moses' 120 year life, and the code's inclusion with the Anglo-Saxon chronicle in the Parker manuscript may be an attempt to draw a parallel between Ælfred's law book and Exodus ("Lex Scripta" 132). The barbarian kings thus committed laws to writing because it was something that Christianized, Romanized kings did.

Aside from the problem of just how the codes were

regarded, there is also the problem of their nature as normative enactments. That is, even assuming they were intended as authoritative and exclusive statements of Germanic law, there is the problem of just how accurately they reflect Germanic law as it really was, of the degree to which they may describe an ideal legal situation and not a real one. There is always this problem with written law, as anyone who has practiced it knows--the law books alone often describe the desired state of affairs on the part of the lawmakers, not always the way their laws are used in practice.

None of this is to deny that the barbarian codes are an important source for early Germanic law; they <u>are</u> an important source but it is simplistic to regard them as the sole source. Like any written documents, they were made for complex reasons and for a range of purposes, but they do not give us a whole picture of early Germanic legal practices.

2. The Literature

In those cases where it addresses legal issues, the literature of the early Germans is particularly useful for filling this gap between the normative statements of the law codes and actual Germanic legal practice. The problem one faces is that much early Germanic literature is not overly concerned with legal issues. In Anglo-Saxon literature, <u>Beowulf</u> reveals a great deal about the bloodfeud, and Frederic Seebohm used the poem extensively in his <u>Tribal Custom in Anglo-Saxon Law</u> to demonstrate certain aspects of the feud and

its modification by various kin relationships (56-72). Fritz Mezger has also looked at Beowulf and other Old English poetic works for evidence of the practice of self-judgment so frequently seen in the sagas, and Morton Bloomfield has looked to the poem and The Battle of Maldon for evidence of trial by battle among the Anglo-Saxons. Miller has also argued from both Beowulf and the sagas that the ritual presentation of certain items associated with feud victims to their potential but unwilling avengers--the blood stained cloak of Hǫskuldr Hvítanessgoði to Flosi in Njálssaga 116 or the laying of the sword in Hengest's lap at Beowulf 1142-1145--could legally bind the avenger to prosecute the feud ("Choosing").

Besides Beowulf, other Anglo-Saxon literature can tell us a little about Germanic legal practices. Dorothy Whitelock, looking at Juliana, The Gifts of Men, and Genesis, notes that some information may be gleaned from them on such subjects as breaches of the peace and inheritance ("Anglo-Saxon Poetry" 91-93). Some information about the Anglo-Saxon law of covenant can be inferred from The Battle of Maldon and Guthlac (Thundyil), while Juliana can tell us something about legal terminology (Abraham), and the various elegies in the Exeter Book something about the legal status of women (J. Anderson). Considerable attention has also been directed to the legal aspects of Wulfstan's corpus, which one would expect given his

juridical bent.[22]

Old High German and Old Norse literature (other than the family and contemporary sagas) can also shed some light on Germanic legal practices; much work has been done on the Hildebrandslied, the Nibelungenlied and the Eddas.[23] And the Latin chroniclers and historians can give occasional insight into Germanic law; Gregory of Tours' Historia Francorum is especially valuable for studying the feud (Wallace-Hadrill, "Bloodfeud"). But there is one category of Germanic literature which focuses with consistency and regularity on law and legal practices--those subcategories of the Old Icelandic sagas known as Íslendingasögur, sagas of the Icelanders or family sagas, and those "contemporary sagas" (samtíðarsögur) contained in the late thirteenth century collection known as Sturlunga saga (Miller, Bloodtaking 44), and I refer to these sagas with some frequency.

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[22] See Dorothy Bethurum's "Six Anonymous Old English Codes" and "Wulfstan"; Whitelock's "Wulfstan and the So-Called Laws of Edward and Guthrum" and "Archbishop Wulfstan, Homilist and Statesman"; and Michael Joseph Cummings' "Social History in Wulfstan's Authentic Homilies: Based on Terminology."

[23] For the Hildebrandslied, see John G. Kunstmann's discussion of the property rights of the exile in "Hildebrandslied 20-22a," and also Kenneth J. Northcott's examination of the poem's legal terminology in "'Das Hildebrandslied': A Legal Process?" For the Nibelungenlied, see Fritz Mezger's "The Publication of Slaying in the Sagas and in the Nibelungenlied" and Ursula R. Mahlendorf and Frank J. Tobin's "Legality and Formality in the Nibelungenlied." For the Eddas, see Winifred P. Lehmann's "On Reflections of Germanic Legal Terminology and Situations in the Edda," and Aron Ya. Gurevich's "Edda and Law. Commentary upon Hyndlolióð."

The subdivision into family and contemporary sagas is based almost entirely on subject matter and not on stylistic or other distinctions.[24] There are about thirty of the family sagas, of varying lengths, and they all concern events which are set in the Icelandic Age of Settlements from the ninth to the eleventh centuries. Sturlunga saga, on the other hand, concerns events of the twelfth and thirteenth centuries, when the Commonwealth was in the midst of the civil unrest which eventually led to its dissolution. All of the sagas in these two groupings show an intense interest in the drama of legal conflict--in almost all of them, the bloodfeud, brought about by a myriad of different legal delicts, and with all its attendant procedures of court action and arbitration, is the mechanism which propels the plot. Both groups of sagas were written down primarily in the thirteenth century, in the case of all the family sagas and some of Sturlunga saga, long after the events they chronicle. This time gap has led to considerable debate over the sagas' historicity.

The tendency of historians of early Iceland has long been to discount the historical value of the sagas; the considerable time lag between event and account, coupled with occasional discrepancies between legal rules stated or used in

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[24] The material for this and the next paragraph is drawn from Miller's Bloodtaking 44-45. For other illuminating discussions of the classification, dating and provenance of the family and contemporary sagas, see Carol Clover's "Icelandic Family Sagas," and the third chapter of Jesse Byock's Medieval Iceland.

the sagas and their statement in other, more historically "reliable" sources such as Grágás, led many scholars to regard the sagas with suspicion. This was particularly true of Icelandic scholars themselves, typified by Sigurður Nordal, editor of several of the Íslenzk Fornrit volumes:

> A modern historian will for several reasons tend to brush these Sagas aside as historical records. He is generally suspicious of a long oral tradition, and the narrative will rather give him the impression of the art of a novelist than of the scrupulous dullness of a chronicler. Into the bargain, these Sagas deal principally with private lives and affairs which do not belong to history in its proper sense, not even the history of Iceland. The historian cuts the knot, and the last point alone would be sufficient to exempt him from further trouble. It is none of his business to study these sagas as literature, their origin, material and making. (14)

A number of assumptions about the nature and role of history and historical inquiry are expressed in this quote, some of which are accounted for by the fact that native Icelandic historiography "was biographical and political and so the question of the historicity of the family sagas centered solely on the issue of whether they were accurate chronicles of actual events" (Miller, Bloodtaking 318, n. 10). Jesse Byock has also suggested that part of the Icelandic bias against the historicity of the sagas was due to a nationalistic desire to elevate them into the position of world literature (Medieval Iceland 39-48). And finally, Nordal's remark about the "scrupulous dullness" of the chronicler perhaps expresses what Miller believes is a general bias of the historian against literature: that there is "an unspoken sense that the truth value of a source varies

inversely with how much pleasure it gives to the reader: no pain, no gain" (Bloodtaking 45).

This view of the historical untrustworthiness of the sagas continues to exert some influence not only in Iceland but also in English-speaking countries. Alan Berger, for example, has argued quite recently that the entire invocation of law and lawyers in the sagas is nothing more than literary convention, that law for the saga writers was nothing more than "a catalogue of conflicts useful to a conflict-hungry literature," and that "narrative contrivances could be made convincing with the addition of daubs of legal detail" (79). This continuing hesitance to use the sagas as an historical tool has been puzzling to English legal historians such as Patrick Wormald, who characterizes it as a "failure of nerve" on the part of scholars and sees no more intractable problems with using these sources than a historian of the Franks might have with Gregory of Tours or an Anglo-Saxon scholar with Bede ("Viking Studies" 129-31).

The situation has changed somewhat, however, with the recent activities of legal historians who have tended to disregard the self-defeating argument of how accurately the sagas reflect the conditions of the time periods in which they are set, and instead accept them as reasonably accurate portrayals of conditions in the time period in which they were written. Among these historians are William Ian Miller and Jesse Byock, whom I have already cited; Miller's method

differs from that of Byock in his extensive use of ethnological data to verify his conclusions about the sagas. Others include Preben Meulengracht Sørensen, who has examined the sagas for evidence of the Icelandic laws surrounding insult, and the anthropologist Kirsten Hastrup, who like Miller regards the sagas as ethnological documents from which one can make valuable deductions concerning Icelandic culture.

If, like these historians, one is willing to grant some basic reflection of reality to the saga treatment of Icelandic law, they can be very useful as an indication of just how Germanic law in general must have worked in practice, of the way Germanic legal systems could work in their social settings to provide considerable refinement of effect. Consider for a moment an idea long current in legal history that Germanic law took little if any account of the intention of the actor in assessing fault or punishment: "in the case of harm ensuing even by pure accident from a distinct voluntary act, we find that the actor, however innocent his intention, is liable, and that the question of negligence is not considered at all" (Pollock and Maitland 1: 54). This is perhaps true as a strictly normative statement of the law, and in fact there are laws in some of the codes to precisely this effect.[25] But

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[25] Konungsbók 92: "Þat er mælt. at engi scolo verða váða verc" (it is prescribed that there shall be no such thing as accidents). However, the section goes on to describe procedures whereby a person may be cleared if someone is accidentally injured by his weapons and a jury panel finds he did not intend the harm. Similar provisions for clearing oneself of intent to do harm with one's weapons are found in

the procedural chances of a litigant's claim could be considerably weakened if he acted intentionally and were at fault, and it is here that the sagas can give a clue to the way this social recognition of fault must have worked.

Legal proceedings in Icelandic courts were far from quiet and private affairs; at the Quarter Courts of the yearly Alþing, for example, each case was crowded with some thirty-six judges and one or more jury panels, not to mention the supporters of the litigants, who were supposed to be limited at ten each although the sagas indicate that this rule was often ignored (Jóhannesson 66-70).[26] It is these "supporters" who give us a clue of the way that fault could factor into Icelandic justice in particular and Germanic justice in general. They gave "muscle" to the claim of a litigant, preventing the opposition from breaking up the court while he was making his case and perhaps helping him to ruin the case of his opponent, and were evidently indispensable in Icelandic court proceedings, which often in the sagas and sometimes in fact were threatened by the violence of the parties. For example, at the Alþing in 999, when Hjalti

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Ælfred 36 and Lex Gundobada 18, perhaps attesting to the frequency of such accidents in Germanic society.

[26] The Alþing was the main legislative and judicial assembly of medieval Iceland, held annually in the summer at Þingvǫllr in western Iceland. The judicial business was handled by four "Quarter Courts," one convened for each of the four geographical and political divisions of the country, and a "Fifth Court" (fimmtardómr) which acted as a court of appeal from the others (Jóhannesson 35-47; 66-74).

Skeggjason was sentenced to outlawry for blasphemy, court was held on a bridge with armed men at either end to keep his supporters from breaking up the court (Jóhannesson 67).

Litigants in the sagas spend a great deal of time and effort drumming up this requisite support for their claims and defenses, and where their legal positions are publicly regarded as morally repugnant, such as the defense of the Njálssons for the killing of Hǫskuldr Hvítanessgoði (Njálssaga 119-120), or legally ill-advised, such as Sámr's suit against Hrafnkel (Hrafnkels saga freysgoða 3-4), they have considerable difficulty gaining support and, in the latter case, are reduced to near despair before fate steps in and rescues their suit. We do not know what role, if any, this sort of armed support to legal claims might have played in continental or Anglo-Saxon law suits, although it is certainly not impossible that it could have played a very similar part to that outlined here. However, all of the continental Germanic legal systems relied heavily on oath-taking to prove guilt or innocence; both defendants and plaintiffs were frequently required to swear an oath of their innocence or the truth of their claims, and depending on the seriousness of the matter at issue, were required to supply oath-helpers to take the oath with them (Holdsworth 1: 305-8). And it is not very difficult to imagine a prospective Frankish or Anglo-Saxon litigant going through precisely the type of support gathering ritual outlined in the sagas in order to gather his oath

helpers, and experiencing the same sort of difficulties as the Njálssons or Sámr if his case was morally or legally shaky.[27]

This is but one example of how the sagas can give the legal historian an idea of the way Germanic justice must have worked in practice. Others are just as illuminating, such as the way that Ljósvetninga saga illustrates the perils of the legal summons to court mentioned in both Konungsbók 87 and Pactus Legis Salicae I §3, whereby the summoner was required to go with witnesses to the house of his opponent and publicly call him to court. In the first chapter of the saga, Sǫlmundr, an overbearing, lawless man, cheats a Norwegian merchant, who then brings legal proceedings against him and travels to his home to summon him:

> Austmaðrinn fór heim. En bráðliga eptir þat fóru þeir stefnuför til Sǫlmundar, Forni ok Arnórr. Þeir váru fimmtánn saman. Þeir bræðr váru þrír heima ok hlýddu til um hríð. Síðan mælti Sǫlmundr, at einsætt væri at þola slíkt eigi. Ok þá hljóp Sǫxólfr til ok þreif spjót sitt ok skaut til Austmannsins, ok fekk hann þegar bana.[28]

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[27] Rebecca Colman has suggested that this sort of public support or its denial could also explain the apparent failure of much early medieval law to account for evidence. As it did with fault, oath swearing could indirectly account for such evidence since the facts of the case would probably be well known in a small, closely knit community, and oath helpers would presumably be hesitant to give support to one known or strongly suspected of wrongdoing: "denial of support was tantamount to an adverse verdict" (576).

[28] The summons could be just as dangerous for the man summoned, as a reference to Víga-Glúms saga 18 shows: "Bárðr tekr málit ok ferr í stefnuför. Ok er hann finnr Hallvarð, hefir hann skjót málalok, høggr af honum høfuð . . ." (Bárðr took up the suit [against Hallvarð] and went to summon him. And when he found Hallvarð, he had an opportunity to quickly conclude the lawsuit by cutting off his head . . .).

> (The Norwegian went home. But shortly after that he went with Forni and Arnórr to summon Sǫlmundr. They were fifteen together. The three brothers were at home and listened for a while. Then Sǫlumundr said that it was clear they should not put up with this. Then Sǫxólfr leapt up and took his spear and threw it at the Norwegian and killed him immediately.)

Or the way that Guðmundr combines legal action with vengeance in the same saga: he has been insulted by Þorir and Þorkell and decides to first humiliate them by prosecuting several of Þorir's thingmen.[29] From these lawsuits Guðmundr obtains enough money in judicial awards to pay the wergeld for Þorkell, whom he later kills (13). Episodes such as these give us some idea of the way that Germanic law could have worked in practice, beyond the dictates of purely normative statements such as the law codes. And given careful acknowledgement of the very considerable differences between Icelandic society and that of the continental Germans and the

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[29] During the Commonwealth period, all householders were required to attach themselves to a chieftain or goði (literally, "priest") for purposes of bing attendance--they had to accompany him to the district bings and the Alþing and give him legal support there. The bond was not permanent however, and a householder could freely change his allegiance once a year (Jóhannesson 60-61).

Anglo-Saxons, there is no reason why they cannot amply illustrate the way the legal system probably worked in these other societies.

In conclusion, the early Germanic legal context of Beowulf consists of far more than a narrow understanding of law derived from the Anglo-Saxon law codes. It involves a broad reconstruction of the poem's intertextual matrix, drawing on a wide range of literary and legal texts for an understanding of the legal issues raised in the poem.

Chapter 2:

An Iron-Clad Case:

The Fight With Grendel

Even if one agrees with those scholars who find some human aspects in the monsters, there can be no doubt that Grendel's crimes against Hrōðgār and the Danes are by any standard, human or monstrous, extremely grave. First of all, he seems to be involved in an ongoing feud with mankind and God as part of the kindred of Cain:

> . . . wæs se grimna gæst Grendel hāten,
> mære mearcstapa, sē þe mōras hēold,
> fen ond fæsten; fīfelcynnes eard
> wonsæli wer weardode hwīle,
> siþðan him Scyppend forscrifan hæfde
> in Cāines cynne-- þone cwealm gewræc
> ēce Drihten, þæs þe hē Ābel slōg;
> ne gefeah hē þære fæhðe, ac hē hine feor forwræc,
> Metod for þy mane mancynne fram.
> Þanon untȳdras eale onwōcon,
> eotenas ond ylfe ond orcnēas,
> swylce gīgantas, þā wið Gode wunnon
> lange þrāge; hē him ðæs lēan forgeald. (102-114)

> (. . . the grim spirit was called Grendel, the notorious march-stepper, who held the moors, fens and fastnesses; that unhappy creature held for a time the home of the unenlightened, after God had banished him among Cain's kin--the eternal Lord avenged that crime, when he [Cain] slew Abel; he found no happiness in that feud, when God banished him far away from mankind. Thence sprang an ignorant brood, corpse-eaters and elves and underworld demons, and also giants, who fought against God for a long time; He gave them requital.)[1]

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[1] For this and the following translations, I have adopted the meanings for fifelcyn, untydras, eotenas, ylfe, orcnēas, gigantas and the other epithets for the monsters suggested by Feldman, 74-78. They give a decidedly less "demonic" impression of the monsters than the values given in most glossaries of the poem.

As we have already seen, feuds were not carried on in Germanic cultures as disputes between individuals, but as conflicts between groups, and unless settled they could go on from generation to generation. Grendel's status as monstrous exile therefore seems to come as part of an ongoing fæhð or feud between the kindred of Cain and God, together with those on God's "side"--the Danes, representing mankind, therefore conceptually part of God's "kin-group" as His children, and also involved in the feud as the descendants of the slain man, Abel. Naturally, Grendel and his kin are on the "wrong side" in this feud, not simply from a theological standpoint as the enemies of God and his children, but because of the feud's origin in an unjustifiable act of kinslaying on the part of their ancestor.[2]

Interestingly, the poet throughout the Grendel section refers to the monster's conflict with the Danes as a fæhð, a feud. After his first visit, Grendel returns to the hall the next night and "gefremede/ morð-beala māre, ond nō mearn fore,/ fæhðe ond fyrene . . ." (did more murder, and felt no remorse for that feud and his wicked deeds; 135-137), and eventually the story of Grendel's "fyrene ond fæhðe" (153) spreads to Geatland and the ears of Bēowulf. Later, in commenting on the prowess of the Danes, the hero remarks that Grendel had "onfunden, þæt hē þā fæhðe ne þearf,/ atole

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[2] For a discussion of the peculiar abhorrence of kinslaying among the early Germans, see page 7, note 7, supra.

ecgþræce ēower lēode/ swīðe onsittan . . ." (discovered that he need not fear the feud, the terrible sword-storm of your people; 595-597). The poet further notes that the Danes could look for no compensation from Grendel: "sibbe ne wolde/ wið manna hwone mægenes Deniga,/ feorhbealo feorran, fēa þingian,/ nē ðær nænig witena wēnan þorfte/ beorhtre bōte tō banan folmum . . ." (he would have no peace with any man of the Danish people, buy off his killings, settle with money, nor did any counselor have reason to expect some bright compensation from the killer's hands . . .; 154-158). This statement is interesting not only for the way it fits the conflict of Grendel and the Danes into a familiar Germanic mode of dispute resolution, but also for the way it echoes attitudes frequently ascribed to anti-social and high-handed killers in the sagas; of Hrafnkell, the saga writer notes that he "stóð mjǫk í einvígjum ok bœtti engan mann fé, því at engi fekk af honum neinar bœtr, hvat sem hann gerði" (fought many duels and made no amends for the men he killed, and no one ever got any compensation from him for anything he did; 2); and of Hárekr in Ljósvetninga saga 8, it is noted that he "var inn mesti víga-maðr ok bœtti engan man fé" (was a great dueler and made no amends for the men he killed). Part of what makes the attacks of Grendel so grievous is what is seen as his conscious rejection of the legal norms of compensation, his refusal, like Hrafnkell or Hárekr, to "play by the rules";

people who kill without even paying their way, and monsters like Grendel who do so, are truly evil to deal with.

