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# Choosing the Avenger: Some Aspects of the Bloodfeud in Medieval Iceland and England

William Ian Miller

*Hamlet.* Speak. I am bound to hear.

*Ghost.* So art thou to revenge, when thou shalt hear.

'Now go home,' said Vermund, 'and have your husband Vigfús's body dug up. Take his head to Arnkel and say to him that this head would not look to others to prosecute this action if Arnkel had needed help . . . .' After that [Þorgerð] went home and did as she had been instructed.<sup>1</sup>

The late King Hamlet's ghost and Þorgerð have similar problems. Both want to oblige someone to take action on behalf of a corpse. And both enlist the aid of part of that corpse or its facsimile in their efforts. Old Hamlet's ghost must busy himself about this matter because he was murdered, and in such a fashion that his body showed no sign of foul play. Clearly, before he can charge someone to avenge him he must announce that there is something to avenge.<sup>2</sup>

On the other hand, no mystery surrounds Vigfús's death. The man who killed him promptly published his deed.<sup>3</sup> Yet not for all this publicity is Vigfús allowed to rest quietly. His body is to be dug up, the head severed, and carried along to get his wife's maternal uncle Arnkel to undertake the prosecution.

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1. *Hamlet*, I.v.7–8; *Eyrbyggja saga*, ch. 27, in 4 *Íslenzk fornrit*, Einar Ó. Sveinsson, ed. (Reykjavík, 1935) [hereinafter cited as *Eyrbyggja*]; English translation: *Eyrbyggja Saga*, trans. by H. Pálsson and P. Edwards (Toronto, 1973). References to sagas are by saga name and chapter. For convenience I have identified an accessible translation where available. All translations from Old Norse and Old English are mine.
2. Early Icelandic law made a distinction between murder (*morð*) and killing (*víg*). Murder was an unacknowledged, secret, or concealed killing. The law of the medieval Icelandic Commonwealth goes by the name *Grágás*, literally 'Grey Goose.' The laws mostly date from the 12th and 13th centuries. See generally Ó. Lárússon, 'On *Grágás*—The Oldest Icelandic Code of Law,' *Third Viking Congress* (1958) 77–89. There are three main manuscripts of *Grágás*: *Grágás: Codex Regius*, V. Finsen, ed. (Copenhagen, 1852) [hereinafter cited as 1 *Grágás*]; *Grágás: Staðarhólsbók*, V. Finsen, ed. (Copenhagen, 1879) [hereinafter cited as 2 *Grágás*]; *Grágás: Skálholtsbók*, V. Finsen, ed. (Copenhagen, 1883) [hereinafter cited as 3 *Grágás*]. A translation of §§ 1–116 of 1 *Grágás* has recently appeared with other volumes scheduled for future publication; see Andrew Dennis, Peter Foote and Richard Perkins, *Laws of Early Iceland: Grágás* (Winnipeg, 1980). For the definition of murder, see 1 *Grágás*, § 88 and 2 *Grágás*, § 315.

Early English and Norman laws also made the distinction between killing and murder. See Sir Frederick Pollock and F.W. Maitland, *The History of the English Law*, 2 vols., 2d ed. (London, 1898) ii, 486; and II *Canute c.5. §1* in *The Laws of the Kings of England England from Edmund to Henry I*, A.J. Robertson, ed. (Cambridge, 1925). See also L.M. Larson, *The Earliest Norwegian Laws* (New York, 1935) 422.

3. Early Icelandic law provided very detailed and complicated procedures for publishing killings and other actionable offenses. 1 *Grágás*, supra note 2, § 87 and 2 *Grágás*, §§ 278–81.

We will return to Vigfús's head later. It is but one bizarre piece of a larger collection of evidence that allows us to reconstruct tentatively a crucial part of the system of rights and duties of the early Icelandic and English bloodfeud. The evidence is not abundant, and what there is is strange and often difficult to interpret. Yet, there is enough material to justify the attempt to describe how a person, who for some reason is not able to take vengeance, is able to oblige another to take up the feud.

### I. The Background: Bloodfeud and the Ties that Bind

It is not very easy to generalize about bloodfeud. The form it takes in any one place will depend variously on the structures of kinship, the rules regarding residence, the economic system, and ecology, among other things.<sup>4</sup> So, too, the actions that will incur the feud will vary from culture to culture, depending on the underlying normative order.