But even without this underlying basis for enmity between Grendel and the Danes, the particulars of his offenses against Hrōðgār and his people are very serious. He has, of course, killed Hrōðgār's retainers, thirty of them in the first attack, and this offense alone would give Hrōðgār a basis for carrying the feud back to Grendel if only he were able. It seems clear that among the Anglo-Saxons, at any rate, the lord/retainer relationship brought with it a duty for each party to avenge the other; it therefore formed something of an adjunct to the normal kindred-based duty of vengeance (Whitelock, Beginnings 31).[3] Aside from their unprovoked brutality, the attacks have other characteristics which make them particularly offensive in light of Germanic law:

> Gewāt þā nēosian, syþðan niht becōm,
> hēan hūses, hū hit Hring-Dene
> æfter bēorþege gebūn hæfdon.

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[3] The interrelationship of kinship and lordship among the early Germans in general and the Anglo-Saxons in particular has long been the subject of scholarly debate. The usual assumption has been that kinship and lordship were at odds, and that the bonds of commendation grew in strength as the Anglo-Saxon period progressed while the kinship bond weakened (Loyn 199-201; Phillpotts 237; for critical treatments of the poem which rely in part on this assumption, see Berger and Leicester 43-44, and Earl, "The Role of the Men's Hall"). Such views often point to the preference for lord over kinsmen expressed by the retainers in the "Cynewulf and Cyneheard" episode from the 755 entry for The Anglo-Saxon Chronicle. Alexander C. Murray has recently pointed out, however, that the bonds of kinship and lordship seem to have reinforced one another at least as often as they came into conflict; Bēowulf is, after all, not only Hygelāc's retainer but his kinsman as well (Germanic Kinship 61-63).

Fand þā ðær inne, æþelinga gedriht
swefan æfter symble; sorge ne cūðon,
wonsceaft wera. Wiht unhælo,
grim ond grædig, gearo sōna wæs,
rēoc on rēþe, ond on ræste genam
þrītig þegna; þanon eft gewāt
hūðe hrēmig tō hām faran,
mid þǣre wælfylle wīca nēosan.
Þa wæs on ūhtan mid ærdæge
Grendles gūðcræft gumum undyrne;
þā wæs æfter wiste wōp up āhafen,
micel morgenswēg. (115-29)

(Grendel then left to spy out, after night came, the high hall, how the Ring-Danes after their beer-feast had settled into it. He found then therein a company of noble ones, sleeping after feasting--they knew then no sorrow, the sad plight of men. The unholy man, grim and greedy, was at once alert, fierce and cruel, and in sleep he seized thirty thanes; then after he left exulting with his booty to travel home, to return to his dwelling with that slaughter. Then in the time before the dawn was Grendel's battle-craft made clear; then after feasting a terrible cry went up, great morning sorrow.)

The poet seems at some pains in this passage to convey the fact that Grendel acts furtively in his initial attack on Heorot; he does not go with the immediate intention of attacking the Danes, but rather to see how they have disposed themselves after the feast. He also does so after dark, and the courage to strike evidently arises in him only after he sees that the Danes are asleep.[4] It is also possible that he

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[4] In some of the law codes, acts committed after dark created an automatic presumption of wrongdoing; Rothair 32 provides that anyone who is found in a courtyard after dark and does not willingly give his hands to be bound may be killed without compensation, "quia non conuenit rationi, ut homo noctis tempore in curtem alienam silentium aut absconse ingrediatur; sed si qualecumque utilitatem habet, antequam ingrediatur, clamit" (because it is not consistent with reason that a man should silently or secretly enter someone else's courtyard by night; if he has some useful purpose, he should call out before he enters). For similar provisions, see Leges Visigothorum VII.II.XVI and VII.II.XXIII, Lex Gundobada

strikes in stealth, since it is not altogether clear from the passage that the Danes are immediately aware of him; they evidently do not notice that their comrades are missing until just before sunrise. This stealthiness of Grendel's fighting seems to be stressed at other points in the text. The poet at 159-161 notes that the "ǣglǣca ēhtende was,/ deorc dēaþscua, duguþe ond geogoþe,/ seomade ond syrede . . ." (the formidable one was lying in wait, the dark death-shadow hung over and devoured both veterans and youths. . .) And he also refers to the monster's killings as morð-beala, "murder-bale" (136), and to the monster himself as morðres scyldig, "guilty of murder" (3). His killings therefore seem to be something more than mere homicide--they may be murder within the narrow Germanic legal sense of the term.

In Germanic law, the distinction between homicide and murder was not, as it is now, based on the degree to which the killer acted deliberately or with evil intent; intentional killings were frowned on but allowed so long as the proper remedy--the blood of an appropriate expiator or wergeld for the victim--was available to the victim's kinsmen; such killings were classified as simple homicide. Murder or morð, however, was a concealed killing, and was analogous in its treatment to theft, a concealed taking of property.[5] Murder

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XXVII.8, and Lex Baiuvariorum IX.6.

[5] For the Germanic treatment of theft, see Andersson's "The Thief in Beowulf" and Chapter 4, infra.

was considered one of the very worst offenses a person could commit in the Germanic legal canon. The so-called treaty of Eadward and Guðrum the Dane associates morðwyrhtan with wiccan (witches), wigleras (sorcerers), mansworan (perjurors) and horcwenan (prostitutes), perhaps indicating the degree of moral outrage which was felt for such malefactors, and prescribes that they are to be driven from the land or else destroyed utterly,[6] while I Eadmund 3, II Eadmund 4, and VI Æþelred 36 all require that murderers make full amends to both church and state before coming near the person of the king. Such "amends" could be draconian indeed. II Cnut 56 requires that the person of the murderer be delivered up to the kinsmen of the slain man, while II Cnut 64 specifies that the murderer could not buy peace with wergeld. A. Robertson notes that such provisions were probably due to Scandinavian influence on Cnut's code, and the exact penalty for concealed killing is nowhere else prescribed in the Anglo-Saxon laws,[7] but the

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[6] Similar language is found in VI Æþelred 7 and II Cnut 4a, perhaps because of Wulfstan's influence on the composition of all three documents (Whitelock, "Wulfstan and the So-Called Laws"; Bethurum, "Wulfstan" 223-26). A strikingly similar provision occurs in Frostathings-Lov V.45.

[7] Interestingly, a privately composed document entitled Be Blaserum and Be Morð-Slihtum (Concerning Incendiaries and Murderers), dated by Liebermann to the late tenth century but not attributed to any particular king, prescribes that in cases of murder the iron weight for the ordeal is to be increased to three pounds, three times the usual weight (Liebermann 1: 388). This threefold increase corresponds to the increased wergeld charged in most continental legislation.

continental codes commonly prescribed a threefold wergeld for secret killings.[8]

The various Frankish and Bavarian laws are the only codes which attempt to define a "concealed" killing, usually covering the corpse with sticks or bark or hiding it by throwing it down a well or into a river or burning it.[9] The Scandinavian codes regarded any killing which was not properly "published" as a murder; the killer had to publish it by announcing his deed at a farmstead near the place of the killing, one where his life was not in danger.[10] The thread linking these two sets of provisions seems to be a peculiar sense of moral outrage at a killer's unwillingness to take responsibility for his deed, and why this should have been the case in early Germanic law is not particularly difficult to guess. If, as has been suggested, the procedural workings of

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[8] Rothair 14; Pactus Legis Salicae XLI.2,4, LXX.1; Lex Ribuaria XVI; Seven Types of Cases VIII.2,3,4. The Alamans and the Bavarians took an even dimmer view of murder, prescribing a ninefold wergeld; Pactus Legis Alamannorum XV, Leges Alamannorum XLVIII, LXIX, ; Lex Baiuvariorum XIX.3.

[9] Pactus Legis Salicae XLI.2,4, LXX.1; Lex Ribuaria XVI; Lex Baiuvariorum XIX.2,3.

[10] Gulathings-Lov 156; Frostathings-Lov IV.7; Konungsbók 87, 88; Staðarhólsbók 315. Interestingly, the Icelandic codes also required the killer to cover the body to keep it from being molested by animals, although he had to tell where it was as part of the publication. Pactus Legis Salicae XLI.11b, prescribing a fine to be paid by one taking down the head of someone killed by his enemies which was left on a pole at a crossroads, may also reflect some sort of publication requirement among the Franks. For a discussion of evidence for Germanic publication requirements in the sagas and the Nibelungenlied, see Fritz Mezger's "Publication," 220-29.

Germanic legal systems relied on the "common knowledge" of their social matrix to function properly--through the denial or extension of support for a claimant in the willingness of oathhelpers to assist him in court, or supporters to back him up in taking vengeance--then a killing where such knowledge was missing presented the system with a frequently insoluble procedural dilemma. How could one build a case unless one's potential supporters had some idea of its strengths and weaknesses?[11] And there is, in addition, the purely dishonorable aspect of the crime in societies where plain dealing and openness were highly prized.

The high punishments extended to murderers in the codes therefore probably reflect one attempt to deter killers from concealing their offenses; certain procedural attempts were also made to assign blame in cases of concealed killings. Gulathings-Lov 161 requires that someone finding a body must report it to the first person he meets and either find the heir or report the finding at the next thing, or else be presumed the killer, while Pactus Legis Salicae CII.1,2, requires that when a corpse is discovered between two villages and no one comes to identify it, the nearest neighbors must offer an oath at the next court meeting that they neither killed the dead man nor know who did, a failed oath indicating

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[11] Miller, of course, suggests that dreams and prophecy may have played a part in solving this problem ("Dreams").

guilt.[12] Interestingly, given the circumstances of Grendel's attack on a meadhall, presumptions of blame were also prescribed in cases where men were killed in ale-houses or at banquets; Frostathings-Lov IV.14 prescribes that if someone is killed at night in an ale-house and it is not reported, the revelers should make a light and take their seats, and whoever is then found missing is presumed to be the killer.[13] These presumptions of guilt seem to have been designed to obviate the problem of concealed killings altogether by legally recognizing the highest probability of guilt.

The secretive nature of Grendel's attacks therefore renders them particularly blameworthy. But his attacks on Heorot are also legally wrong for another reason: they violate Hrōðgār's right of protection over the hall, a right variously referred to in the Anglo-Saxon laws as mund (protection, guardianship), or grið or frið (peace).[14]

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[12] Similar presumptions of the land-owner's or community's guilt are found in the Anglo-Norman legislation of William I and Henry I; a "murder-fine" could be imposed on the land-owner on whose property a slain Norman was discovered, with a default in payment being charged to the community at large. The device was probably intended as a protection for the conquerors against the native population. See The Laws of William I 3, Leges Henrici Primi 91.

[13] A very similar provision occurs in Gulathings-Lov 157, while Pactus Legis Salicae XLIII.1 requires the revelers at any banquet where a man is killed to yield up the killer or be held collectively responsible for his death.

[14] Mund is the older, native Anglo-Saxon term for the concept; grið and frið are Scandinavian loan-words and occur in later legal sources promulgated after the Viking invasions.

Mund was an extremely ancient concept in Germanic law and referred essentially to a house-holder's power of possession and protection over both the persons of his household members and the physical space of the household, a right expressed metaphorically in the meaning of the word itself--"hand." As Rudolph Huebner explains it:

> During the dominance of the patriarchal system the family constituted a circle of persons all of whom were absolutely subjected to the power of the house-lord, the patriarch, and were united by this common bond of subjection into a social group. They participated in legal life solely through the mediacy of the "house-father"; he was their representative outside the group. The Germanic languages and the Latin both took the name for this power of the house-lord from the most striking symbol of power, the hand, and named it therefore "Munt" (Old High G. "munt"; North Germanic and Old Norse "mund", Latinized "mundium"). (585-86)

Huebner makes a verbal distinction between mund, which he uses solely to refer to guardianship over persons, and gewere or seisin, the rights of possession and control over things, particularly land.[15] But he notes that the two concepts are analogous (13), and his usage seems to be derived mostly from continental law-codes where mund is used solely of rights over persons.[16] Yet mund is used most frequently in the Anglo-Saxon laws to refer to a right of undisturbed peace and

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[15] Gewere is in fact the term that Huebner uses, but his translator, Philbrick, substitutes the English equivalent seisin throughout, and as I have worked for the most part from Philbrick's translation, I have followed suit.

[16] It is most clearly used of persons, particularly women, in the Lombard codes, for example Rothair 204, requiring all women to be permanently under the legal protection and representation of a male.

enjoyment over the premises of the household and its environs.[17] Thus, disturbances within the precinct of the house required compensation not only to the party directly injured but to the house-holder as well; Ælfred 39 provides that "gif hwa on cierlisces monnes flette gefeohte, mid syx scill. gebete ðam ceorle" (if anyone fights in the house of a commoner, he shall pay the commoner six shillings compensation).[18]

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[17] Its only occurrence in the Anglo-Saxon laws as a reference to guardianship over people is in Æðelbirht 75: "Mund þare betstan widuwan eorlcundre L scillinga gebete, §1. Ðare oþre XX scll'. ðare þriddan XII scll', þare feorðan VI scll'" (the mund of a widow of the best class shall be compensated with 50 shillings, for the next class 20 shillings, for the third class 12 shillings, and for the fourth class 6 shillings); and in Æðelbirht 76: "Gif man widuwan unagne genimeþ, II gelde seo mund sy" (if a man takes a widow who does not belong to him, let him give double the value of her mund). Charter evidence makes it clear, however, that widows and minor children were at times at least technically under the mund of male religious figures or of religious institutions; see A. Robertson, Anglo-Saxon Charters no. 44, where the grantor Ecgferð conveys his property to Archbishop Dunstan "tó mundgenne his lafe · his bearne" (to act as guardian of his wife and child); see also no. 4.

[18] Similar provisions are found in Hloþhære and Eadric 13: "gif man wæpn abregde þær mæn drincen 7 ðær man nan yfel ne deþ, scilling þan þe þæt flet age, 7 cyninge XII scll"; and 14: "gif þæt flet geblodgad wyrþe, forgylde þem mæn his mundbyrd 7 cyninge L scill" (13. If a man draws his weapon where men are drinking but does no harm there, he shall give a shilling to the man who owns the house and 12 shillings to the king. 14. But if the house is stained with blood, he shall give the householder his mundbyrd and fifty shillings to the king). The emphasis on protection of places where men gather to drink is interesting considering that Heorot is a mead-hall; similar provisions concerned with the protection of peace in drinking places are found in some of the continental codes; Gulathings-Lov 187 prescribes a double wergeld for men killed in ale-houses. The easier standards of proof for murder in ale-houses, mentioned above, are probably also due to this increased protection. Such provisions recognize not

Breaking into the precinct of the mund holder also required compensation; Æðelbirht 27 imposes a six-shilling fine for breaking the fences of another and chapter 32 also requires payment of compensation for the actual value of damage to the enclosure; ordinary trespass without breaking enclosures brought a charge of only four shillings (29), indicating the conceptual importance to mundbryce ("protection breaking") of an actual breach of a physical barrier. The importance of such a physical breach is further underscored by Æðelbirht 17, which indicates that where more than one person breaks into the house of another, only the first--presumably the one who actually made the breach--pays the full six shilling fine; the second intruder pays only three and the third and subsequent intruders one. Offenses committed within the close were also more heavily compensated--Æðelbirht 27-28 requires that property seized within a broken enclosure be compensated threefold, while later enactments allowed the intruder to be killed with impunity and specified that he would lie in an unhonored grave.[19]

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only the social importance of drinking in Germanic culture but also its tendency to lead to violence; as Hávamál 32 notes, "gumnar margir/ erusk gagnhollir,/ en at virði vrekask;/ aldar róg/ þat mun æ vesa;/ órir gestr við gest" (Even friends fond of each other/ will fight at table;/ nothing will ever bring to an end/ the strife of men at meals).

[19] IV Æþelred 4; II Cnut 62, 64. A provision similar to Æðelbirht's threefold restoration for property stolen from an enclosure in found in Lex Baiuvariorum IX.2.

House-breaking was not referred to in continental legislation as mundbryce, but fines were imposed for breaching enclosures similar to those in the Anglo-Saxon laws, and offenses committed within the close were likewise more heavily punished; the same principle of the sacrosanctity of the close seems to therefore have been recognized. Thus Rothair 285 and Liutprand 45.XVI both impose six solidi compositions for fence breaking; Lex Ribuaria XLVII.1 and Pactus Legis Salicae IX.6,7, XXXIV.1,2 impose compositions of 15 solidi for such offenses; while Pactus Legis Alamannorum XXX.2 and Leges Alamannorum XCVI.7 impose compositions of three solidi. Sometimes a distinction is made between fence-breaking and breaking into a courtyard; Lex Baiuvariorum X.15 requires a composition of three solidi for breaking into a courtyard but X.16 only one solidus for fence breaking. Interestingly, Pactus Legis Salicae II.3, VII.3, XI.1, XXI.3,4, and XXVII.29 raise the amount of the composition according to how deeply into the homestead the offender penetrates; thus II.1 charges three solidi for stealing a pig from a middle enclosure, 15 solidi from a third enclosure, and 45 solidi from a locked sty; taking anything kept under lock and key is usually most heavily punished. Sometimes a distinction is also made when the offense was committed in anger or with evil intent; Lex Gudobada XXV imposes a composition of three solidi for breaking into a garden in anger, together with a six solidi fine to the king, while Rothair 34 and 277 raise the

composition amount to 20 solidi for entering another's courtyard in anger or for firing an arrow into it, and Pactus Legis Alamannorum XXI.1-3 imposes a six solidi fine for entering a courtyard with intent to harm.

But most interesting for a legal analysis of Grendel's attack are those sections which more heavily punish armed forays into enclosures with intent to kill. For entering into a courtyard with intent to kill, the usually more sophisticated Leges Visigothorum specifies at VI.IV.II that the intruder may be killed with no action lying for his death, while Gulathings-Lov 178 imposes full outlawry for the offense, which involved complete forfeiture of property and permanent exile. For killing a man in his home, Lex Ribuaria LXVII required the killers to each pay three times the normal wergeld, with an additional charge of 90 solidi for the first three entering the home and 15 solidi for each one following and not shedding the victim's blood; nearly identical provisions are found in Pactus Legis Salicae XLII.1,2.

Grendel's breach of Hrōðgār's mund is also quite serious because Hrōðgār is a king and the value of one's mundbyrd or "protection fine" went up depending on the social status of the offended party, the king's being the highest. Six shillings was the normal West Saxon mundbyrd for a commoner and was levied in all cases where his mund was breached, but for a bishop or ealdorman it was two pounds, for an archbishop

three, and for the king, five (Ælfred 3).[20] Fighting in the king's house was moreover punished more severely than fighting in a commoner's house; Ine 6 provides that "gif hwa gefeohte on cyninges huse, sie he scyldig ealles his ierfes, 7 sie on cyninges dome, hwæðer he líf age þe nage" (if anyone fights in the king's house, he shall forfeit all his property, and it is up to the king whether he shall live or not).[21] The spatial boundaries of the king's mund also tended to expand beyond the confines of his hall as the Anglo-Saxon period progressed--for example, Hloþhære and Eadric 14 requires that the spilling of blood in the house of another be compensated for by payment of both the householder's mundbyrd and that of the king. Why this expansion of the king's protection rights took place is not altogether understood; Sir Frederick Pollock suggested that it "was for the king's manifest advantage to widen the bounds of his jurisdiction for the purpose of increasing the fines and forfeitures incident to its exercise" (83), and Sir William Holdsworth adds as possible reasons the need to extend the sovereign's jurisdiction to deal with offenses not compensable by monetary means--treason, murder, arson, etc.,

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[20] These amounts differ somewhat in the earlier Kentish laws; the six shilling mundbyrd for a commoner is the same and probably forms the basis for this figure in the West Saxon laws, but the mundbyrd of the king was 50 shillings, for a noble, 13 (Æðelbirht 5, 8, 10, 13-16).

[21] Similar provisions are found in Ælfred 7 and II Cnut 59; a much older provision in Æðelbirht 3 provides for two-fold compensation for offenses committed at feasts where the king is present. Rothair 36-38 indicates a similar Lombard conception of the the king's enhanced protection rights.

and the weakening of the kindred's ability to deal with offenses against its members (2: 48-49). Both agree, however, that the gradual expansion of the king's protection throughout the kingdom, both during the Anglo-Saxon period and after, was one of the foundations of modern Anglo-American criminal law--the basic idea that certain offenses must be punished by the sovereign and not by the individual (Pollock; Holdsworth 2: 47-48).

William Chaney suggests that one reason for the enhanced status of the king's mund or peace was the sacrosanct nature of the king's person:

> The 'peace' of the king--his person and his residence--is an outstanding feature of Anglo-Saxon law, and is to seen not only in the constitutional-political aspects of a later age but in the succession from the sacrificial priest-king of a not far-distant Germanic past. (Cult of Kingship 205)

The sacral nature of Germanic kingship, evidenced by such factors as the conjunction of kingly and priestly functions among the pre-conversion Germans, the tendency of Germanic kings to trace their descent from Woden or other Germanic gods, and the prevalent Germanic belief that the king embodies the luck of his people, has been verified by considerable scholarly investigation over the last century (Cult of Kingship 11-20). Chaney cites several instances where this royal sacrosanctity is reflected in Anglo-Saxon law, most notably in provisions such as I Eadmund 3 or II Eadmund 4 which forbid a homicide from approaching the person of the king until he has made reparation and done penance ("Grendel"

518; Cult of Kingship 217): "thus a person polluted by the sin of homicide is not allowed to approach the king except by the mediator-ship of the bishop" (Cult of Kingship 217). He also contends that "the sacredness of the monarch's person transfers its mana to the cult-objects of Anglo-Saxon kingship" ("Grendel" 516), among them the gifstōl from which the Anglo-Saxon king distributed treasure to his followers ("Grendel" 516-17). He then uses this inference to explain a well-known crux in the text of Beowulf, the apparent inability of Grendel to approach the gifstōl of lines 168-169: "nō hē þone gifstōl grētan mōste,/ māþðum for Metode, nē his myne wisse . . ." (he could not approach the gifstōl, the treasure, because of God, or know his love . . .). As a homicide and an outlaw, he cannot approach the gifstōl which stands at the center of Hrōðgār's mund.[22]

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[22] John Golden has objected to this argument because if correct, Grendel as a homicide would have been barred from approaching the hall of the king at all ("A Typological Approach" 195-97). His objection seems to seriously undermine Chaney's argument that the throne enjoyed some degree of the king's peace, or at least to point out its unproven assumption that the king's throne enjoyed a level of peace higher or more inviolable than that of the hall at large. But it does not dispose of the fact that Grendel under Anglo-Saxon law has committed a very serious legal offense in breaking into the hall in the first place, and Chaney's basic argument that the special character of the king's mund contributes to the offensiveness of Grendel's action must stand. There have been other interpretations of this passage besides Chaney's. Chaney credits Robert M. Estrich as the first critic to make the claim that Grendel's pollution by homicide keeps him away from the royal throne, and Margaret W. Pepperdene made a similar observation somewhat later. In his note on the passage, Robert Howren argued that Grendel as an anti-thane cannot approach the throne as a symbol of the comitatus' unity, but also suggests that the gifstōl referred to could be

The fact that Grendel's attack is a breach of Hrōðgār's mund is also very interesting because the strong punishment of mundbryce gives a legal basis for the poem's preoccupation with the image of the hall, enclosing light, warmth, and sociability, and shutting out the darkness, cold, and isolation which seemed to hold such a horror for the Anglo-Saxons:

> Though assumptions about halls were never elaborated into an articulated social philosophy, any reader can deduce from incidental comments that the hall was pictured, for poetic purposes, as a circle of light and peace enclosed by darkness, discomfort and danger. (Hume, "Concept of the Hall" 64)

Critics have long agreed that Heorot is on some level symbolic of the ordered world itself; the creation of the hall and the scop's song of creation which follows have been considered to link the creative act of Hrōðgār with the Creation itself. The creation imagery of Heorot likens "Heorot's creation to the creation of the world," and "raises to the ultimate the symbolic force which Heorot is meant to carry as a revelation

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God's throne, the throne of grace, which Grendel as God's enemy cannot approach; the symbolism is thus ambiguous with both secular and religious connotations. Margaret Goldsmith (109), Jeffrey Helterman (8) and Stephen C.B. Atkinson ("Beowulf and the Grendel Kin" 60) concur that the gifstōl is both Hrōðgār's and God's throne. Golden argues that the throne should simply be understood typologically as the throne of grace ("A Typological Approach" 193-95). Several critics have even suggested that the hē of line 168 might not refer to Grendel at all, but to Hrōðgār, arguing that the passage makes more sense if it does--it simply describes the king's despondency at his inability to deal out treasures from his throne (Brodeur 200-204; Greenfield, "'Gifstol'" 110-11; Clipsham; Riley).

and embodiment of civilized human society" (Calder 23).[23] Nor is this tendency to idealize the hall into a world symbol unique to Beowulf; Old English religious poems frequently describe the creation of the world as the creation of a great hall, or the joys of heaven as the joys of the hall (Lee 22-26, 180). The right of mund seems to have therefore given legal sanction to a set of rights and privileges which formed the very essence of Anglo-Saxon concepts of security and safety, of right and good order in the world, and Grendel's breach of Hrōðgār's mund can therefore be seen as not merely an outrageous species of illegality, but as an almost cosmic wrong.[24]

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[23] For other treatments of this theme, see Helterman's "Beowulf: The Archetype Enters History" 6-8; Irving's Reading 89-90; David Williams' "The Exile as Uncreator" 9-10; and James W. Earl's "The Role of the Men's Hall" 147.

[24] Aron Ya. Gurevich points out a pagan Scandinavian parallel to this correspondence between the cosmic notion of inside and outside and its legal counterpart in the Norwegian laws:

> The world, as the ancient Scandinavians saw it, was formed by the opposition of miðgarðr (Middle-yard, the world of mankind) and útgarðr (Outyard, the abode of monsters and giants). The lays of Edda recount the struggle between those two worlds representing, correspondingly, culture and wild nature, the good and the evil. Meanwhile, Old Icelandic and Norwegian laws differentiated landed estates into two opposite kinds, the land innangarðs ("enclosed possession") and the land útangarðs ("land beyond the fence"). Thus the cosmos was modelled by the ancient Scandinavians on the pattern of their own farms, not only the world of men, but also the world of gods, ásgarðr. ("Edda and Law" 82; see also "Wealth and Gift Bestowal" 126-27)

Like the rest of Grendel's acts it is, however, still a wrong done to Hrōðgār. Yet it is Bēowulf who avenges it. How then do Hrōðgār's rights of action against Grendel come to be vested in the hero?

One possibility is that Bēowulf is merely repaying a debt owed by his family to Hrōðgār, who paid composition to the Wilfings for the killing of Heaþolāf by Ecgþēow, Bēowulf's father (459-472). In response to Bēowulf's declaration of his intentions, which perhaps conspicuously lacks any reference to this prior favor, Hrōðgār is quick to define Bēowulf's assistance as a quid pro quo:

> 'For [g]ewy[r]htum þū, wine mīn Bēowulf,
> ond for ārstafum ūsic sōhtest.
> Geslōh þīn fæder fǣhðe mǣste;
> wearþ hē Heaþolāfe tō handbonan
> mid Wilfingum; ðā hine Wedera cyn
> for herebrōgan habban ne mihte.
> Þanon hē gesōhte Sūð-Dena folc
> ofer ȳða gewealc, Ār-Scyldinga;
> ðā ic furþum wēold ginne rīce,
> hordburh hæleþa; ðā wæs Heregār dēad,
> mīn yldra mæg unlifigende,
> bearn Healfdenes; sē wæs betera ðonne ic!
> Siððan þā fǣhðe fēo þingode;
> sende ic Wylfingum ofer wæteres hrycg
> ealde mādmas; hē mē āþas swōr. (457-472)
>
> (for past deeds you have sought us, my friend Bēowulf, and for kindness. Your father caused a great feud; he was the killer of Heaþolāf of the Wilfings; then the Weder folk for terror of war might not harbor him. From there he sought the South Danes over the rolling waves, the Honor-Scyldings; then I first ruled the Danish people and in youth commanded a wide realm, a treasure hall of warriors; at that time Heregār was dead, my eldest kinsman not living, the child of Healfden; he was better than I! Later the feud was settled with money; I sent to the Wilfings over the water's ridge ancient treasures; he [Ecgþēow] swore oaths to me.)

From Hrōðgār's point of view, Bēowulf is merely redeeming his father's oaths as any good son and warrior should.

But Bēowulf is nevertheless not Hrōðgār's thane but Hygelāc's, an intrusive foreigner whose announced intention of doing a job the Danes cannot do themselves probably irks them very much, judging from Unferð's reaction. And so before he entrusts to Bēowulf the precious hall, the very symbol of Danish social unity, Hrōðgār speaks some words of formal transfer which seem to place the hero's relationship to the hall on an "official" footing:

> [Ge]grētte þā guma ōþerne,
> Hrōðgār Bēowulf, ond him hæl ābēad,
> wīnærnes geweald, ond þæt word ācwæð:
> 'Næfre ic ænegum men ær ālȳfde,
> siþðan ic hond ond rond hebban mihte,
> ðrȳðærn Dena būton þē nū ðā.
> Hafa nū ond geheald hūsa selest,
> gemyne mærþo, mægenellen cȳð,
> waca wið wrāþum! Ne bið þē wilna gād,
> gif þū þæt ellenweorc aldre gedīgest.'
> Ðā him Hrōðgār gewāt mid his hæleþa gedryht,
> eodur Scyldinga ūt of healle;
> wolde wīgfruma Wealhþēo sēcan,
> cwēn tō gebeddan. Hæfde Kyningwuldor
> Grendle tōgēanes, swā guman gefrungon,
> seleweard āseted; sundornytte behēold
> ymb aldor Dena, eotonweard' ābēad. (652-668, emphasis added)

> (One man then spoke to the other, Hrōðgār to Bēowulf, and wished him well, control of the wine-hall, and said these words: "Never before, since I might lift hand and shield, have I to any man entrusted the splendid hall of the Danes, but to you now. Have now and hold the best of houses, think on fame, show mighty valor, watch for the foe! There will be for you no lack of good things, if you survive this valorous undertaking alive." Then Hrōðgār departed out of the hall with his band of warriors, the Scylding king; the great man wished to seek Wealhþēo, to sleep with his queen. The most glorious of kings had set a hall guardian against Grendel, so men

might know; he did special service for the lord of the Danes, offered to act as a guard against trolls.)

As I suggested earlier in brief, it seems as if some sort of formal assignment is going on here which will temporarily place the hall in Bēowulf's power, within his protection or mund. The poet refers to Hrōðgār's farewell as wishing "control of the wine-hall" to Bēowulf, and when the king speaks he seems to first call deliberate attention to his own mund over the hall by recalling when he first exercised it--when he could "first lift hand and shield," a rather neat symbolic conflation of physical power and legal capacity, especially interesting given the pervasive hand symbolism of the Grendel section. His next words, "hafa nū ond geheald hūsa sēlest," sound almost contractual, as if some sort of legal transfer by hand is taking place. At the conclusion of the passage, the poet notes that the kyningwuldor sets the hall guardian publicly, "swā guman gefrungon," "so men might know." Klaeber takes kyningwuldor to be the equivalent of the partitive cyninga wuldor, "glory of kings," "most glorious of kings," which occurs in several of the religious poems and invariably refers to God or Christ, but a few very early critics took it to refer to Hrōðgār, and from a legal standpoint this certainly seems to make more sense: Hrōðgār, after all, is the one who sets the hall-guardian, not God; the

term therefore seems at least ambiguous.[25] This sort of ambiguity is not, however, unusual in the poem--Hrōðgār and God seem to be conflated at several points, as creators of halls/worlds, as the ambiguous joint owners of the gifstōl of lines 168-169 (Howren; Goldsmith 109; Atkinson, "Beowulf and the Grendel Kin" 60), and perhaps here as the dual appointers of the hall-guardian. And if God does give his imprimatur to the appointment of Bēowulf, the hero's legal and moral credentials are only strengthened.

This passage is especially interesting from a legal standpoint because it seems to fulfill all of the Germanic legal requirements for the transfer of possessory rights in property. First, there had to be a physically apprehensible transfer of the property, as in a hand-shake, or in the case of a transfer of real property, the delivery of some tangible object symbolic of the property, such as a clod of earth (Huebner 13, 242-43). Second, this delivery had to be made publicly and in the presence of witnesses (Huebner 13-14). Thus, the transfer of real property in Gulathings-Lov 292 required that the purchaser in the presence of witnesses take earth from "arenshornum fiorum oc i ondveges sæte, oc þar sem acr oc eng motezt oc þar sem hollt oc hage motezt" (the four

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[25] For Klaeber's disposition of this question and references to prior textual criticism, see his "Studies in the Textual Interpretation of 'Beowulf'" 454. The phrase cyninga wuldor occurs in Andreas 555, 854, 899; Elene 5, 178; Christ 508; Juliana 279, 289; Resignation 21; Judith 155; and the Menologium 1.

corners of the hearth and from under the highseat and from a place where the cornland meets the grassland and where the holt touches the pasture), and Pactus Legis Salicae XLVI.1 required the transferor before witnesses to toss a stick (presumably from the property transferred) into the lap of the transferee, followed by the transferee's demonstration of possession and power over the property by living on it for a time and entertaining guests there. Huebner contends that such public rituals of symbolic delivery lie behind the later ceremony of livery of seisin, by which the vassal was enfeoffed by his feudal superior (242-43), and if as he suggests the concepts of seisin and mund are analogous (13), the resemblances between such ceremonies and Hrōðgār's gesture may be more than superficial--some sort of temporary assignment of mund may well be indicated.[26]

Interestingly, similar types of physical and public deliveries were required in at least one Germanic legal system to transfer legal claims from one person to another. Staðarhólsbók 307 provides that:

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[26] In Anglo-Saxon usage, written charters were often used at least as an adjunct to livery of seisin in the transfer of "bookland"--usually grants by the king to a particular religious institution or, later, individual. Bookland was distinguished from "folkland" or alodial property--land not held by book, in which the kindred of the owner usually had some proprietary interest (Holdsworth 2: 67-70; Pollock and Maitland 1: 60-62). Huebner points out that on the continent even transfers of bookland were often accompanied by a livery of seisin (244-45). How common this was in England is difficult to assess; Patrick Wormald has recently shown that in Anglo-Saxon lawsuits over land, written proof of ownership was frequently seen as conclusive ("Charters" 157).

> Vig söc a maðr at selia i hönd avðrom manne ef hann vill til socnar fullrar eða sáttar oc scal þa sa fyrir raða er við hefir tekit sva sem hann se rettr aþili at. oc allar sakir a maðr at selia avðrom manne þær sem hann vill. selldar hafa. En sva scal savc selia at þeir scolo takaz ihendr. sa er savk tekr oc hin er sell. oc nefna ser vatta ii. eþa fleiri at þvi at aðili selr savc þa hinom oc queða a söc þa; at søkia oc at sættaz á. oc sva allra gagna til at neyta sem hann se rérrt aðili at. selr hann söc þa at lögum. en hinn tekr at lavgom.
>
> A man may transfer a killing case to another man if he wishes, for full prosecution or settlement, and then the man who has taken it shall have charge of it just as if he were the rightful principal in the case; and a man may transfer to someone else any case he wants to transfer. And a case is to be transferred thus: they are to take each other by the hand, the one who takes the case and the one who transfers it, and name two or more witnesses to witness that the principal transfers that case to the other, to prosecute and to settle and to use every formal means of proof as if he were the lawful principal. He transfers the case in accordance with law, and the other takes it in accordance with law.

In Old Norse such an assignment was termed a handsal, or "delivery by hand," and it was loaned into Middle English and still survives in English today as the old-fashioned term "handsel." Cases having to do with property could also be handseled (Konungsbók 75), as could specific procedural steps within a case, such as the right to call neighbors as witnesses (Staðarhólsbók 285), or the right to accept outlawry as part of a private settlement (Konungsbók 60). Certain procedural safeguards were also specified to prevent abuse of the process; Konungsbók 77 enjoins assignees to prosecute their cases diligently and not collude with the other side, and also forbids the immediate relatives of the assignor from taking part in the trial as witnesses.

Cases might be handseled for any number of reasons, usually because the principal wished to secure the advocacy skills or influence of the assignee. Thus Þorbjǫrn handsels his case to his nephew Sámr because Sámr is "uppivǫzlumaðr mikill ok lǫgkœnn" (a contentious man and very skilled at law; Hrafnkelssaga 3), and Kári forces Mǫrðr Valgarðsson to take over the prosecution of the case against the Burners partly because he is a skilled lawyer, but also to humiliate him as he sowed much of the discord which led to the burning in the first place (Njálssaga 135). This latter instance of assignment is particularly interesting because of the detail with which the handsal is described:

> Mǫrðr tók þá í hǫnd Þorgeiri ok nefndi vátta tvá, -- "í þat vætti, at Þorgeirr Þórisson selr mér vígsǫk á hendr Flosa Þórþarsyni at sœkja um víg Helga Njálssonar með sóknargǫgnum þeim ǫllum, er sǫkinni eigu at fylgja. Selr þú mér sǫk þessa at sœkja ok at sættask á, svá allra gagna at njóta, sem ek sé réttr aðili; selr þú með lǫgum, en ek tek með lǫgum.
>
> (Mǫrðr then took Þórgeirr's hand and named two witnesses--"to witness that Þorgeirr Þórisson assigns (selja, literally "hands over, delivers")[27] to me in hand an action to prosecute for manslaughter Flosi Þórðarson for the killing of Helgi Njálsson, with all evidence which is relevant to the case. You assign to me this action to prosecute and to settle, using all the evidence, as if I were the rightful plaintiff; you assign it to me according to the law, and I take it according to the law.)[28]

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[27] The Old English cognate is sellan and is the main verb of transfer used in the vernacular charters to convey property.

[28] Assignment of some sort may have existed in continental systems as well; the institution of advocacy is fairly well documented there and while it is difficult to know exactly how advocates took charge of cases for their principals, some sort

It is, of course, true that the poet nowhere says anything is delivered by the king to the hero or even that they shake hands, but the prevalence of such handseling ceremonies in Germanic law for the transfer of both property and legal rights makes the passage seem, at the least, highly suggestive. It is a suggestiveness heightened both by the fact that Grendel has violated Hrōðgār's mund with his

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of assignment like that of the Icelanders may have existed. Gulathings-Lov 47 requires men of legal age to prosecute their own suits unless they go abroad, when they may appoint someone to litigate concerning their possessions, and the same provision allows unmarried women to either bring their own actions at law or else assign them to another, although they may not choose as assignees people of higher standing than their opponents. Whether this sort of institution existed among the Anglo-Saxons is difficult to determine with certainty. II Eadmund 7 mentions a forspeca in a homicide action who is to act as an advocate for the killer with the victim's kinsmen, and Liebermann conjectures that this person may be analogous to official advocates which are found in continental legal sources (3: 128); the most the passage will seemingly bear is the idea that persons in trouble occasionally engaged another to speak to their enemies, but no more than an unofficial mediation may be intended, as A. Robertson points out (Laws 297). Yet a description of an 11th century lawsuit in which a son sued his mother over ownership of some land clearly indicates that the mother was represented by a male kinsman (A. Robertson, Anglo-Saxon Charters no. 78). The continental sources do seem to indicate that the institution of advocacy existed there; Pactus Legis Salicae CV.1 provides for a 15 solidi fine for those who speak in a case without authority from the principal. Ratchis 3 and 11.VII prohibit advocacy except for widows and orphans, or men unable to prosecute their own causes, while Lex Gundobada XXII prevents Burgundians from acting as advocates for Romans. Other continental sources also mention the practice; for example Leges Visigothorum II.III.I-V regulate the conduct of advocates, II.III.VI proscribes women from acting as advocates but allows them to transact their own business in court, while II.III.VII--VIII specify that principals and not advocates shall suffer from adverse judgments, that advocates' heirs are entitled to their fees, and, much like Gulathings-Lov 47, that advocates may not be more powerful than principals.

repeated incursions into Heorot, and by the fact that "hand" imagery is so prevalent in Bēowulf's contest with Grendel. James S. Rosier notes that:

> Throughout Beowulf there are sixty-six specific references to the hand, including not only the simplices hond, folmu, mund, and other compounds, but also the metonymic words, clamm, grap, and gripe. . . . Nearly half of the total number of 'hand'-terms appear in four clusters, and each of these is contained in a cluster having to do directly or obliquely with Grendel or his mother . . . ("Uses of Association" 10)

Of these terms, Rosier counts twenty-three, more than a third of the total, within the combined 170 lines telling of Beowulf's fight with Grendel (722-836; ten references), his description of the fight to Hrōðgār (963-992; eight references), and his description of the fight to Hygelāc (2072-2099; five references) ("Uses of Association" 10). Also noteworthy in this connection is the way the verb healdan crops up again and again in the Grendel section as a synonym for physical and political or legal control over specific physical spaces. Grendel holds the moors (103, 161, 1348); the Scylding watchman holds the sea-cliffs (230); Hrōðgār in his youth held a rich kingdom (466); Hrōðgār bids the hero hold the hall against the monster (658); the companions who were to hold the hall sleep at the monster's approach (704); Hrōðgār observes that God at times gives a warrior great tracts of land to hold (1730-1731), and that a greedy king thinks he holds his kingdom too short a time (1748); he remarks that the Geats could not find a better king were Bēowulf to hold their land (1852). Who holds what and on what

legal basis, who exercises mund over a particular physical space and with what justification, seems a great concern to the poet in the Grendel section.