The feud has its rules and structure. For example, virtually all blood-feuding societies recognize a rough rule of equivalence in the prosecution of the feud, the law of the talion being perhaps the most familiar statement of the rule. Taking ten lives for one was not feud; it was either war or anarchy.<sup>5</sup> The rule of equivalence also limited the class of possible expiators by excluding some who might by virtue of kinship alone qualify as vengeance targets. Thus, young children, old infirm men, or women were usually inappropriate expiators,<sup>6</sup> and killing one of them tended to expand the dispute and increase its intensity.<sup>7</sup>

In those societies in which the state was either weak or nonexistent, the feud often functioned as a system in which disputes were processed and

4. For the effect of ecology on feud, see Jacob Black-Michaud, *Cohesive Force: Feud in the Mediterranean and the Middle East* (New York, 1975) 125–26, 162–72; E.L. Peters, 'Some Structural Aspects of the Feud Among the Camel-Herding Bedouin of Cyrenaica,' *Africa* XXXVII (1967) 261–82.

5. For a discussion of the distinction between feud and war see Black-Michaud, *Cohesive Force*, supra note 4, 1–8, 22–23, 27–32, and works cited therein.

6. *Brennu-Njáls saga*, chs. 129–47, in 12 *Íslensk fornrit*, Einar Ó. Sveinsson, ed. (Reykjavík, 1954) [hereinafter cited as *Njálf*]; English translation: *Njal's Saga*, trans. by M. Magnusson and H. Pálsson (London, 1960).

7. The rule of equivalence raises some interesting questions. If you kill my brother, does equivalence require me to kill you or your brother? It is tempting to see a very strange manifestation of the rule in Icelandic wergeld law, which provided for compensation payments to be made from each member of the killer's kin group out to fourth cousins to the corresponding member of the victim's kin group. 1 *Grágás*, supra note 2, § 113. The killer, balanced against the victim, was not included in the compensation schedule. It has been suggested that the reason lies in the law having assumed the exile of the killer and the confiscation of his goods. See Dame Bertha Phillpotts, *Kindred and Clan* (Cambridge, 1913) 13. Rather than hypothesizing a successful outlawry action, I prefer to explain the killer's lack of liability to the lack of a receiver corresponding to him. No doubt the law also recognized that the killer's kin would make sure the killer subsidized their obligatory payments.

resolved. It was not necessarily inconsistent with the existence of what we would recognize as law or a well-defined legal system.<sup>8</sup> The feud could be integrated into the law as when, for example, the law explicitly privileged vengeance killings.<sup>9</sup> Or it could be implicit in the structure of the legal system, as when the feud or threat of it provided the sanction behind legal judgments.<sup>10</sup> Indeed this was the case in both pre-conquest England and Iceland where it was ultimately the responsibility of the plaintiff and his kin to enforce judgments in their favor.<sup>11</sup> But the feud could also exist as a dispute system in its own right, independent of the law. According to some,

8. There is an extensive literature on the proper definition of 'law' and the 'legal.' It is a slough to be avoided. Useful discussions of the issues and a review of the literature can be found in Richard L. Abel, 'A Comparative Theory of Dispute Institutions in Society,' *Law and Society Review* VIII (1973) 217–347 at 221–39 and Simon Roberts, *Order and Dispute: An Introduction to Legal Anthropology* (New York, 1979) 17–29, 184–206.

The status of the bloodfeud as a juridical mechanism has also produced a small feud of its own in the anthropological literature. The position taken by various writers depends on their position in the dispute noted in the preceding paragraph. I do not undertake to supply a complete bibliography here, but the following works contain useful and enlightening discussions of the bloodfeud as an institution in its own right, having at times a distinctly juridical look to it. E.E. Evans-Pritchard, *The Nuer* (Oxford, 1940) 150–62; Margaret Hasluck, *The Unwritten Law in Albania* (Cambridge, 1954); Peters, 'Structural Aspects,' supra note 4; Black-Michaud, *Cohesive Force*, supra note 4. And among historians see especially J.M. Wallace-Hadrill, 'The Bloodfeud of the Franks,' in *The Long-Haired Kings and Other Studies in Frankish History* (London, 1962) 121–47; also Marc Bloch, *Feudal Society* (Chicago, 1964) 128; R.R. Davies, 'The Survival of the Bloodfeud in Medieval Wales,' *History* LIV (1969) 338–57.

Representative of the anthropologists whose definition of law leads them to discuss the feud as subculture violence, war, or anarchy are Paul Bohannan, *Social Anthropology* (New York, 1963) 290–91; Leopold Pospisil, *Anthropology of Law: A Comparative Theory* (New York, 1971) 2–10; and A. Radcliffe-Brown, *Structure and Function in Primitive Society* (New York, 1965) 208.