It is of course true that one would expect a high concentration of "hand" and "holding" terms in a section which centers around the description of a wrestling match, but it seems quite probable that the legal significance of such terms as mund and the general legal significance of acts performed with the hand, such as the holding of halls, must have metaphorically heightened the stakes, so to speak, of the wrestling match for the Anglo-Saxon audience of the poem. The tools of the struggle for mund over the hall--the hand-grips of the protagonist and the monster--become symbolic of the mund for which they fight, and Grendel's wrongful seizure of that mund is taken from him both legally and physically when Bēowulf tears from him the physical symbol of that wrongful control:

> Ða þæt onfunde sē þe fela ærror
> mōdes myrðe manna cynne,
> fyrene gefremede --hē [wæs] fāg wið God--
> þæt him se līchoma lāstan nolde,
> ac hine se mōdèga mæg Hygelāces
> hæfde be honda; wæs gehwæþer ōðrum
> lifigende lāð. Līcsār gebād
> atol æglæca; him on eaxle wearð
> gūrhrēð gyfeþe; scolde Grendel þonan
> feorhsēoc fleon under fenhleoðu,
> sēcean wynlēas wīc; wiste þē geornor,
> þæt his aldres wæs ende gegongen,
> dōgera dægrīm.
> . . . . . .
> þæt wæs tācen sweotol,
> syþðan hildedēor hond ālegde,
> earm ond eaxle --þær wæs eal geador

> Grendles grāpe-- under gēapne hr(ōf). (809-823; 833-836)
>
> (Then he who had perpetrated such evil deeds and brought about so many of mankind's afflictions--he was feuding with God--perceived that his body would avail him nothing, for the spirited kinsman of Hygelāc had him by the hand; each found the life of the other hateful. The terrible, terrifying one felt pains in his body; a great wound opened in his shoulder, plain to see, the muscles sprang out, the joint burst. Bēowulf was granted battle-glory, Grendel had to flee from there bane-sick along the marsh-track, seek his joyless abode; he surely realized that his life's end had come, that his days were numbered. . . . That [the arm] was a clear token after the brave one in battle set it, arm and shoulder, Grendel's grip all together, under the vaulted roof.)

The wrestling match becomes, quite simply, an elaborate legal pun.

What I would like to suggest then is simply this: that Grendel wrongs Hrōðgār by seizing the hall from him and so violating his mund, and that Hrōðgār temporarily transfers his rights of mund to Bēowulf so that when the monster invades the hall that evening, he will be committing an offense against Bēowulf as the rightful hall-guardian, the rightful holder of mund over the hall; the vengeance taken by Bēowulf is thus for a wrong committed against him as hall-guardian, not Hrōðgār. This interpretation is interesting not only for its consequences to the legality of Bēowulf's intervention, but also for the legal backing it gives to the poem's obvious concern with the great hall and the question of who rightfully holds it.

But there is a final legal basis for Bēowulf's intervention against Grendel, besides the transfer of

Hrōðgār's mund. When Grendel first attacks the Geats in the hall, he seizes and devours one of Bēowulf's young retainers named, we learn later, Hondsciōh:

> Þrȳðswȳð behēold
> mæg Higelāces, hū se mānscaða
> under færgripum gefaran wolde.
> Nē þæt se āglæca yldan þōhte,
> ac hē gefēng hraðe forman sīðe
> slæpendne rinc, slāt unwearnum,
> bāt bānlocan, blōd ēdrum dranc,
> synsnædum swealh; sōna hæfde
> unlifigendes eal gefeormod,
> fēt ond folma. (736-745)
>
> (The mighty kinsman of Hygelāc beheld how the man-killer would fare in his sudden grip. Nor did the formidable one think to delay, but he suddenly seized first a sleeping warrior, tore him apart greedily, bit into his muscles, drank the blood quickly, swallowed great gobbets; he had soon devoured the dead man completely, even feet and hands.)

The death of Hondsciōh, of course, carries the feud directly to Bēowulf as Hondsciōh's lord, and this further legal justification of Bēowulf's position perhaps helps explain why the poet has the monster first kill the sleeping retainer rather than engage the hero directly; Bēowulf's "dereliction" in this moment of decision, his failure to save Hondsciōh, is another well-known narrative crux in the poem.[29]

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[29] I am indebted to William Ian Miller for this insight into the legal position of Bēowulf, which he suggested as a possible explanation for the hero's dereliction during his class on the Germanic bloodfeud taught at the University of Houston Law Center in the spring of 1983; Walter Scheps also mentions it in passing in his article, "The Sequential Nature of Beowulf's Three Fights" (44). Other explanations for the dereliction are found in Arthur K. Moore's "Beowulf's Dereliction in the Grendel Episode," which suggests that Bēowulf as lord is not bound to assist his individual retainers but rather to act in keeping with "the general rather than in the particular interest" (169); T.M. Pearce's

Therefore, if we are looking to the relative legality of the combatants' positions in this first fight, there can be no doubt but that Bēowulf is here completely justified. This conclusion is, of course, obvious; what is important and interesting is the way the narrative and the language carefully stack the legal deck against Grendel so that the outcome becomes so obvious. One basis of Grendel's culpability is of course his position as a legitimate vengeance target in feuds with both Hrōðgār and Bēowulf, as the lords of their respective comitatus groups which Grendel has attacked. Another basis for his culpability is the idea of mund in this first section--the fact that Grendel breaches it, even wrongfully takes it; that Bēowulf rightfully takes it and avenges its breach, that the two exercisers of control, one rightful and the other wrongful, clash in a highly symbolic contest of legal and physical power which winds its punning way throughout this section. Bēowulf's next two fights, however, run a more legally ambiguous course.

"Beowulf's Moment of Decision in Heorot," which argues that Beowulf's failure to save Hondscīoh may reflect "the earliest instance in English literature of the practice of expendability in a military situation" (170); Greenfield's "Three Beowulf Notes," which argues that the āglǣca of line 739 who does not delay in fact refers to Bēowulf--Grendel in the next line is thus simply too fast for him, a view Brodeur concurs with in general (93); and Raymond Tripp's "The Archetype Enters History," which contends that Bēowulf is himself asleep when the monster enters and unaware when Hondscīoh is taken. Klaeber contends that the dereliction is a retention of a motif from the original folk-tale (Beowulf 155), a view concurred in by Gwyn Jones (24).

Chapter 3

Sēo Wrecende Wīf:

The Limits of the Feud

A catalogue of the offenses committed against Hrōðgār and the Danes by Grendel's mother must appear very similar to that of her son. Like Grendel, she attacks the hall under cover of darkness, and she attacks quickly in a sort of hit and run raid, leaving the minute the Danes are aware of her: "Hēo wæs on ofste, wolde ūt þanon,/ fēore beorgan, þā hēo onfunden wæs;/ hraðe hēo æþelinga ānne hæfde/ fæste befangen, þā hēo tō fenne gang" (She was in haste, wished to be away, to protect her life before she was discovered; quickly then she seized fast a noble one, then returned to the fen; 1292-1295). Her attack is thus construable as a sort of morð, although her seizure of the arm and subsequent placement of Æschere's head on the path might be taken as a macabre publication. And her invasion of the hall is of course a violation of Hrōðgār's mund.

And yet, she acts out of an impulse much more human, social and understandable than the unjustified malignancy of her son: the desire for blood vengeance. Hrōðgār, indeed, immediately assumes that her attack was undertaken out of a desire for vengeance:

> . . . Hēo þā fæhþe wræc,
> þē ðū gystran niht Grendel cwealdest
> þurh hæstne hād heardum clammum,
> forþan hē tō lange lēode mīne
> wanode ond wyrde. Hē æt wīge gecrang
> ealdres scyldig, ond nū ōþer cwōm

> mihtig mānscaða, wolde hyre mæg wrecan,
> gē feor hafað fæhðe gestæled . . . (1333-1344)
>
> (She requited that feud, when you last night killed Grendel violently with hard grips, because he had too long lessened and destroyed my people. He was destroyed in battle, having forfeited his life, and now another comes, a mighty evil-doer, would avenge her kinsman, and has far requited the feud . . .)

This passage and others like it are remarkable not only for the way they fit the motivation of Grendel's mother into a familiar social pattern of feud, but also for the slight tone of grudging admiration they seem to carry--here, in the space of 11 lines, Hrōðgār mentions three times the fact that she "þā fæhðe wræc," "wolde hyre mæg wrecan," "hafað fæhðe gestæled" (requited the feud, would avenge her kinsman, has requited the feud). The effect of such emphasis seems to be one of stunned amazement but also of forced acknowledgement--that Grendel's mother has in one night balanced the feud in her favor, something the Danes were unable to do in twelve years of conflict with her son. Grendel's mother thus acts well within the realm of human motivation--in the feud, merciless retaliation seems to have always been the preferred course of action, as Bēowulf somewhat tactlessly reminds the grief-stricken Hrōðgār the moment he hears of the latest attack: "sēlre bið æghwæm,/ þæt hē his frēond wrece, þonne hē fela murne" (it is better for each man that he avenge his friend than to mourn much; 1384-1385). By this very standard, Grendel's mother feuds quite effectively, and the Danes do not.

And yet she is a monster and she acts to avenge an extremely unworthy son. Hrōðgār in fact refers to Grendel as ealdres scyldig, "having forfeited life," a phrase used in the laws to refer to someone who has legally forfeited his right to live, such as a traitor,[1] and although he is never referred to explicitly as an outlaw, it is amply clear from the text that he and all his kindred share in God's sentence of exile and outlawry against Cain. Outlaws could be killed with impunity under Anglo-Saxon law, and when one was killed no action lay for his death; Eadward and Guðrum 6 §6 provides that if someone "man to deaþe gefylle, beo he þonne útlah, 7 his hente mid hearme ælc þara þe riht wille" (kills a man, he shall be then outlawed, and he shall be pursued with hostility by all those who will promote the law), and §7 goes on to say that such a man will "licge ægylde" (lie uncompensated).[2]

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[1] For example Ælfred 4 §2: "se ðe ymb his hlafordes fiorh sierwe, sie he wið ðone his feores scyldig 7 ealles ðæs ðe he age" (whosoever plots against his lord's life shall be forfeit of his life and all he owns). Nearly identical provisions are found in II Æþelstan 4 and II Æþelstan 6 for sorcerers, and in II Æþelstan 1 §4, 5, for those who attempt to assist a convicted thief or to avenge an executed one.

[2] See also in this regard Pollock and Maitland 1: 47, 49; Holdsworth 2: 46; Whitelock, Beginnings 140. Pollock and Maitland note that outlawry does not become a recognizable feature of Anglo-Saxon law until the period of the Danish invasions (1: 43), and whether it existed before then is unclear; the institution of outlawry is certainly most elaborated upon in the Scandinavian law codes, particularly Grágás. It appears from saga evidence that even convicted outlaws were sometimes avenged; when the Sigfússons ask Njál whether they should prosecute the killers of Gunnar, their outlawed kinsman, he replies that such a course "ekki mega, er maðr var sekr orðinn, ok kvað heldr mundu verða at veita þeim í því vegskarð at vega nǫkkura í hefnd eptir hann" (was

Her desire for vengeance is therefore understandable, but not strictly legal.[3]

But another problem with her vengeance is brought out in Chance's notion that as an avenger she inverts the traditional roles of women in Anglo-Saxon poetry--those of queen, hostess and peace-weaver or "feud-ender," not continuer ("Structural Unity" 288-89; Woman As Hero 95-98). The fault with her act of vengeance is thus tied to her gender--she behaves unnaturally not as an avenger but as a specifically female avenger. The question then arises of whether there is a legal basis for the inappropriateness of her action--what is the legal effect of her character as a female avenger, and what was the role of women in the Germanic dispute resolution process?

In the purely judicial aspects of Germanic dispute resolution--in the acts of making a claim, prosecuting it with witnesses and oath-helpers, or conversely of defending

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impossible, because he had been outlawed, and suggested it might be better to dishonor them by killing a few of them in revenge for him; 78). From a human point of view, of course, Grendel is not nearly as worthy of revenge as Gunnarr.

[3] Other critics have noted this flaw in her vengeance; see in this regard Greenfield, "Extremities" 10; Chance "Structural Unity" 292, Woman As Hero 101. Atkinson argues that her feud is flawed because of her fallen nature as member of the kin of Cain ("Beowulf and the Grendel Kin" 62), but this seems a continuance of the simple equation of evil nature with evil deeds found in so much criticism of the monsters, and is neither critically nor legally satisfying. Joseph L. Baird points out the mixed emotions that Anglo-Saxon audiences would probably have actually felt towards Grendel--loathing for the outlaw, but mingled with the pity expressed in the elegies for the lordless exile.

themselves against the claim of another--the rights of women clearly varied from people to people. Among some of the Germanic peoples, women seem to have been under a general legal disability. They were continually under the mundium of some male relative, either a husband, or for unmarried women and widows a father or other male relative, and this mundwald was largely responsible for them at law. This disability is most clearly seen among the Lombards:

> Nulli mulieri liberae sub regni nostri ditionem legis langobardorum uiuentem liceat in sui potestatem arbitrium (id est selbmundia) uiuere, nisi semper sub potestatem uirorum aut certe regis debeat permanere; nec aliquid de res mobiles aut inmobiles sine uoluntate illius, in cuius mundium fuerit, hebeat potestatem donandi aut alienandi. Rothair 204
>
> (no free woman who lives according to the law of the Lombards within the jurisdiction of our realm is permitted to live under her own legal control, that is, to be legally competent [selpmundia], but she ought always to remain under the control of some man or the king. Nor may a woman have the right to give away her movable or immovable property without the consent of him who possesses her mundium).[4]

It is fairly clear that this institution of mund over women existed to some degree among the Anglo-Saxons as well; Æðelbirht 75 provides that "mund þare betstan widuwan eorlcundre L scillinga gebete," and, further that "Ðare oþre XX scll'. ðare þriddan XII scll', þare feorðan VI scll'" (the mund of a widow of the best class shall be compensated with 50

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[4] Why this disability was strongest among the Lombards is not known; it is usually explained as a feature of their militaristic society, although the institution of female guardianship existed in some form among all the Germanic peoples (Huebner 63).

shillings, for the next class 20 shillings, for the third class 12 shillings, and for the fourth class 6 shillings). Æðelbirht 76 goes on to say that: "Gif man widuwan unagne genimeþ, II gelde seo mund sy" (if a man takes a widow who does not belong to him, let him give double the value of her mund). Scholars generally agree that this fine for the violation of widows went to some male kinsman who acted as her guardian (Rivers 208-9; Dietrich 39; Klinck 109). The laws also provide that damages for the seizure of a woman are to be paid to her agend (owner; Æðelbirht 82), and Æðelbirht 77 also describes the betrothal ceremony as a purchase of the bride, presumably from her kinsmen.[5] Furthermore, charter evidence from later in the Anglo-Saxon period makes it clear that widows and minor children were at times placed under the mund of male religious figures or of religious institutions,[6] while

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[5] Further support for the idea that early Anglo-Saxon betrothals were bride purchases is found in Maxims I 81: "Cyning sceal mid ceape cwene gebicgan" (a king shall with goods buy a queen; Krapp and Dobbie 3: 159). However, Christine Fell warns against an automatic equation of the Old English verbs bicgan (to buy) and agende (to own) with their Modern English descendants. She contends that the money paid may have in fact consisted of the morgengifu or "morning gift" which in Anglo-Saxon marriage custom (and on the Continent, too) was given to the woman herself "to guarantee her financial security and independence within the marriage," and that moreover an agend (owner) could be anyone "in charge of a community, man or woman in charge of an estate . . . with regard to any of the dependents, male or female, within that community. It does not imply 'ownership' in our sense of the term, nor imply that the dependant was of slave status" (16-17).

[6] See Robertson, Anglo-Saxon Charters no. 44, where the grantor Ecgferð conveys his property to Archbishop Dunstan "tó mundgenne hís lafe · his bearne" (to act as guardian of his

some of the very late laws of Æþelred and Cnut which regulate the rights of widows to remarry make it clear that the kinsmen of her dead husband still had a strong say in her decision to remarry (V Æþelred 21; VI Æþelred 26; II Cnut 73).[7]

And yet, the legal disability of Anglo-Saxon women evidently did not prevent them from defending themselves in court or prosecuting their own suits, even if they frequently did so through a male intermediary of some sort: ". . . the Anglo-Saxon land-books show us women receiving and making gifts, making wills, bearing witness, and coming before the courts without the intervention of any guardians" (Pollock and Maitland 2: 437). One such noteworthy example of a woman acting in a law case is described in a charter of Cnut's reign from Herefordshire. Here Edwin Enneawn's (Eanwine's) son sued his mother over some land, and Ðurkil Hwita, husband of the mother's kinswoman Leoflæd, claimed to represent her at the trial, "gif he þa talu cuðe" (if he knew the case). The judges were evidently not satisfied with his knowledge and so sent three thanes to ride to the mother and ask her claim to the lands. She angrily denied that Edwin had any claim to the land and before the thanes verbally transferred all of her

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wife and child); or no. 6, where the grantor requests the religious community of Christchurch to act as guardian over his wife and children.

[7] Similar laws designed to protect on the widow's remarriage the economic interests of either the deceased husband's relatives or of her own children occur in Rothair 182, Pactus Legis Salicae XLIV.1,2, C.1; Pactus Legis Alamannorum XXXIV.2,3; and Leges Alamannorum LIV.1.

property to Leoflæd, apparently disinheriting her son. The thanes then conveyed these directions to the judges, who conveyed the property. Ðurkil Hwita then had the transfer recorded "on ane Cristes boc" (in, or on, a gospel book; Robertson, Anglo Saxon Charters no. 78). This document seems to indicate that Anglo-Saxon women did act through men in legal disputes, though whether they were required to is not said. Yet the decisive contentiousness with which the aggrieved mother acts makes it clear that women could and did act in their own legal defense, as well as transfer their own property without male intervention.

Another case in which a woman was represented in court by a male advocate was that of Eadgifu, queen of Eadward the Elder. Her father bequeathed certain property to her at Cooling but a dispute arose at his death over whether it was still encumbered with a debt to a certain Goda. In her dispute with Goda, the queen was evidently represented in court by a man, Byrhsige Dyrincg, but she took her own oath to clear the debt and evidently won, although she did not press the judgment (Thorpe 201). Again, the actual prosecution of the case is undertaken by a man, although the woman plaintiff does come forward in court to give her oath; again, it is unclear whether this was due to a general legal bar against women pleading their own cases or simply an instance of a high

born woman keeping herself at a seemly distance from the rough and tumble world of legal dispute resolution.[8]

But in another case recorded in a late 10th century charter from the south central counties, a woman evidently appeared in court on her own behalf. This dispute was over some properties in Berkshire and Buckinghamshire, which the plaintiff, a woman named Wynflæd, contended that Leofwine, a man, had illegally occupied. To prove her case, the plaintiff produced as oath-helpers numerous influential men and women. How the case ended is not said; mediators evidently stepped forward as the oath was about to be taken to make peace between the parties "forþan þær siþþan nan freondscype nære" (because after it there would be no friendship between them). But the peace negotiations appear to have broken down, and whether the case was then resumed is not recorded (Robertson, Anglo-Saxon Charters no 6).[9] Women could, therefore, evidently protect themselves in court by personally appearing

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[8] The Visigoths, at any rate, actually forbade their monarchs from pleading cases except through an advocate, because they felt it was both unseemly for the monarch to plead his own cases and that it would also lead to an abuse of royal power, no judge or legal opponent daring to stand up in open court against the manifest wishes of the king (Leges Visigothorum II.III.I).

[9] This phenomenon of "peacemakers" stepping in to separate the contending parties at a crucial moment in the trial seems to have been a recurrent feature of Germanic litigation and happens frequently in the sagas; there the arbitrating party is usually a kinsman or other person with ties to both parties who will lose from being caught in the middle of a dispute carried to the extreme, or perhaps a powerful individual with an interest in maintaining the peace in the district (Miller, "Avoiding" 102-3).

and producing oath-helpers, and they could also appear as oath-helpers in the cases of others. Their dependence on male guardians for legal protection does not appear to have been complete.

Cases such as these have long been taken by scholars as evidence that among the Anglo-Saxons the masculine mund over women was of a sporadic or incomplete nature, one aspect of a uniquely privileged position enjoyed by Anglo-Saxon women.[10] Others have recently sought to qualify this view, arguing that the legal capacity enjoyed by women was largely limited to widows (Rivers; Meyer 61-65), or that it only developed in late Anglo-Saxon times and was in any case limited to women of the upper class (Klinck). Thus, Anne Klinck minimizes the importance of the cases of Wynflæd and Edwin's mother by pointing out that both women appear to have been members of the upper class, and she also contends "the fact that there is no mention of their husbands makes it likely they were widows" (116). She also surmises from the fact that the mother in the first case did not appear in court herself that "the outcome was the due to the influence of a powerful man. . . .

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[10] The classic statements of this view are to be found in Frank Stenton's "The Historical Bearing of Place-Name Studies: The Place of Women in Anglo-Saxon Studies," and in Doris Stenton's The English Woman in History. It has been more recently restated by Dietrich, and convincingly reaffirmed in Women in Anglo-Saxon England and the Impact of 1066 by Christine Fell, Cecily Clark and Elizabeth Williams. According to this view, women enjoyed a remarkable degree of freedom in Anglo-Saxon times, much of which they lost following the Norman Conquest.

Significantly, Thurkill's wife was the beneficiary in the contested will" (116). Klink's arguments, while an interesting and probably necessary corrective to the more complimentary views of Anglo-Saxon women's rights, are not altogether convincing. Her first objection begs the question of whether the husband's legal representation was required as well as the issue of whether the women were even married, and the second could be countered with the observation that Þurkil appears in the case less as a Machiavellian manipulator than as a somewhat bewildered go-between--the charter is quite clear that his representation was denied because he was not familiar with the facts of the case.[11] Still, the objections

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[11] These sorts of "half-full, half-empty" debates seem to characterize scholarly disputes over the legal status of Anglo-Saxon women; the society may be characterized as either enlightened or patriarchically oppressive towards women depending on how the evidence is read; therefore, "the disparity of modern treatments underscores the necessity of going directly to the primary sources" (Dietrich 33). The more negative characterizations of Anglo-Saxon female legal capacity are somewhat troubling because they often see the mere existence of male mund over women as necessarily indicating an oppressive patriarchy. All too often left unasked is the question of what such mund actually consisted of, and here the literature is perhaps instructive--the sagas show several examples of marriage contracts being negotiated, and the emphasis is usually on procuring a property settlement which will assure the bride's future security and protect her from abuse (Njálssaga 2, 9-10; Laxdœla saga 34). Also, it is clear from saga materials that although fathers might give their daughters in marriage without their consent, miserable consequences usually followed. Even if not all Germanic women were viragos such as Hallgerðr or Guþrún Ósvífrsdóttir, the very common-sense notion that male kinsmen would have wished to prevent their kinswoman's future marital humiliation or dishonor, and to avoid future involvement in her legal affairs, makes the notion of Anglo-Saxon fathers routinely selling their daughters, without any concern other than the highest price, seem rather far-fetched. See also in this

of Klinck and others are sufficient to make the legal competence of Anglo-Saxon women problematical--at most, the charters show that the idea of a female litigant was not so bizarre or unusual that it could not have been rather matter-of-factly recorded on numerous occasions.[12]

However, despite the lack of specifically legal evidence to go on in either the charters or the Anglo-Saxon laws, it is clear that Anglo-Saxon women were not considered able to take

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regard Fell, 58.

[12] The juridical competence of women among the continental Germans varied considerably, often fluctuating between the Lombard and Anglo-Saxon extremes. The Visigoths alone seem to have bettered the Anglo-Saxons in the judicial freedom accorded to women; a woman was allowed to conduct her own lawsuits in court, and indeed her husband was prohibited from conducting suits for her absent her written consent (Leges Visigothorum II.III.VI, VI.V.XIV). Gulathings-Lov 47 provides that an unmarried woman might bring an action at law just as a man, or she might assign her case before witnesses to a man. Nothing is said however about the rights of a married woman, who would presumably have been represented by her husband, although chapter 151 allows a wife to carry on the prosecution for her husband's homicide. Frostathings-Lov X.36, however, requires an unmarried woman summoned in a lawsuit to choose a male defender, further implying that among the Norwegians a married woman would be represented by her husband; nothing is said, however, of the rights of a woman plaintiff to conduct her own suits. Konungsbók 94 allows widows and unmarried girls of 20 or more to have charge of their own cases for assault, but Staðarhólsbók 297 forbids women from taking killing cases; Eyrbyggja saga 38 claims that this disability was enacted when the killing case for Arnkell Þórólfsson fell to his women relatives and was weakly handled, his killers receiving only a light verdict. The case of Arnkell Þórólfsson is instructive: the "weakness" with which the case was prosecuted probably related to his daughters' inability to gather armed support for the case. The evidence of women's legal capacity is therefore somewhat equivocal; in some Germanic societies, they seem to have been kept completely out of judicial affairs, in others to have enjoyed a fairly broad judicial capacity.

part in the more violent aspects of dispute resolution. It may of course be inferred that because even among the Anglo-Saxons the ultimate sanction behind all legal judgments was the threat of violence, those Anglo-Saxon women who could defend themselves at law must have had at least the capacity to prosecute the judgments they obtained to the utmost, probably by recruiting help from their male followers and kinsmen. But women who could call on male supporters to enforce their legal rights were surely limited to the upper classes, and the inability to gather such support was probably a practical factor which limited the low born woman's access to legal redress as much or more than any legal guardianship.[13] In any case, women themselves were considered unable to physically back their claims, an attitude which may have lain behind the very legal disabilities they suffered:

> Despite all Walkyrie [sic] ideals Germanic women were generally regarded as incapable of bearing arms,

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[13] That some upper class Anglo-Saxon women could command the loyalties of men holding land from them is quite clear; Domesday Book describes a woman named Eddiva or Eadgifu who held land estimated at 230 hides, more than 27,000 acres, and many male tenants held land of her (Fell 89) who might have formed the muscle necessary to back up her claims; she indeed seems to have been involved in helping one widow tenant to wrongfully hold on to a piece of property which should have reverted to the church after her husband's death (Fell 90). Women prosecuting claims or collecting on judgments would presumably have also relied on their kinsmen for support. That Anglo-Saxon men accepted the idea of following women into armed conflict is illustrated by the activities of the Mercian lady Æðelflæd, who led the military forces of her kingdom quite effectively against the Vikings from before her husband's death in 911 until her own death in 918 (Fell 91).

> notwithstanding that in case of necessity they had known how to support the men in battle. And since the community was constituted by the totality of arms-bearing persons, they could not be independent members of the community; they were incapable of serving in the army and therefore also in the courts--for he who would participate in the popular court must be able to bear arms, since the procedural contest might at any moment be transformed into a warlike combat. (Huebner 64)

A few of the codes make this connection between ability to fight and legal capacity explicit. Liutprand 13.VII forbids daughters from sharing in their father's wergeld if he leaves no son because "filiae eius, eo quod femineo sexu esse prouatur, non possunt faidam ipsan leuare" (his daughters, because they are of the female sex, are unable to raise the feud), while Lex Baiuvariorum IV.29 protects women with a two-fold wergeld because they are unable to defend themselves with weapons.[14] Women were thus considered physically unable to

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[14] Enhanced wergelds for women also occur among the Lombards, usually of 900 solidi, three times the normal compensation for a freeman (Rothair 26, 186, 191), and sometimes of 1200 solidi, four times the normal compensation (Rothair 200, 201); they are also found among in Leges Alamannorum LIX, LX. Among the Salian and Ripuarian Franks, wergeld was usually multiplied by three but only for women of child-bearing age; female children and older women had the same wergeld as men of equivalent rank; Pactus Legis Salicae XLI.15, LXVe.1, CIV.1; Lex Ribuaria XII.1, XIII, XL.10. Among the Anglo-Saxons, no such enhanced wergeld was provided; women had the same protection as men of equivalent rank (Æðelbirht 74, Ælfred 9), although the charge of a half wergeld for an aborted fetus in effect at times increased the wergeld for a pregnant woman (Ælfred 9). Presumably the reason for these increased wergeld provisions was the same as that given in Lex Baiuvariorum--the physical inability of women to bear arms, coupled with the value of their reproductive capacity, creating a need for increased protection. However, once the codes decided on this rationale for the reduced legal capacity of women, they seem to have applied it without regard to their actual physical abilities. That women at times became involved in physical altercations is clear from an additional

fight and the only conceivable way they might have taken vengeance or otherwise backed their legal claims would have been in cases where they could muster masculine support for the undertaking--a course usually open only to women of the upper classes.

Grendel's mother is certainly no aristocratic Anglo-Saxon litigant, and her solitary vengeance-taking foray must have therefore seemed legally peculiar to the Anglo-Saxon audience of Beowulf. This conclusion is bolstered by a review of the literary treatments of women's roles in the more violent aspects of dispute resolution. Chance's analysis of the Old English literary evidence makes it abundantly clear that Anglo-Saxon women were not expected to be active participants in the feud:

> The role of woman in Beowulf, as in Anglo-Saxon society, primarily depends upon peace-making, either biologically through her marital ties with foreign kings as a peace pledge or mother of sons, or socially and psychologically as a cup-passing and peace-weaving queen within a hall. (Woman As Hero 98).

Women such as Hrōðgār's queen, Wealhþēow, Hildeburh in the Finnsburh episode, or Frēawaru, the daughter of Hrōðgār, all act as peace-makers or as pathetic symbols of the tragedy

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provision in Lex Baiuvariorum IV.29, which denies the twofold composition for a woman who, "through boldness of heart," defends herself like a man. Similarly, Rothair 378 denies any enhanced wergeld for a woman who becomes involved in a brawl in a manner "quod inhonestum est mulieribus facere" (which is dishonorable for a woman), while Liutprand 123.VII denies her even a full wergeld, and 141.III eliminates her wergeld altogether when she beats a man up as part of a gang. Lex Gundobada XCII.1 also forbids a woman any compensation who exits her courtyard to fight.

inherent in the feud, but they do not act as avengers of their own wrongs, and this pattern seems to have generally held throughout the Old English literary corpus (Woman As Hero 1).[15]

Women play a different role in continental and Scandinavian feuds; they are often as much or more blood-thirsty than the men, but still rarely take a direct part in the bloodletting. The quarrel of Brunhild and Kriemhild in the Nibelungenlied, for example, eventually leads to the falling-out between the Burgundians and the Huns, yet both women act through men when it actually comes to the killing--Brunhild through Hagen, when he kills Siegfried, and Kriemhild through the Huns when she takes vengeance on her Burgundian kinsmen. Similarly in Njálssaga 35-45, the fight between the households of Njál and Gunnarr originates in a feud between Bergþóra, the wife of Njál, and Gunnarr's wife, Hallgerðr, and this intense animosity between the two women keeps the feud alive and tests the friendship of Njál and Gunnarr to the utmost, yet both women use the male members of their households to strike at one another. Indeed, the scene of the woman who will not let the feud die, egging on her male kinsmen to take blood-vengeance, is something of a literary

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[15] There are of course strong, active women in Old English literature as well, Elene, Judith and Juliana. Helen Damico notes that these three are treated in much the same way as Old English male heroes, and argues that they represent an Old English manifestation of the favorable treatment sometimes given valkyrie-like warrior-women, such as Brynhildr or Sváva, in Old Norse courtly literature ("Valkyrie Reflex" 182-187).

commonplace in the sagas, for example, Guðrún's goading of Bolli to avenge himself on Kjartan in Laxdœla saga 49, Hildigunnr's shaming of Flosi into taking vengeance over the death of Hǫskuldr in Njálssaga 116 by showering him with the slain man's blood, or Þorgerðr's presentation of Vigfúss' head to Arnkell in Eyrbyggja saga 27, which obliges him to take vengeance.[16] Indeed, Miller has suggested from these last two scenes and others like them that women may have been able to legally bind men to take vengeance by presenting them with parts of the slain man's person--clotted blood, severed members, etc.: a partial redress for their physical powerlessness in the feud ("Choosing" 175-94).[17]

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[16] The debate over saga historicity has also affected scholarly faith in the trustworthiness of saga depictions of women. Jenny Jochens traces the type of the "female inciter" from early Eddic works such as Hamðismál, which shows Guðrun egging her sons into taking vengeance on Jǫrmunrekkr (Ermanaric), or from Volsunga saga, in which Brynhildr eggs Gunnarr into killing Sigurðr, into the family sagas, and notes the paucity of such figures in the king's sagas or Sturlunga saga (167-73); she therefore concludes that "in Iceland and Norway the goading woman was far less prominent than the family sagas would have us believe" (173). She does not claim, however, that the practice was wholly fictional, which indeed seems doubtful given the lack of other outlets for the feuding aggression of female kin-group members. Miller notes that goading is not limited in the sagas to women but is also practiced by other members of the kin-group unable to physically avenge themselves, so that it does not appear to be solely attributable to literary misogyny (Bloodtaking 212-14). "Goading actually did allow the relatively disenfranchised to participate in group decision making . . ." (213).

[17] Miller finds evidence of a similar legal ceremony in Beowulf, although here it is not so specifically associated with women: the laying of the sword Hūnlāfing on Hengest's lap (1142-1144) and Wēohstān's presentation of Ēanmund's sword to Onela (2610-2625) ("Choosing" 194-203); Liggens likewise notes that the laying of the sword in Hengest's lap reminds

When saga women do physically avenge themselves, their actions are usually represented as either ineffective or deviant. Thus, Gísli's sister, Þórdís, seeks to revenge herself on his killer, Eyjólfr, when he comes to stay with her and her husband Bǫrkr. Eyjólfr out of either thoughtlessness or arrogance displays Gísli's sword at the dinner table, and as Þórdís reaches for the spoons to serve the men she seizes the sword and stabs him with it. The sword hilt catches on the table-edge, however, and she only wounds him in the thigh. Bǫrkr seizes her by the wrist and forces her to drop the sword, and then immediately grants Eyjólfr self-judgment in the case, whereupon Þórdís declares herself divorced from Bǫrkr for taking the part of her brother's killer (Gísla saga 37). The symbolism with which the attempt is presented perhaps gives some indication of why it fails--as Þórdís reaches for a utensil appropriate to women, the serving spoons, she seizes instead one with which she is unfamiliar, the sword, and through a combination of her unfamiliarity with the sword and the intervention of the dinner table, another article appropriate to women, her attempt fails. And yet the wound she inflicts is certainly shameful for Eyjólfr, partly

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him of his duty to take vengeance (197). The ability of specific weapons and other heirlooms to force the feud is indeed remarkable, for example Bēowulf's prediction concerning the actions of the old warrior at 2041-2069, or the effect on Kriemhild of Hagen's display of Siegfried's sword in the Nibelungenlied (380).

because of its proximity to his genitalia but also because it is struck by a woman.

That the blows of women were considered shameful to those who received them is clear from the same saga. When Auðr, Gísli's wife, smashes Eyjólfr across the nose with the purse of silver he offers her to betray her husband, she taunts him with the shame of her blow: "Haf nú ðetta fyrir auðtryggi þína ok hvert ógagan með. Engi ván var þér þess, at ek mynda selja bónda minn í hendr illmenni þínu. Haf nú þetta ok með bæði skǫmm ok klæki. Skaltu þat muna, vesall maðr, meðan þú lifir, at kona hefir barit þik . . ." (Take that for your easy faith, and every harm with it. There was never any chance that I would give my husband over to you, scoundrel. Take your money, and shame and disgrace with it. You will remember, miserable man, as long as you live, that a woman has struck you . . .; 32).[18]

Unlike þórdís, who seemingly acts nobly if ineffectively, Bróka-Auðr, "Breaches-Aud," is held up to ridicule as a truly perverse female figure, a cross-dresser who wears a man's

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[18] The idea that the blows of women were considered particularly shameful is confirmed by reference to non-saga materials such as the Nibelungenlied. On Gunther and Brunhild's wedding night, she wrestles with him, ties him up with her girdle and hangs him from a nail on the wall. Gunther is quite mortified by this treatment, noting in confidence to Siegfried that "I got only shame and disgrace . . . for I have brought the wicked devil home to my house. When I wanted to make love to her, she tied me up tightly, carried me to a nail, and hung me up high on the wall. There I hung in terror all night until the day, before she untied me" (280).

breaches and takes upon herself the masculine role of avenger (Laxdœla saga 35).[19] When Þórðr Ingunnarson divorces her in order to marry Guðrún Ósvífrsdóttir, she travels by night to the farm where she knows he is staying, sneaks into the bed-closet where he is sleeping and stabs him in the right arm, the sword continuing through and gashing him across both nipples. Like the episode with Þórdís, the incident seems to play on a reversal of male-female roles: the male in the bed-closet is literally and figuratively "pierced," here with a sword, and as Miller points out, there seems to also be in the position of the wound some play on the notion of a woman "cutting" her man an effeminate, low-cut shirt, one which exposes the nipples--which is of course precisely the course of action Þórðr recommends to Guðrun when she wishes to escape from her own unhappy marriage with Þorvaldr (Bloodtaking 354, n. 35).[20] The incident shows that the idea of feminine vengeance-taking was considered both degrading to the woman and shameful to the victim.

The perversity of Grendel's mother therefore lies in the legal flaw of her character as a female avenger, as a woman who takes a legal course inappropriate to one of her gender,

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[19] A similar treatment is given to Þuríðr in Heiðarvíga saga 22; when she tries to join the vengeance taking foray of her sons, they concoct an elaborate ruse to get her out of the way by having her horse throw her into a brook.

[20] At Þórðr's suggestion, Guðrun sews Þorvaldr a shirt with a low neckline, and when he puts it on declares herself divorced from him for cross-dressing, a basis for divorce under Icelandic law (Laxdœla saga 34).

much like Þórdís or Bróka-Auðr. These comparisons give us some idea of what the poet perhaps means when he remarks that her woman's attack is less devastating than that of a man--"wæs se gryre læssa/ efne swā micle, swā bið mægþa cræft,/ wīg-gryre wīfes be wæpnedmen . . ." (the terror was less by just so much as is the skill of women, the wife's war-power, in comparison with that of men . . .; 1282-1284). Given the fact that the blows of women were considered particularly shameful to those who received them, and also given the fact that the Danes are so completely caught off-guard and unprepared by the really very effective vengeance of Grendel's mother, it seems possible that this statement may be a grim example of litotes directed at the Danes, who become the victims of a woman's vengeance. Her attack is just so much less effective than that of a man--and yet like the case with Þórðr, it is sufficient vengeance on the unmanned men she finds sleeping in the hall.

Any disapprobation heaped on the Danes misses Bēowulf, however, for he is not in the hall at the time of the attack: "Næs Bēowulf ðær,/ ac wæs ōþer in ær geteohhod/ æfter māþðumgife mærum Gēate" (Bēowulf was not there, but was elsewhere in a dwelling appointed before to the greatest of Geats, after gift-giving; 1299-1301). The question therefore arises again of how the claim against the Grendel kin moves from the Danes to the hero. Here, the answer seems much more straightforward than before--Hrōðgār literally hires him:

> Eard gīt ne const,
> frēcne stōwe, ðǣr þū findan miht
> sinnigne secg; sēc gif þū dyrre!
> Ic þē þā fǣhðe fēo lēanige,
> ealdgestrēonum, swā ic ǣr dyde,
> wundnum golde, gyf þū on weg cymest. (1377-1382)
>
> (That land you don't know, the terrible place, where you may find the sinful creature; seek if you dare! I will repay you for the feud with riches, with ancient treasures, as I did before, with twisted gold, if you come away)

There is no question of any sort of assignment here; none is necessary, for the vengeance-taking foray will be launched into the lair of the monsters itself and the question of who controls Heorot and why is not important. Bēowulf is simply acting as a hired champion; indeed, the poet refers to him during the fight with Grendel's mother as freca Scyldinga (warrior, or hero, of the Scyldings; 1563).