9. See, e.g., 1 *Grágás*, supra note 2, §§ 86, 90; 2 *Grágás*, § 275; 3 *Grágás*, 695, s.v. *vígt*; also *Leges Henrici Primi*, L. Downer, ed. (Oxford, 1972) c.36.1c, c.70.12.
10. The traditional view that the state and royal justice were incompatible with kin solidarity and bloodfeud has been qualified by Wallace-Hadrill, 'Bloodfeud of the Franks,' supra note 8, 129: 'when we come to inquire what it was that made the composition tariffs of *Lex Salica* work and why wergelds and lesser compositions were in fact paid, the answer is, not fear of local royal officials but fear of feud; or rather it was both.' So too in Scotland where royal and private justice coexisted and were mutually dependent. See Jenny Wormald, 'Bloodfeud, Kindred and Government in Early Modern Scotland,' *Past and Present* LXXXVII (1981) 54–97. See also Julius Goebel Jr., *Felony and Misdemeanor* (Philadelphia, 1976) 17–25.
11. See Dorothy Whitelock, *The Beginnings of English Society*, 2d ed. (Harmondsworth, 1974) 39–40; see, e.g., 1 *Grágás*, supra note 2, § 110; and *Njál*, supra note 6, chs. 75–77. See generally *Hrafnkels saga Freysgoða*, in 11 *Íslenzk fornrit*, Jón Jóhannesson, ed. (Reykjavík, 1950) [hereinafter cited as *Hrafnkel*]; English translation: *Hrafnkel's Saga*, trans. by H. Pálsson (Harmondsworth, 1971).

On the difficulty of enforcing a judgment of outlawry, consider the quip made to a successful plaintiff: 'I guess you got this much out of your lawsuit: you may call him an outlaw.' *Hrafnkel*, ch. 4 (English trans., ch. 12).

in the absence of centralized authority, it was the feud that kept the peace.<sup>12</sup> This view was a needed corrective to the uncritical association of feud with lawlessness and anarchy. Yet, it is at times too benign. The feud could get out of hand. There are occasional instances in the sagas that show the feud ominously close to the limits of its rules, and when it exceeds them only the most uncritical functionalist could still claim there was a peace in the feud.<sup>13</sup>

The duty to take up the feud or the liability to suffer its consequences was largely a function of kinship. In England and Iceland both the laws and language suggest, with some qualifications, that the kinship system was bilateral and ego-centered.<sup>14</sup> That is, a person (ego) could trace kinship through both male and female links and on both parents' sides. One feature of this system is that two people related to ego might not be related to each other. For example, a mother's brother and a father's brother, though kinsmen to ego in the same degree, are not kin to each other. This led Maitland to conclude that the bloodfeud group could not be 'a permanently organized unit' since its make-up would depend on who figured as ego. The

12. See the important and influential article by E. Colson, 'Social Control and Vengeance in Plateau Tonga Society,' *Africa* XXIII (1953) 199–212; M. Gluckman, 'The Peace in the Feud,' *Past and Present* VII (1955) 1–14.

13. The burning of Njál and its consequences is a case in point.

14. For Iceland, see 1 *Grágás*, supra note 2, §§ 113, 118; 2 *Grágás*, § 56; S.B. Barlau, 'Old Icelandic Kinship Terminology: An Anomaly,' *Ethnology* XX (1981) 191–202. For England, see generally Phillpotts, *Kindred and Clan*, supra note 7, 211, 224; Lorraine Lancaster, 'Kinship in Anglo-Saxon Society,' *British Journal of Sociology* IX (1958) 234–50, 359–77; and H.R. Loyn, 'Kinship in Anglo-Saxon Society,' *Anglo-Saxon England* III (1974) 197–209.

The nature of Germanic kinship has been hotly debated for over a century, and the statement in the text to which this footnote is appended is only a little less controversial now than it was in 1900. The issue is whether early Germanic kin were agnatic clans—patrilineal descent groups—or whether the kin set was bilateral—cognatic. The debate has been characterized by remarkably able performances on both sides. Some early spokesmen for patrilineality were Sir Henry Maine, *Ancient Law* (Everyman ed. 1917) 88–89; and Sir Paul Vinogradoff, *The Growth of the Manor*, 2d ed. (New York, 1911) 135–36. Spokespeople on the side of cognation were Pollock and Maitland, *History of English Law*, supra note 2, ii, 240–45; Phillpotts, *Kindred and Clan*, supra note 7.

The more recent writers on both sides have greatly benefitted from the work of anthropologists who have shown that patrilineal descent does not preclude the recognition of cognatic kin, nor does a bilateral kinship system preclude lineal biases in certain areas. See, e.g., Robin Fox, *Kinship and Marriage* (Harmondsworth, 1967) 50–52, 153; Radcliffe-Brown, *Structure and Function*, supra note 8, 23. In other words, the issue now is whether Germanic kinship is cognatic admitting patrilineal and patrilineal biases, or whether it is patrilineal admitting cognation. Fox cautions against making such distinctions, but the question has produced the following useful and interesting discussions. For patrilineality see H.H. Meinhard, 'The Patrilineal Principal in Early Teutonic Kinship,' in J. Beattie and R. Lienhardt, eds., *Studies in Social Anthropology: Essays in Memory of E.E. Evans-Pritchard* (Oxford, 1975) 1–29; T.M. Charles-Edwards, 'Kinship, Status, and the Origins of the Hide,' *Past and Present* LVI (1972) 3–33. For the bilateral kin set, see D.A. Bullough, 'Early Medieval Social Groupings: The Terminology of Kinship,' *Past and Present* XLV (1969) 3–18; Lancaster, 'Kinship in Anglo-Saxon Society,' supra.