This brings us to the episode of the fight under the mere, a passage in the poem which seems again to give the lie to the poet's disparaging remarks concerning the prowess of Grendel's mother. For she here puts up a much better fight than her son did in Heorot, coming perilously close to killing the hero. Various critics have sought to explain her sudden increase in power in different ways. Some have accounted for it with what they perceive to be her moral and legal ascendancy as an avenger.[21] But as we have seen, while her

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[21] Nist 21; Huffines 79-80; Hume, "Theme and Structure" 14; Kiernan 25-26. Others have sought to explain her suddenly increased effectiveness as an unassimilated folk-motif; see Nora Chadwick's "The Monsters and Beowulf" for Norse parallels (178-93), and Martin Puhvel's "The Might of Grendel's Mother" for Celtic analogues. Helen Damico has also argued that she

vengeful impulses improve her legal standing they cannot because of her sex altogether account for it, and her effectiveness as an avenger may be intended as a dig against the Danes as much as anything else.

I would like to suggest that Grendel's mother is more strongly justified in the fight beneath the mere, but not solely because she is an avenger. As I noted in the first chapter, many critics have suggested that the evil of the monsters in Beowulf is constituted socially, that it forms the dark mirror image of the social relationships observed in human society; I suggested further that the misdeeds they commit will therefore respond to legal analysis, the law being so firmly imbedded in the context of Germanic social structures and values. A few of the critics who hold to the "social inversion" idea have further suggested that the abodes of the monsters, particularly the mere-hall, represent an inversion of the social center of Germanic society, the mead-hall,[22] and if this is the case, it is not beyond the realm of possibility that the Grendel kin possess a mund of their

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expresses the usual view held of the valkyries or wælcyrgan in Old English literature--baleful war-demons who are associated by Wulfstan in the Sermo Lupi ad Anglos and by Cnut in his letters with "murderers, slayers of kinsmen, and fornicators" ("Valkyrie Reflex" 177), a particularly interesting association given the catalogue of offenses committed by both her and her son. Other critics have, of course, stressed the other side of the equation, arguing that Grendel's mother does not become more justified, but rather that the hero becomes more flawed; see the sources discussed at pages 22-24, supra.

[22] See Lee 203-5; Hume, "Concept of the Hall" 68; Dragland 614; Chance, "Structural Unity" 293, Woman As Hero 102.

own comparable to that of Hrōðgār over Heorot. Grendel's mother is therefore stronger in the fight beneath the mere because there she is a defender of her own mund over the mere and its environs; here Bēowulf is the invader just as Grendel was earlier with Heorot, and his intrusion into the proper sphere of monsters almost gets him killed. There are several supports for this notion.

One is the fact that the poet throughout the fight with Grendel's mother refers to the home of the Grendel kin beneath the mere as a hall or building over which some sort of mund might be legitimately held. It is a nicorhusa (house of water-monsters; 1411); an ælwihta eard (a home of monsters; 1500); a hof (a house; 1507); a nīðsele (a battle hall or hostile hall; 1513); a hrōfsele (a roofed hall; 1515); like a hall it has firelight (1516); it has a flet, a floor; it is a reced, a building (1572), and a wic, a hall (1612); it is a [gūð]sele (a battle-hall; 2139). Many of these epithets contain a prefix suggesting conflict, but this may be no more than the same sort of irony the poet uses when he describes Grendel as a hall-thane--the incongruous juxtaposition of like and unlike referents points up simultaneously the similarities and differences between the object described and a real hall such as Heorot, but it does not nullify the fact that the enclosure described is legally important to the monsters and therefore to them worth protection. The poet also stresses the idea that Grendel and his mother hold sway over the moors

and the mere-hall. Hrōðgār recalls somewhat belatedly that "swylce twēgen/ micle mearcstapan mōras healdan,/ ellorgæstas" (two such great march-steppers hold the moors, alien spirits; 1347-1349); and that "hī e dȳgel lond/ warigeað" (they guard a secret land; 1357-1358). The poet then goes on to note that Grendel's mother had "flōda begong/ heorogī fre behēold hund missēra" (fiercely ravenous held the flood's compass a hundred half-years; 1497-1498), interestingly the same length of time that both Hrōðgār and Bēowulf hold their respective kingdoms; and Bēowulf notes that in his fight with Grendel's mother he killed hūses hyrdas (the guardian[s] of the house). The idea of the close and the monsters' guardianship over it is therefore repeatedly stressed in the section with Grendel's mother.

Another support for the idea that mund is important in the second fight is the fact that the wrestling match with Grendel's mother seems to focus on hands and holding only a little less than the fight with Grendel, and if the first fight was significant as a metaphoric battle for legal control over Heorot, the second seems no less significant as a struggle over the mund of the mere-hall.[23] As Bēowulf swims

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[23] Another body part which is usually assigned some symbolic significance in the fight with Grendel's mother is of course the head--both Æschere's and Grendel's are of considerable importance here (Rosier, "Heafod and Helm"), and Greenfield explains the heads of the second fight as symbolic of the thane's duty to provide wise counsel to his lord and to protect his head ("Extremities" 4-5, 11). This does not, however, explain the symbolism of Grendel's head except as a sort of feuding tit-for-tat--just as Grendel's mother has

to the bottom of the mere, the troll-wife "grāp þā tōgēanes, gūðrinc gefēng/ atolan clommum" (reached then towards him, seized the battle-warrior with horrible grips; 1501-1502); yet she "þone fyrdhom ðurhfōn ne mihte,/ locene leoðosyrcan lāðan fingrum" (might not pierce the war-covering, the locked mail-shirt with hostile fingers; 1504-1505). After Hrunting, Unferð's sword which had never before failed in many hondgemota (meetings of hands; 1526), fails here, Bēowulf must rely again on his mundgripe mægenes (the strength of his handgrip; 1534) to defeat the monster.[24] In the ensuing wrestling match, he grasps Grendel's mother "be eaxle --nalas for fæhðe mearn--" (by the shoulder, never shrinking from the feud; 1537), yet she quickly "andlēan forgeald/ grimman grāpum ond him tōgēanes fēng" (gave requital with grim grips and pulled him towards her; 1541-1542). He cannot, however, defeat her until he takes the giant's sword from the wall, but

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robbed Hrōðgār of his best counseling head, so Bēowulf takes the head of her son. The laws occasionally address the issue of head-taking, usually as a punishable variety of corpse-mutilation intended to humiliate the victim or his family; see Lex Baiuvariorum XIX.6, Gulathings-Lov 238, 241; also Miller, "Choosing" 180, n. 88.

[24] There have been various explanations of why Unferð's sword fails the hero here; among the more interesting are the notion that Unferð is a kin-killer and so his weapons are ineffective against the Grendel-kin, themselves in some degree symbolic of kin-slaying (Clark 427-28; Hughes 394), while Peter Jorgensen attributes it to a folk-motif carried over from the original versions of the story. Alexander C. Murray has interestingly suggested on the basis of the Anglo-Saxon laws that the lending of the sword is an offer to share legal responsibility for the feud with the Grendel-kin ("Lending of Hrunting").

even this supernatural instrument of victory seems to continue the hand imagery of the struggle's early phases; when Bēowulf strikes off the troll-wife's head, the sword seems to literally grapple with her: it "hire wið halse heard grāpode,/ bānhringas bræc" (gripped her hard by the neck, broke the bone-rings; 1566-1567).

As Chance notes, the wrestling match is also noteworthy for its inversion of another usual female role in Old English poetry, that of the welcoming hostess who draws her guests into the hall and shows them hospitality with drink and fair words. Bēowulf is several times referred to as a gist, a "guest," and her wrestling holds are referred to ironically as embraces; the passage seems to therefore echo many of those in the Grendel section where the monster is himself referred to as a hall-retainer, receiving drink and hospitality in Heorot from Bēowulf ("Structural Unity" 293; Woman as Hero 101-2). She also notes the rather ludicrous sexual overtones of the wrestling match, with Grendel's mother inverting the usual feminine roles of passive, biological peace-weaving by climbing on top of her guest and trying to stab him with an obviously phallic knife; the passage "almost projects the mystery and danger of female sexuality run rampant" ("Structural Unity" 293-96; Woman as Hero 102-4). Yet the wrestling match also recalls the troll-wife's legally inappropriate assumption of the role of vengeance taker, for the passage deliberately hits the note of "vengeance" on more

than one occasion during the fight. Thus, the fight is characterized as a fæhð, a feud (1537); when Bēowulf abandons his sword and wrestles with her, Grendel's mother "hraþe andlēan forgeald" (quickly gave requital; 1541); in drawing her knife, she "wolde hire bearn wrecan" (would avenge her child; 1546). Indeed, the wrestling match, with the somewhat ridiculous position in which it places the hero, seems to strikingly recall the sexual overtones of the episodes of Bróka-Auðr and Þórdís from the sagas, in which female assumptions of socially preferred male roles in both sexual activity and vengeance taking are ironically conflated to the discredit of both the women and their victims. If this is the case, then it is probably the only instance in the poem of Bēowulf being mocked as the target of feminine vengeance, a treatment usually reserved for the Danes.

The idea that Grendel's mother is defending her mund over the mere-hall is further strengthened by the principle of sanctuary inherent in the idea of mund. Among the Anglo-Saxons and others of the early Germans, even a wrongdoer was not to be attacked in his home with impunity. Ælfred 42 provides that if a man knows his adversary to be at home, he cannot enter the homestead by force but must instead besiege his enemy inside until he yields himself up. Frostathings-Lov IV.50-52 forbid even the king or jarl from attacking a man in his own home, while Leges Alamannorum XLIV.1 allows a killer to be pursued into his own home only immediately following the

killing, in hot pursuit; stopping to gather support incurs a ninefold wergeld for the killer, the same as for murder. The Lombards and Alamans seem to have also recognized a limited right of sanctuary for killers fleeing into the courtyard of another; Rothair 269 requires the owner of the courtyard to be compensated with 20 solidi if someone takes a fugitive from the courtyard of another after promising him peace, while Pactus Legis Alamannorum XXI.5 provides that if a murderer flees into a courtyard no claim may be made against him.[25] In attacking Grendel's mother in her lair, Bēowulf therefore injects himself into something of a legal hornet's nest, and it is no real surprise that he suffers such difficulties at her hands.

It could of course be asked whether women could hold the mund over a hall or other enclosure, whether the rights of mund were gender restricted. As I have already noted, women in Anglo-Saxon society were usually regarded as being under the mund of male kinsmen or perhaps their husbands. But this male tutelage does not seem to have restricted the rights of Anglo-Saxon women to own and dispose of real property in their own right, and these rights of ownership doubtless carried the right of protection as well. Aside from the cases of Edwin's mother, Eadgifu, and Wynflæd which we have already considered, other charters from early in the period show ecclesiastical

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[25] All of the codes of course also offer varying degrees of sanctuary for fugitives fleeing to a church, and in some instances the house of the king.

women transferring property which was evidently theirs to dispose of, and doing so without male interference.[26] There is also a case mentioned in an Old English letter to Eadward the Elder describing a land dispute between Æðhelm and Helmstan; Helmstan based his claim on that of one Oswulf, who had obtained the land from one Æðeldryð; "7 heo cwæþ to Osulfe ðæt heo hit ahte him wel to syllanne for ðon hit wæs hire morgengifu ða heo æst to Aðulfe com" (and she said to Oswulf that she was able to sell it to him because it was her morning gift from when she was married to Æðelwulf; Birch no. 591, 2: 236-37; trans. Whitelock, Historical Documents no. 102, 544-46). Anglo-Saxon women could therefore own and control real property in their own right, and it is quite likely that the right to protect that property, whether it was enclosed or had enclosures on it, was held as well by the woman owners.[27]

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[26] See Archbishop Nothelm's adjudication of a disputed land grant from the Mercian king Æthelred to two nuns, dated 734-737 (Birch 156, 1: 225-26; trans. Whitelock, Historical Documents no. 68, 494-95); see also the settlement between Archbishop Athelhardus and Abbess Cynedritha over the lands of a monastery at Coccham, dated 798 (Birch 291, 1: 405-7; trans. Whitelock, Historical Documents no. 79, 508-10).

[27] There is a split among scholars over whether the right to transfer real property was possessed by women during their husbands' lifetimes. Meyer contends that all of the wife's property, even the morning gift, was under the husband's management during coverture, and that he was forbidden only to alienate it without his wife's consent (61-63), although he mentions as an exception an instance from the "Worcestershire Marriage Agreement," a document from Cnut's reign, in which the groom, evidently anxious to procure his bride, agreed with her brother to settle an estate on her which she could bestow upon whomever she wished during her lifetime or at her death (63). On the other hand, Fell argues that the wife had at all times complete freedom over the morning gift, and considerable

If, as I have suggested in this chapter and the last, the legal concept of mund is important to the fights with the Grendel-kin, it may help to explain another troubling crux in the poem, the meaning of the term āglǣca which the poet applies to all three of Bēowulf's principal adversaries but also, oddly, to the hero himself and to the legendary dragon-slayer Sigemund. The meaning of the term has never been altogether satisfactorily explained. Lotspeich early suggested a meaning of āg-, cognate with Primitive Germanic *aig- and Lithuanian eiga, a "going," or a "march," plus lǣca, Old English lāc, "battle," and lācan, "to jump" or "move rapidly"; an āglǣca is therefore "one who goes in search of his enemy" (1). Subsequent commentators have varied Lotspeich's etymology, but have usually come to the conclusion that the term was not inherently pejorative; Dobbie notes that "it is clear that in the historical period of Anglo-Saxon it did not need to have any more specific meaning than 'formidable one'" (4: 160).[28] And yet Alexandra Hennessy Olson has suggested a variant reading of the first element in the term, arguing that the palatization of the "g" to "h" in

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control over the other marital property as well (56-58). However, even Meyer and Rivers agree that once the marriage ended in the husband's death, the surviving widow enjoyed considerable freedom over properties she held in her own name, and the noted absence of any father for Grendel (1355) would seem to make his mother some sort of femme sole along these lines.

[28] For a list of references dealing with the term and its various suggested meanings, see the Introduction, pages 4-5, note 4.

certain variant spellings of the term indicates that an Anglo-Saxon speaker might have heard or understood the first element as æ, "law," so that an āglæca might have been someone who "strives against the law"; she further notes that the term is usually applied to Bēowulf and the monsters when they invade each others' realms (66-8). If the concept of mund is being invoked in the monster fights, Olson's idea is obviously much strengthened.

The fight with Grendel's mother is therefore in many ways legally ambivalent; the poet seems to extend a possibility of legal justification to her as an avenger, and yet her action is unfavorably colored by her son's outlawry, and also by the fact that she is female and so acts as an avenger inappropriately, if not illegally. She seems to be on firmer legal ground, however, when she defends the mere-hall against the intruding Bēowulf, although even here her actions are treated ironically, if not parodically, by her inversion of the usual role of hostess and by her continuing vengeance motive. In any case, her legal ground is much stronger than that of her son in the first fight, and this would seem a satisfactory explanation for the hero's much greater difficulty with her.

Chapter 4

The Expanding Dispute:

The Fight With the Dragon

Like his fights with the Grendel-kin, Bēowulf's battle with the dragon is described in social and legal terms as a feud, a fæhð. The poet speaks of the theft as giving rise to a fǣhð (2403), and as he prepares to challenge the dragon, Bēowulf notes that he "wylle,/ frōd folces weard fǣhðe sēcan" (will, old and wise guardian of the folk, seek the feud; 2512-2513).[1] The dragon also appears in this conflict as a genuinely wronged party, for despite the fact that he is described as a terror to earth-dwellers (2274-2275), and as a ðēodsceaða (harmer of the people; 2278), at the time he enters the story he has been guarding the treasure for 300 winters so quietly that no one even suspects he is there (2278-2279), until a man enters the barrow and steals the cup, setting a catastrophic feud into motion. The dragon's legal position in this conflict therefore deserves and repays close attention.

Critics have at times called dragon's vengeance "excessive and misdirected" (Cherniss, "Progress" 482),[2] which

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[1] Interestingly, when the hero calls the dragon forth, the poet notes that "næs ðǣr māra fyrst/ frēode tō friclan" (there was no more time to ask for friendship [reconciliation?]; 2555-2556), an example of grim irony perhaps playing on the practices of arbitration and peace-making which could terminate feuds.

[2] The dragon's vengeance is similarly characterized as excessive by Adrien Bonjour (309-10) and John Gardner (19). T.M. Gang on the other hand notes that unlike the Grendel kin, the dragon is not characterized as a foe of God, and that his

puts into question the nature and severity of the offense against the dragon: how badly has he been wronged, and does he overreact to the offense, or strike at the wrong parties?

The answers to these questions depend on a number of considerations, the first of which is the nature of the person who actually wrongs the dragon. The poet refers to him as niðþa nāthwylc (a certain man; 2215), fēascaftum men (a wretched man; 2285), and most importantly, as a þ--- (2223), a word blurred in the original manuscript but which Klaeber amends as þ(eow), "slave," and which others have amended as þ(egn), "thane."[3] However, Theodore Andersson has argued convincingly that the word should be amended to þ(eof), "thief," and has examined the nature of the Germanic crime of theft to back up his argument. Andersson points out that in the Scandinavian legal materials and in the sagas, the crime of theft was always a concealed taking and was distinguished from open and notorious seizures in much the same way that a murder was a concealed killing and distinguished from open and

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vengeance is provoked "by a very definite outrage" (6).

[3] For a full discussion of the advantages to þ(egn), see Lawrence 553-57; he rests his argument on the doubtful assumption that a poem composed for an aristocratic audience (if that is indeed what Beowulf is) would not stoop to treat slaves at all sympathetically, as the poet does briefly when he describes the þ--- as driven by necessity (2221-2225). Given the odium attaching to the crime of theft, the notion that a member of the Germanic upper class would have dirtied his hands with þēofes cræft (2219) seems almost ludicrous. Dobbie follows Klaeber in favoring þ(eow), and his note to the passage briefly discusses the various positions on the issue (4: 232).

notorious homicide (497-503). It was regarded as a particularly odious and morally blameworthy crime; thieves in the sagas are frequently portrayed as sexual deviants or sorcerers (497-505), in much the same way that murderers are on occasion associated with sorcerers and prostitutes in the Anglo-Saxon laws.[4] And although Andersson does not examine the Anglo-Saxon laws to support the conclusions he draws from the Scandinavian sources, it is clear that they and the other leges barbarorum strongly confirm his arguments.

Andersson suggests that the term "thief" had by itself connotations of secretiveness in the vocabulary of most Germanic languages. He notes that its Gothic adverbial form, þiubjo, is used as a translation for the Greek λάθρᾳ and ἐν κρυπτῷ, "secretly," in Ulfila's Bible (505), and a reverse equivalence seems to have prevailed in the leges barbarorum, where the Latin furtum is regularly used to describe acts of thievery. Also, persons or agents which are regarded as thieves in the Anglo-Saxon laws are usually so treated on the basis of actions suggesting secretiveness. For example, Ine 43 provides for a compensation of 60 shillings where someone destroys the trees of another by fire, "forþamþe fýr bið þeof" (because fire is a thief), but only 30 shillings compensation where he cuts the trees down with an axe, "forþon sio æsc bið melda, nalles ðeof" (because an axe is an informer, not a

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[4] For a discussion of the moral outrage expressed for murder, see pages 77-81, supra.

thief); in other words, the banging of the axe gives the away the taking, as opposed to the setting of a fire which is not so easily detected. Similarly, both Ine 20 and Wihtræd 28 provide that if a stranger leaves the road, "7 he þonne nawðer ne hryme ne he horn ne blawe, for ðeof he bið to profianne: oþþe to sleanne oþþe to alysenne" (and he neither shouts nor blows a horn, he is to be taken as a thief and may either be slain or put to ransom); the presumption being that a foreigner who moves off the road without making a noise must be intending to act secretly and so criminally. Similarly, the large number of provisions in not only the Anglo-Saxon laws but the other leges barbarorum for the forensic discovery of thieves, usually by following their tracks or the tracks of stolen animals, always presume that the circumstances of the taking are not immediately known, as they of course would be in the case of an open and notorious taking.[5]

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[5] III Eadmund 6 provides that tracks leading to the premises of the accused serve as an oath for the accuser; i.e., his "burden of proof" in the case is presumed carried and he need not make an oath concerning his suspicions, but the case proceeds immediately to the defense. The right to search the premises to which tracks lead is also provided for in Lex Gundobada XVI and Lex Ribuaria XLIX, while more general provisions dealing with the right to search for stolen goods are found in Rothair 284 and Lex Baiuvariorum XI.5. In addition, Lex Gundobada XVI.3, XCV and CIII.5, and Rothair 255 all allow for searches to be conducted where the way is pointed by divination. Much Germanic legislation seems concerned with setting up evidentiary presumptions of guilt in theft cases, just as similar provisions do in killing cases; thus Gulathings-Lov 255 and Frostathings-Lov XV.7,8 provide an ingenious system for determining guilt depending on where within the suspected premises the stolen goods are found--if in the housewife's cupboard to which she keeps the keys, she is the thief; if in the haystack in the barn, the person who

Theft in the Anglo-Saxon laws seems to have also been regarded as more blameworthy than an open taking. A thief taken in the act was ordinarily to be killed out of hand, without a right of wergeld going to his kinsmen, and a thief who had his theft proven after the fact was usually either mutilated or executed. Thus, Wihtræd 25, Ine 12 and 35, and II Æþelstan 1 all provide for the killing of thieves taken in the act, and further that they should fall without compensation.[6] II Æþelstan 11 and III Æþelred 7 both allow the relatives of one captured or killed as a thief to clear his name and collect compensation for him, but the procedure for doing so was relatively difficult, requiring in the latter case placement of a 100 silver piece security with the court and submission to the triple ordeal. As the Anglo-Saxon period progressed, the penalties for thieves whose thefts were proved after the fact seem to have worsened. Ine 37 and

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keeps the barn is the thief, and so on.

[6] The penalties for thieves taken in the act varied among the continental Germans, although they seem to have been only slightly less draconian than those of either the Anglo-Saxons or Scandinavians. For theft of a horse or ox, Lex Gundobada IV prescribes death together with restitution of the stolen item, with a threefold composition for thefts of less important items; no restrictions of time or place are prescribed. Leges Visigothorum VII.II.XV-XVI allow a thief to be killed when he is discovered in the daytime and defends himself, or anytime he is discovered after dark, and Lex Baiuvariorum IX.6 similarly allows a thief to be killed if caught after dark. However, Lex Ribuaria IX.6 and Rothair 32 allow a discovered thief to be killed only if he will not allow himself to be bound. In addition, the leges barbarorum provide for various money penalties for theft to compensate for loss of the stolen item.

Ælfred 6 both provide for the amputation of a hand or foot, while II Eadward 6 reduces the thief to the servitude of his victim, again without a right of compensation for his relatives, but IV Æþelstan 6 prescribes various forms of execution depending on the sex and social status of the thief: freewomen were to be thrown from a cliff or drowned, male slaves to be stoned, and female slaves to be burned alive.[7]

Conversely, the Anglo-Saxon penalties for open robbery were somewhat less severe, and do not seem to have involved the degree of moral censure implied by the penalties of falling uncompensated or of mutilation or execution. Ine 10 prescribes a penalty of 60 shillings for robbery or seizure by violence, and Ine 15 requires that a person on a plundering expedition must pay his own wergeld to his victim or clear himself by oath.[8] The penalties for robbery or raiding seem

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[7] The penalty was also inflicted on the woman herself and not her mundwald or owner. The stiffer penalties for women may reflect a perceived feminine propensity for theft, an interesting idea when considered in conjunction with the case of Halgerðr in Njálssaga. Miller suggests that her theft from Otkell's storehouse in chapter 48 may have been a form of feminine vengeance taking for the insult to her husband, Gunnarr (Bloodtaking 89, 329 n. 30), and the draconian punishments set forth by Æþelstan could conceivably have been intended tc discourage women from taking revenge by stealing.

[8] Ine 13 §1 also contains a very odd provision which seems to defy definite interpretation: "Ðeofas we hatað oð VII men; from VII hloð oð XXXV; siððan bið here" (we call "thieves" up to seven men; from seven up to thirty-five a band of robbers; more is an predatory band). Nothing is said about the quality of the action which distinguishes these categories, only the number of men required before each may be applied. It could very well be considered yet another case of a presumption being applied--fewer than seven men would be presumed too weak to act except by stealth, and so on. The

to have increased as the Anglo-Saxon period advanced, however, probably as a natural corollary to the greater responsibility taken by the state for ensuring public order. Thus, III Æþelred 15 allows the victim of a robbery to make the deed known in three villages, after which the robber may not be sustained, probably a reference to outlawry, and II Cnut 63 requires restitution of the stolen property together with a forfeiture of two times the robber's wergeld to the king.[9]

Andersson uses this general odium attaching the crime of theft to support his suggested reading of þ(eof) in line 2223, pointing out that the man who steals the cup is described as synbysig ("beset by sin" or "occupied in mischief"; 2226); the dragon he steals from is besyre(d) ("deceived" or "tricked";

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consequences of such a classification may be found in Ælfred 26, providing that where a member of a hlоð kills someone, the killer himself must pay the full wergeld and his accomplices 30 shillings each. Provisions similar to this are found in Lex Ribuaria LXVII and Pactus Legis Salicae XLII.1,2, XLIII.3. Ine 13 §1 may therefore be little more than an attempt to define the limits of accomplice liability.

[9] This distinction between punishment for theft and punishment for robbery seems to have generally held among the continental Germans. Leges Visigothorum VII.II.XIII requires a ninefold restitution for theft, but VIII.I.IX and VIII.I.XII require only fourfold restitution for plundering committed while in the army or for robbery of wayfarers or laborers; VIII.I.VI, however, somewhat strangely requires an elevenfold restitution from those inciting others to plunder. Pactus Legis Salicae XIV.9 prescribes a 100 solidi compensation together with actual damages for stealthily stealing from a corpse or a sleeping man, but XIV.1 only 62.5 solidi together with actual damages for robbing a freeman by waylaying. Pactus Legis Salicae XIV. 4-8, however, prescribes a compensation of 200 solidi for robbing a man while he is moving house, or for plundering a house and actually taking something; the act of breaking in carries alone a penalty of 62.5 solidi.

2218), that he is stolen from while asleep (2218, 2295), and that the crime is committed by "þēofes cræfte" ("thieve's craft"; 2219, "craft" in the double sense of "skill" and "guile"). The dragon is thus not only stolen from, but stolen from by a thief, a truly disreputable class of person, and this may well have been seen by the original audience as increasing the seriousness of the offense against the dragon, and as perhaps something of an explanation for the severity of the vengeance he takes.

A second factor contributing to the seriousness of the theft is the fact that it also involves a violation of the dragon's mund over the barrow and its contents. Like the mere-hall, the barrow is frequently characterized as a house or hall; it is an eorð (hu)se ("earth-house"; 2232); a hordærn ("a treasure-house"; 2279, 2831); a dryhtsele dyrnne ("a secret lordly hall"; 2320); an eorðsele ("earth-hall"; 2410, 2515); an eorðreced ("earth-hall"; 2719); a hringsele ("ring-hall"; 2840); and finally, simply a reced ("hall"; 3088).[10] Interestingly, the dragon is on numerous occasions referred to as the hordweard ("hoard guardian"; 2293, 2300) and the beorges weard ("mound's guardian"; 2524, 2580, 3066), the

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[10] An additional reference to the barrow as a hall or house may occur in line 2212, where the poet notes that the dragon controlled a hēa- h-e. Klaeber gives the reading hēa(um) hæþe, "high heath," but Dobbie prefers hea(um) hofe, "high house." For a full discussion of the various editorial positions on filling this lacuna in the manuscript, see Dobbie 4: 230. The barrow is also frequently characterized as a beorg, a burial mound or barrow, but the term also means "a place of refuge."

frætwa hyrd ("treasure's guardian"; 3133), and once even as the mundbora of the hoard (its "mund-holder"; 2729). The barrow therefore seems to stand in ironic opposition to Bēowulf's hall, described as his hām ("home"; 2325), bolda sēlest ("best of houses"; 2326), the gifstōl Gēata ("treasure-throne of the Gēats"; 2327), the lēoda fæsten ("fastness of the people"; 2333), and an eorðweard ("earthen fortress"; 2334), in much the same way that the abode of the Grendel kin stands in opposition to Hrōðgār's Heorot.[11] It is therefore like the mere-hall subject to the mund of its monstrous denizen, and we have already examined at some length the seriousness of mundbryce in Germanic legal practices. The dragon's rage therefore seems more understandable and "balanced" than it might at first glance--when the thief violates the dragon's mund over his hall, the dragon repays Bēowulf by violating the mund of his hall when he burns it to the ground. Interestingly, when Bēowulf fights the dragon he does not repeat his earlier breach of the monster's mund--when he is unable to enter the barrow for the flames coming out of it, he calls forth the dragon to fight and the battle takes place outside the barrow (2546-2553). The poet also neatly

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[11] Lawrence briefly discusses this use of hall terminology to describe the dragon's beorg, although he merely sees it as substantiating evidence for the beorg's character as a burial mound (574). Irving (Reading 209), Hume ("Concepts of the Hall" 68) and Atkinson ("Oð þæt" 2-3) all point out its ironic inversion of Bēowulf's mead-hall, similar to the ironic inversion of Heorot by the Grendel-kin's mere-hall ("Concepts of the Hall" 68).

caps the symbolism of the earlier battles for the mund of Heorot and the mere-hall by casting this fight as something other than a wrestling match--Bēowulf retains his weapons and armor in the dragon fight, although he wishes he could wrestle against the āglǣcean as he "giō wið Grendle dyde" (did before against Grendel; 2520-2521).

A natural question to ask at this point is, of course, how the dragon's vengeance could be proper when it is directed not at the thief, but at Bēowulf. This requires a brief examination of what the thief does with the cup after he steals it. The poet notes that the thief took the cup to appease the wrath of his lord: "Nealles mid gewealdum wyrmhord ābræc,/ sylfes willum, sē ðe him sāre gesceōd,/ ac for þrēanēdlan þ(ēof) nāthwylces hæleða þearfa, ond ðǣr inne fealh . . ." (Not at all wilfully was the worm's hoard broken into, by the self-will of the one who sorely harmed him [the dragon], but for great distress a certain thief, the slave of nobles, fled hostile blows, lacked shelter, and so passed therein . . .; 2221-2225), and he further notes that after the theft the thief returned to his lord and "bēne getīðad/ fēasceaftum men; frēa scēawode/ fīra fyrngeweorc forman sīðe" (forgiveness was granted the wretched man; his lord beheld for the first time the ancient work of men; 2284-2286). The thief therefore flees from punishment for some unnamed offense, stumbles upon the hoard, steals the cup, and then returns with it to his lord, who accepts it and forgives him.

It is quite clear from the Anglo-Saxon legal codes that in accepting the cup and taking the thief back into his service, the lord becomes implicated in his theft and so a legitimate target of the dragon's retribution; masters were usually held liable under Anglo-Saxon law for the delicts of their servants.[12] Ine 22 provides that "gif ðin geneat stalie 7 losie ðe, gif ðu hæbbe byrgean, mana þone þæs angyldes; gif he næbbe, gyld ðu þæt angylde, 7 ne sie him no ðy ðingodre" (if a member of your household steals and escapes from you, if you have a surety [a person legally and financially responsible for another], you should claim the value from him; if he [the thief] has no surety, you shall repay the value, but the thief does not thereby escape punishment), while II Æþelstan 19 provides further that ". . . þeowan men, gif he fúl wurþe æt þam ordale, þæt mon gulde þæt ceapgild 7 swinge hine man ðriwa oððe þæt oþer gild sealde

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[12] III Eadmund 7, I Æþelred 1 §10, and II Cnut 31 all compel the lord to act as surety for his men, while II Cnut 33a makes a lord liable in general for the wrongs of his servants. The master's liability for homicides committed by a slave or servant seems to have been somewhat lower than it later became under these statutes; Hloþhære and Eadric 1 require that where the dead man is a nobleman, the lord must surrender the homicide (presumably for vengeance) and also pay "þrio manwyrð" (the value of three men, which Liebermann at 3: 19 and Attenborough at 179 both take to mean slaves) to the kinsmen of the dead man; Hloþhære and Eadric 2 requires payment of a fourth man's value if the lord allows the homicide to escape; 3 and 4 impose slightly lighter sentences if the dead man was a commoner. Ine 74, on the other hand, imposes only a 60 shilling fine on the owner of a Welsh slave who kills an Englishman, and then only if the master will not hand the slave over to the dead man's relatives for vengeance.

. . ." (a thief, if he fails at the ordeal, that one [his master] must pay the value and either scourge him three times or pay the value again). These penalties seem to have been inflicted on the master even when he knew nothing of the theft, for even stiffer penalties were imposed on a lord who knew of the thefts of his slaves; II Æpelstan 3 §1 stipulates that on the first offense the lord must lose his slave completely and also forfeit his own wergeld, and on a second such offense he forfeits all his property.[13] Whether mere acceptance of the stolen property meant that the lord knew of the theft is impossible to guess, but the lord in Beowulf would presumably have known his wretched underling could have only come upon such a valuable item by stealing it or finding it.[14]

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[13] On the continent, the Burgundians and the Franks made the lord responsible for the actual value of items stolen by their slaves, sometimes together with an additional fine (Lex Gundobada IV.2,4; Lex Ribuaria XXX; Pactus Legis Salicae XII.2), while the Lombards made the master responsible for the full ninefold penalty for his slave's thefts, together with a 40 solidi penalty (Rothair 254, 258). The Visigoths generally excused the master unless he participated in or knew of the theft (Leges Visigothorum V.V.VII, VII.II.II). Among the Norwegians, the master had either to take an oath himself to clear the slave and suffer outlawry if he failed, or else hand the slave over to the dead man's kinsmen or redeem him with a 40 mark fine (Gulathings-Lov 163).

[14] Even if he found it, the distinction between finding and stealing was never very clear in Germanic law; Rothair 260 stipulates that if someone finds an item in the road and lifts it above his knees without making it known, he will be regarded as a thief; an almost identical provision is found in Lex Ribuaria LXXVII.

There is a split of critical opinion as to whether the lord of lines 2284-2286 is Bēowulf himself. The hero is only explicitly connected with the cup at lines 2403-2405, when the poet notes that he "hæfde þā gefrūnen, hwanan sīo fæhð ārās,/ bealonīð biorna; him tō bearme cwōm/ māðþumfæt mære þurh ðæs meldan hond" (had then learned whence the feud arose, the dire affliction of men; into his possession had come the great, ornamented cup through the informer's hand). William Lawrence assumed early on that the lord of the earlier passage was Bēowulf himself, although he admitted "it may be that the cup only later came into Beowulf's keeping; that it was not given to him in the beginning. The whole narrative is so allusive and indefinite that certainty in details is impossible" (551-52). Michael Cherniss later supported Lawrence's tentative identification of lord and hero (89). Klaeber, however, assumed in his note to the passage that the lord was one of Bēowulf's men (208), and Earl R. Anderson bolstered this assumption by reading the "him tō bearme cwōm/ māðþumfæt mære" of lines 2404-2405 as an indication that the cup does not come into Bēowulf's possession until after the dragon's raids begin (155). Anderson's view is open to question, however, for lines 2404-2405 could just as easily be read as a reiteration of Bēowulf's earlier receipt of the cup, the full ramifications of which he has just come to realize; Lawrence's

tentativeness about how to read the actual circumstances of the transfer must therefore stand.[15]

I would contend that given the extensiveness under Anglo-Saxon law of the lord's vicarious liability for his dependents' delicts, this whole critical controversy is somewhat misplaced. For an Anglo-Saxon principal was liable not only for the wrongs of his slaves, but also for the wrongs of "suos homines et omnes qui in pace et terra sua sunt" (his men and all who are under his protection and on his estate; III Eadmund 7); he was legally responsible for "his hiredmen on his agenon borge" (his retainers in his own household; III Æþelred 1 §10; II Cnut 31).[16] Therefore, even if the lord of lines 2284-2286 is not Bēowulf himself, he is almost certainly one of his men, and if one of his men becomes implicated in the theft by accepting the stolen cup, Bēowulf does as well. The dragon is therefore not only more sorely wronged by the theft than critics have sometimes been willing to grant, but his attack on Bēowulf and his people is in no way misdirected.

All this assumes, of course, that the hoard is the

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[15] Pierre Monnin identifies the hlāford and Bēowulf because the term hlāford is used in the poem almost exclusively of Bēowulf (117).

[16] The lord's legal responsibility for his men does not appear to be an innovation of these relatively late Anglo-Saxon codes, although it is most clearly expressed there. The very early statute of Ine 22 seems to apply not merely to masters and slaves, but to the master's other legal dependents as well; the word it uses for "dependent" is geneat, which means literally "companion," "associate," "vassal," a term which is often compounded in the poetry with heorð to refer to members of a lord's comitatus.

dragon's to take vengeance for, and the question of legal title to the treasure is therefore of some importance. The only scholar to have dealt with this issue in any analytical way is Earl R. Anderson, who argues that the treasure rightly belongs to Bēowulf as king of the Geats. He bases this conclusion on the legal doctrine of treasure trove, which determines the legal ownership of deposits of valuables found hidden in the earth. Anderson relies in his argument on George Hill, who notes in his treatise on treasure trove that practice varied under Roman law whether the finder, the owner of the site, or the sovereign took ownership of treasure, but that in general the practice in the early Middle Ages seems to have followed the principle of "treasure regality"--treasure trove was an exclusive right of the sovereign (1-50). Although it is not known whether treasure regality was an accepted doctrine in Anglo-Saxon law, Anderson infers that it must have been from its appearance in the Anglo-Norman Leges Henrici Primi 10,1 and in most later medieval European legal systems (142-47). Anderson therefore contends that in fighting the dragon and taking the treasure, Bēowulf is only acting to recover property rightfully his.

Anderson's view is interesting, but its validity rests entirely on an assumption that the dragon has no right to the treasure, which he briefly bolsters by referring to the dragon's function as a natural guardian of treasure, described in both Maxims II and Beowulf:

Draca sceal on hlæwe, frod, frætwum wlanc. (Maxims II 26-27)

(A dragon shall remain in his barrow, old and wise, proud in treasures.)

Hē gesēcean sceall
(ho)r(d on) hrūsan, þǣr hē hǣðen gold
warað wintrum frōd; ne byð him wihte þȳ sēl. (Beowulf 2275-2277)

(He [the dragon] shall seek out a hoard in the earth, there he, old and wise in winters, will guard heathen gold; he is none the better for it.)

Anderson's contention is that "the dragon . . . possesses the treasure not by legal right, but by biological instinct . . . In losing the cup, the dragon does not suffer a legal wrong any more than the wolf, eagle and raven would be wronged by being denied the corpses of battlefield victims" (148). Why biological instinct and legal right are mutually exclusive is never explained. Yet Anderson's argument would seem to essentially reflect one critical view which sees the dragon as a natural force, an animal who is driven not so much by legally defined motivations as by "biological instinct"; he seeks out gold and sits on it as an expression of what Tolkien called draconitas, "dragon-ness," because that is what dragons do.[17] But this view underestimates the poet's obvious

[17] T.M. Gang, for example, noting that the dragon is not like the Grendel-kin described as a foe of God, concedes that we can call the dragon evil, "but in a very different sense of the word; an impersonal, amoral sense: rather as we might think of a disease as evil" (6). Adrien Bonjour, however, sees the dragon's evil as more individual, more motivated (305). Stephen C.B. Atkinson contends that the poet's description of the dragon can in fact support both views, for he is indeed ageless and not demonic in the same way as the Grendel-kin, but at the same time motivated by greed and

appreciation of the dragon's emotional states--his greedy guarding of the treasure and the subsequent joy he takes in wrecking vengeance on his human enemies are conspicuously human states of mind, not those of a mere animal. If he can feel such emotions, he could have at least an arguable legal claim on their focus.

Such a claim could rest on a number of bases. The most obvious and convincing of these is the function of dragons to act as the guardians of treasure, which Anderson himself notes. Such an idea could be founded on notions of legality or customary right as much as on biology, and we have already noted the number of synonyms for "guardian" of the hoard which the poet applies to the dragon; one of these, mundbora, even alludes specifically to the legal idea of guardianship, mund, over the treasure. It seems unlikely that the poet would have used so many of these terms for the dragon if he did not have even an arguable claim over the treasure. The dragon's right to the treasure could also be seen as prior in time to that of any other claimant, such as Bēowulf or his people, because while we do not know if the Gēats had control over the site of the barrow for "þrēo hund wintra," the period that the dragon has held the treasure, the text seems to portray the time of the dragon's acquisition as being in the remote and

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vengefulness; in Atkinson's view, both characterizations may be explained by the dragon's ironic inversion of Germanic kingship: "Like a king, the dragon combines the drives and emotions of an individual with the power and longevity of an institution" ("Oð ðæt" 3).

immemorial, therefore pre-Gēatish, past. It is also necessary to note that the "hordwynne fond/ eald ūhtsceaða opene standan" (the old dawn-harmer found the treasure-joy standing open; 2270-2271), an important point if the possibility of the dragon's claim is admitted--the poet seems to be deliberately calling attention to the fact that the hoard was standing open without any legal guardian, perhaps not even hidden, and therefore the legitimate property of the first finder.[18] It seems that if the dragon can legally own anything, he has at least arguable legal title to the treasure, enough so for him to legitimately dispute its ownership with the hero.

It is of course possible that both the dragon's and Bēowulf's claims to the treasure may be somewhat suspect because the hoard is cursed. The poet notes of the treasure that it was:

> . . . ēacencræftig,
> iūmonna gold galdre bewunden,
> þæt ðām hringsele hrīnan ne mōste
> gumena ænig, nefne God sylfa,
> sigora Sōðcyning sealde þām ðe hē wolde
> --hē is manna gehyld-- hord openian,
> efne swā hwylcum manna, swā him gemet ðūhte.
> Þā wæs gesȳne, þæt se sīð ne ðāh
> þām ðe unrihte inne gehȳdde
> wrǣte under wealle. Weard ær ofslōh
> fēara sumne; þā sīo fæhð gewearð
> gewrecen wrāðlīce. Wundur hwār þonne
> eorl ellenrōf ende gefēre
> līfgesceafta, þonne leng ne mæg

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[18] The phrase may also impact on Anderson's classification of the hoard as treasure trove, for items considered treasure trove are usually defined as "hidden treasure of which the ownership is no longer known" (Hill v), and the words opene standan would seem to at least raise a question over whether the hoard is hidden.

mon mid his (mā)gum meduseld būan.
Swā wæs Bīowulfe, þā hē biorges weard
sōhte searoniðas; seolfa ne cuðe,
þurh hwæt his worulde gedāl weorðan sceolde.
Swā hit oð dōmes dæg dīope benemdon
þēodnas mære, þā ðæt þær dydon,
þæt se secg wære synnum scildiġ,
hergum geheaðerod, hellbendum fæst,
wommum gewītnad, sē ðone wong strude,
næs he (næfne?) goldhwæte gearwor hæfde
āgendes (Āgendes?) ēst ær gescēawod. (3051-3075)[19]

(craftily fashioned, gold of the ancients, wound with a spell, so that no man might reach [touch, attain?] that ring-hall unless God himself, true king of victories, gave it to him to open the hoard--he is the protector of men--to only that man who seemed worthy to him. Then it was seen that the course had not prospered for the one who against right hid the treasure under the wall. First the guardian slew one among a few; then the feud was severely requited. It is a wonder where a brave earl will reach the end of life, when he may no longer with his kinsmen live in the mead-hall. So it was with Bēowulf, when he sought the mound's guardian in battle; he didn't know himself in what way he would leave the world. Just as the great princes solemnly declared that it (the treasure) should remain there until doomsday, that the man would be guilty of crimes, imprisoned in heathen temples, bound fast with hell-fetters, evilly punished, who plundered that place, not at all had he before beheld the owner's favor in gold [unless God's grace had before more readily favored the one eager for gold].)

As both Klaeber (Beowulf 227) and Kenneth Sisam (131) have noted, this curse may be analogous to the anathema clauses regularly found in Anglo-Saxon writs and charters, some of which could approach the level of sophisticated ill-will expressed in the curse from the poem:

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[19] Those portions of lines 3074-3075 in parentheses represent Klaeber's emendation of the manuscript, the original of which is presented in Dobbie's edition and which I have cited outside the parentheses. Dobbie's notes discuss briefly the various editorial solutions to the problems with the passage at 4: 272-73.

> Gif hwa þonne þurh ænige dyrhstignesse oððe þurh deofles lare þisne freols abrecan wille · oððe þas gesetedness on oðer awendan durre · Se he awyrged mid eallan þan awyrgednessan þe synd áwritene on eallan halgan bocan · 7 sy he ascyred fram ures drichtnes gemanan 7 ealra his halgana · 7 sy hé gebunden ða hwile þe he libbe on þisam life mid þan ylcan bendan þe God ælmihtig þyrh hine sylfne betæchte his halgan apostolan Petre 7 Paule · 7 æfter his awyrgedan forðsiðe ligge he efre on healle grundleasan pytte · 7 byrne he on þan ecan fyre mid deofle 7 his englan a butan ælcan ende · butan he hit ær his forðsiðe gebete. (Anglo-Saxon Charters no. 38, 70)[20]
>
> (If anyone through any presumption or the devil's urging wishes to break this freedom or dares to change this established right, he shall be accursed with all curses which are written in the holy books and cut off from the company of our lord and all his saints, and he shall be bound as long as he lives in this life with the same bands which God almighty himself entrusted to his holy apostles Peter and Paul, and after his cursed death he shall lie eternally in the bottomless pit of hell and burn in eternal fire with the devil and his angels without end, unless he makes amends before his death.)

Despite their religious character, these anathema clauses were obviously felt to have some real binding, legal force over those who would interfere with the transfer or confirmation of rights dealt with in the charter, and a similar binding force may therefore be argued for the curse over the dragon's hoard. But beyond the simple fact of the curse, there is very little that can be said with any certainty concerning its terms or its workings; the passage where it is described has been aptly described as a textual "locus desperatus" (Klaeber, Beowulf

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[20] Other particularly colorful anathema clauses are found in nos. 12, 22, 23, 24, 94 101, and 105 of Robinson's Anglo-Saxon Charters; a frequent feature of these clauses is a stipulation that anyone interfering with the transfer shall be "mid Iudan Cristes læwan á ecelice fordemed" (eternally damned with Judas, Christ's betrayer; no. 105, 202).

227), and a number of different readings of it have been proposed.

I leave aside as frankly unresolvable the problem that 3047-3075 seems to contradict the earlier account of the Last Survivor's burial of the treasure and its subsequent acquisition by the dragon (2232-2270). During the earlier elegiac passage, nothing is said of any spell being placed on the hoard or the mound by the survivor, and exactly where this "curse" comes from is therefore not clear. Klaeber, interestingly, proposes that the two accounts actually happen at two different points in time--the great princes curse the treasure, the Last Survivor's people take it and then perish, and after a time the dragon takes it (Beowulf 227). However, most critics have rejected such attempts to reconcile the contradiction and simply admit its existence as a slight flaw in the narrative (Lawrence 557-69; Brodeur 238-39; Irving, Rereading 122-23). Sisam even contended as late as 1958 that the passage describing the curse was an interpolation (130-31). But even leaving aside this contradiction, a number of textual cruces remain in the passage. Assuming the curse passage is authentic to the poem, how does the curse work? Who is the he of line 3074 who receives the āgendes ("owner's") favor, Bēowulf or the hypothetical secg of line 3071? Who is the āgend of line 3075, the person or persons who put the treasure into the mound, the dragon, or is āgend a kenning for God, as Klaeber contends? Who is the person who

unrihte (against right, or law, or custom) hid, or kept, the treasure under the wall in line 3059-3060, and what was wrongful about his doing so?

If the hoard is cursed to prevent its acquisition by anyone after its commission to the earth, there are a number of ways that the curse could work. Which way a critic favors is often determined by his view of the hero, and that view often dictates in turn the critic's reading of the passage describing the curse. One possibility is that the dragon is himself the instrument of the curse's execution, and that Bēowulf meets his death pursuant to the curse's terms; such readings typically translate lines 3074-3075 as "not at all had he (Bēowulf) before beheld the owner's (dragon's) favor in gold." Such a translation reads as a form of extremely grim litotes directed at the hero, one which calls into question the wisdom and legality of his action in fighting for the hoard, and leaves open the possibility that the hero himself has fallen to the curse's terms--an explanation for his death favored by H.L. Rodgers (253) and E.G. Stanley ("Hæthenra Hyht" 143-47). The question of whether Bēowulf's death was due to the curse's operation is further complicated by the possibility that the swā of line 3066 and the following swā of line 3069 may be correlatives meaning "so . . . because"; if

so, the recapitulation of the curse's terms at 3069-3073 becomes a direct explanation for the hero's death.[21]

A second possibility is that the dragon attempts to execute a curse on the treasure against Bēowulf, but Bēowulf avoids the immediate workings of the curse because he enjoys God's favor; such readings typically translate lines 3074-3075 as an escape clause for the hero: "unless God's grace had before more readily favored the one eager for gold." This reading is in fact the one Klaeber suggests in his notes to these lines (227), and he has generally been followed by later critics such as Cherniss (485), Condren, Donahue (37-38), and Irving (Rereading 122). Such readings tend to exonerate the hero from any ill effects of the curse, since he is certainly one worthy of God's favor and he does in fact win the treasure, albeit at the cost of his own life.

A third possibility, one not considered at any length by any critic, so far as I am aware, is that the dragon himself may suffer from the terms of the curse. This seems a little improbable since he has held the treasure undisputed for three hundred years, and I offer the suggestion more for the sake of completeness than for any great faith I may have in its validity. But it is interesting that such a reading would

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[21] This reading was favored by some early editors of the poem (see Dobbie at 4: 272), and is advanced by Stanley ("Hæthenra Hyht" 145). However, almost all recent editors, including Klaeber and Dobbie, have punctuated the end of line 3069 with a period rather than a comma, thereby rejecting the idea of a swā . . . swā correlative.

help explain the ambiguity with which the last fight ends--are both the dragon and Bēowulf guilty of taking the treasure against the terms of its original commission to the earth, and is this why both combatants really lose the final fight? If so, some flaw in the dragon's title to the hoard may be indicated.

In considering the validity of the dragon's claim to the treasure, one may also ponder whether the dragon is the one who has hidden the gold under the wall unrihte. It is difficult to see how this person could be the either the Last Survivor or the bēodnas mære; there appears to be nothing wrong with committing treasure to a barrow, as the Gēats do it themselves after Bēowulf's death and it in fact appears to have been a widely practiced Germanic burial custom,[22] and the only other finder that the poet speaks of is the dragon himself. There may, however, be something wrong with keeping the treasure in the mound once it is discovered, perhaps an indication of the intended meaning of unrihte--not "unrighteously" but "against custom" or "against usage"; this unnamed individual acts wrongly not in taking the gold but in keeping it hidden and not circulating it, an apt description of what the dragon actually does. Patricia Silber has in fact suggested that gold takes on good or negative connotations in

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[22] The exact ritual significance of the custom is not understood, although Gurevich ("Wealth and Gift-Bestowal" 131-33), Loikala (279-81), and Taylor (192-93) all see it as an attempt to provision the dead man in the afterlife.

Beowulf in direct proportion to the degree it is kept in circulation through the customary heroic activities of plundering and redistribution through gift-giving. And because the dragon does not give, but only keeps, he acts unrihte--against custom. Thus, while the characterization of his actions as unrihte may not speak to their strict legality, it does violate an important social norm and so may be seen as throwing some question onto his title--the vengeance he takes for the theft may therefore be somewhat questionable.

If his vengeance is questionable because of a weakness in his title to the treasure, it may also be questionable because it still seems to outweigh the nature of the offenses against him, even though the theft and breach of his mund are more serious than the critics have sometimes admitted. His action in burning down the mead-hall of the Gēats, thereby not only violating Bēowulf's mund but destroying the very social center of Gēatish society, still seems extreme; he thereby raises the legal stakes, so to speak, and expands the legal parameters of the dispute beyond those of the original offense. And after this expansion, things get rapidly out of hand.

As Andersson notes, this type of escalation may be the narrative point of the episode (506). That things could get out of hand in the feuding process, with one small wrong leading to a greater wrong and so on down into a spiral towards utter catastrophe, is a favorite theme in Germanic literature, not only in Beowulf but in the sagas as well.

Andersson notes two instances in the sagas where, in ways strikingly analogous to Beowulf, simple theft leads to conflict between much greater opponents with increasingly tragic consequences,[23] and Njálssaga 35-45 and the Nibelungenlied present similar instances of trivial slights leading to the radical expansion of a dispute. In the former instance an exchange of insults between Hallgerðr and Bergþóra leads to a series of killings in which first slaves from the respective households kill each other, then free laborers, then kinsmen, with only the strong friendship of Njál and Gunnarr keeping the feud in check.[24] And in the Nibelungenlied, a trivial dispute between Brunhild and Kriemhild of course leads to the death of Siegfried and ultimately the mutual slaughter of the Burgundians and the Huns.

I attempted to demonstrate earlier that the feud could act as an ordering force in Germanic society, and in his examination of the feud between the households of Gunnarr and

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[23] These are the theft of a sheep by the scoundrel Hánefr in Reykdœla saga, which causes a feud between the chieftains Vémundr kǫgurr and Steingrimr Ǫrnólfsson, and in Njálssaga Hallgerðr's dispatch of her servant Melkólfr to steal cheese from Otkell, which begins a series of increasingly serious feuds that lead to the death of the hero, Gunnarr (505).

[24] The feud does not really end with the death of Hallgerðr's good for nothing kinsman, Sigmundr; Miller contends that the dispute breaks out again later after Gunnarr's death, leading to the Njálssons' killing of Gunnarr's uncle, Þrainn Sigfússon, and finally his son Hǫskuldr Hvítanessgoði, which leads ultimately to the tragedy of the burning ("Justifying").

Njál, Miller points out that its pattern of geometric escalation is usually balanced out in other saga feuds by constraining influences inherent to the feuding model (Bloodtaking 184-85). But even so, one should never underestimate the attractiveness of the feud's capacity for escalation as an engine for literary tragedy. Andersson is probably right that the conflict with the dragon reflects precisely this sort of literary feud escalation: it arises from a serious but small scale incident of wrongdoing, the theft of the cup, which leads to the destruction of the Gēatish mead-hall. From this initial expansion of the dispute comes a further expansion in the form of Bēowulf's retaliation, in which he dies, and his death proves the harbinger of his nation's death, as all of the old wrongs and retaliations of the Gēat's previous wars with the Franks, Frisians, Hugas, Hetwaras, Merovingians, and particularly the Swedes, all come due for repayment.

The question of legal justification in the fight with the dragon therefore seems even more ambiguous than the dispute with Grendel's mother, while it is worlds removed from the legal absolutes of the fight with Grendel. And in the final analysis, this may actually be the point of the obscurities which surround the legal issues in this section of the poem, particularly the questions of who has true title to the treasure and who is responsible for the feud's escalation. The legal ambiguity of the hoard may in fact be its very

point--that it is truly "cursed" not because it is anathema, but because it exists only as the morally and legally neutral focus of bloody and tragic dispute. Everyone, it seems, has a claim on the treasure--the þēodnas mære, the Last Survivor and his people, the dragon, the thief, the lord to whom the thief gives the cup, Bēowulf, even the Gēats, who choose to honor their departed king by committing the treasure to the earth with his body, although one suspects that it will again be the subject of dispute in the future. The hoard, in fact, seems symbolic of property in general in the poem--that it exists to be circulated through the exchange medium of dispute; blood and money are, after all, the currency of the feud.[25]

The question of responsibility for the feud's escalation is likewise legally moot. It is no one's fault, really; it is just the sort of thing which happens when a resource of great value such as the hoard is interjected into a feuding society,

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[25] Philip Grierson first proposed the idea in 1959 that both feud composition systems and intertribal warfare and raiding (which is often described in Beowulf in terms of the feud) may have been important vehicles of exchange in the early Middle Ages. This argument has since led to extensive reevaluation of early medieval exchange patterns, particularly in the area of Viking studies (P. Wormald, "Viking Studies" 133-34), with a consequent erosion of the idea that wealth was moved about primarily by trade. Since then, a number of critics working with Beowulf have noted the importance of property in the poem as a focus for violent confrontation between the various tribal groups in the poem; see especially Liggens, Berger and Leicester (42-43), and Silber. Miller has also analyzed patterns of exchange in medieval Iceland, concluding that mercantile activity was similarly less important than exchanges through gift or violence ("Gift, Sale").

and it takes but the tiniest interference with the dragon's rights of possession to move the hoard back into the circle of blood and money. As Andersson notes (507-8), not even the thief acts of his own accord when he takes the cup; he does so unwillingly (2221-2222 and 2409), and he is described as hygegiōmor and hēan (sad in mind, abject; 2408).[26] It is interesting that he takes the cup to settle a dispute of his own with his lord, thereby starting a much greater and deadlier feud which swallows up his king and ultimately his people, as the feud of man and monster comes to feed into the circle of human raiding, feuding and warfare which forms the backdrop to the dragon fight. Whether or not the dragon or Bēowulf are justified is no longer really the issue--both have become caught up in a dispute which gains a certain momentum of its own, and which ends tragically for everyone involved.

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[26] The poet's mixed feelings about the character of the thief differentiate him somewhat from his Norse cousins, who are rarely if ever shown any sympathy by the saga writers (Andersson, 507-8). This seems to be similar to the mixed signals the poet gives about Grendel, who despite his evil nature, as Joseph L. Baird points out, is still an exile for whom the Anglo-Saxon audience might have felt a sort of horrified pity (380-81).

Conclusion

In this study, I have examined the three monster fights as legal conflicts and have tried to show the relative "cases for resistance" which might be made for each monster against the hero. It is now time to look at the results of this inquiry to see if any larger patterns of legal or thematic significance emerge.

The most important single conclusion which can be drawn from this analysis is that the concept of legality has little to do with the identity and nature of the combatants in each fight. Bēowulf does not win simply because he is Bēowulf and the monsters do not lose simply because they are monsters--the fights have the outcomes they do because the law in each ultimately favors the hero, but they become progressively more difficult as the legal issues in each become more complex and difficult to resolve. Bēowulf wins easily in the first fight because Grendel is so palpably wrong. He has more difficulty with Grendel's mother partly because she acts out of a recognizable and understandable impulse, the desire for vengeance, but more importantly because he invades her home and she has a right to resist him in spite his justifiable desire to kill her in revenge for Æschere. And he has the most difficulty with the dragon because he is implicated in the thief's wrong through the principles of vicarious

liability and collective responsibility, which draw him inexorably into an expanding feud not of his own making.

"Not of his own making" is an important qualifier to include here. For Bēowulf does not start any of the feuds into which he is drawn, and it therefore cannot be said that the legal complications of the fights reflect on his moral stance. His decisions to plunge into the mere and to attack the dragon are legally justifiable, but so are the defenses of Grendel's mother and the dragon--the conflict in each case simply becomes more legally complex.

One of the more important supports for this conclusion is the poem's preoccupation with the rights of guardianship over place, the rights of the mundbora over his or her enclosure. In the fight with Grendel, the focus is about the right of mund over Heorot; in the fight with Grendel's mother, it is over control of the mere-hall; in the fight with the dragon, it is over the mund of the hringsele, the dragon's barrow and its precious contents. The concept of mund therefore gives a legal basis to the poem's long-noted preoccupation with the sacred close, the perimeter of the hall which attempts to shut out the darkness and anti-social impulses of the outside, of the Other. What is so interesting about the legal basis for this preoccupation is that the concept of mund seems to operate both inside and outside the most obvious enclosure in the poem--Heorot. It applies with equal force to the mere-

hall and to the barrow which stand in opposition to Hrōðgār's and Bēowulf's halls.

Law in the poem seems to therefore be a largely neutral phenomenon--it acts impartially and with equal effect in both the world of monsters and the world of men. One immediate critical consequence of such a conclusion is support for a less demonic reading of the monsters, at least on the level of immediate significance. They may indeed be devils and demons in some sense, but as the immediate, physical enemies of men, they are subject to the rule of law no less than men, and conversely, the victories of men occur not because of any absolute moral superiority, but because men have more legal justification on their side than do the monsters.

There are two ways of looking at this conclusion, one optimistic and the other pessimistic. On the one hand, it can reassure those who wish to see the poem affirming some set of transhuman, non-contingent values--as the impartial arbiter of all conflict, the rule of Law becomes analogous to the rule of God, and a legal reading can then be used to adduce support for a Christian view of the poem. On the other hand, the rule of Law in the poem may be seen simply as the inescapable and determining framework of some sort of social Wyrd, a set of arbitrarily established social conventions for justifying winners and losers in a world where conflict and feud are the normal state of affairs. Such a view can be depressing, for it raises the possibility that if the monsters lose this time

because Bēowulf has more law on his side, he may have less next time and so lose--which is arguably the result of the final fight.

I feel that the latter alternative is closer to what the poet probably intended when he wrote Beowulf, but I am aware that this is little more than a subjective impression and that a strong alternative case could be made for the function of law in the poem. I would not, in any case, wish to destroy the tantalizing ambiguity which hovers around the issue, for it is ultimately yet another example of the Beowulf poet having his cake and eating it too, so to speak. He creates for us a poem in which all interpretive possibilities are left open, and that was perhaps his intention.

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