bloodfeud group had 'to organize itself *ad hoc*,' and its organization was necessarily of a 'fleeting kind.' Maitland supposes the following situation: 'Along with his brothers and paternal uncles a man goes out to avenge his father's death and is slain. His maternal uncles . . . who stood outside the old feud, will claim a share in his *wer*.'<sup>15</sup> Unfortunately, as it will be more than borne out later, the situation was never as clear-cut as Maitland makes it. Take the position of the maternal uncles in his hypothetical. They are not of the blood of their nephew's father. A strict application of bilateral kinship computation would exclude them from the group of his avengers or compensation receivers. They may not care in the least about the corpse; they could sit back and do nothing and feel themselves justified. But they do have kinsmen who care about the corpse; their sister is its widow, and they share blood with the corpse's son who does have a duty to avenge his father.

Shift focus and consider the matter from the son's view. He is interested in taking vengeance, if he can. If he has the aid of his brothers and paternal uncles he might well succeed, but if he has no brothers or paternal uncles, or if he is estranged from them or disagrees with them on how to proceed, he will need to get support elsewhere. It would seem very likely that he would look to those to whom he was obliged, and who were obliged to him, for help—his maternal kinsmen. The maternal kinsmen, then, are likely to be caught in a bind. They owe a duty to the avenger, but not to the victim; if they participate in the vengeance-taking they will incur the feud of the slayer's kin. Yet if they sit back and thereby estrange themselves from their sister's son, they run the risk of weakening the solidarity of their own kin group. The maternal uncles are in an uneasy position. It is not quite as anxiety provoking as the person's who is clearly obliged to both sides as would be, for example, someone who is first cousin to both the slayer and the slain, or both brother to the killer and husband of the victim's sister.<sup>16</sup> But the position is an uneasy one nevertheless, one which they would like to avoid if they could. This is the class of people who have an interest in seeing things settled amicably, and it is they who will often constitute the class of peacemakers urging the parties to reconcile, to substitute money for blood.<sup>17</sup>

15. Pollock and Maitland, *History of English Law*, supra note 2, ii, 242.

16. The plight of the person bound to opposing sides is a favorite theme of Germanic literature, depicted in mythic grandeur in the Nibelung cycle and in more homely fashion in the actions of Styr Þorgrimsson. *Eyrbyggja*, supra note 1, ch. 45. Styr fought in a battle on the side of his first cousins once removed who were arrayed against his daughter's husband and his grandson. He killed a member of his son-in-law's party and then switched sides and evened the score by killing a follower of his cousins.

17. See Gluckman, 'Peace in the Feud,' supra note 12. In Gluckman's view, cross-cutting ties will inhibit the feud, or at least work as a deterrent to violence within the feud. Exogamous marriage, friendship, residence patterns, fostering, among other things, will inevitably cause some people to have close ties with both sides. These people 'have an interest in bringing about a settlement of quarrels.' Ibid. 8. In most situations, there will be someone so situated and should there not be, kin groups will set about establishing cross-cutting ties by strategic marriage arrangements. The sagas and *Beowulf* offer many examples of such marriages. See, e.g., *Beowulf*, F. Klaeber, ed., 3d ed. (London, 1951)

What I mean to suggest by all this is that both the laws and a model of bilateral kinship will make rights and duties appear clearer at any particular moment than they really appeared to the people involved. Moreover, the make-up of the kin group varied according to the matter at hand.<sup>18</sup> Those people obliged to take vengeance need not be the ones who received compensation, or who had to pay it, or who were liable for the return blow of an avenger. The group recruited to take blood was invariably larger than the one liable for a reprisal. In turn, the class of compensation payers and the group recruited to support litigants in lawsuits were each larger than the class of avengers.<sup>19</sup> None of these groups, moreover, need coincide with those who would attend the wedding of ego's daughter or contribute to her marriage portion, attend ego's funeral, or be his heir.<sup>20</sup>

The same group liability that required kinsmen to take up the feud on behalf of a member also provided the inducement for the kin set to police itself. Since the permissible target of a vengeance killing did not have to be the killer<sup>21</sup> there was every reason why a kin group would wish to control its

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ll. 1071–1159; *Njál*, supra note 6, chs. 93, 159. The frequency of the practice is also attested to by the Old English word *freoðuwebbe*, literally 'peaceweaver,' meaning 'woman.'

How effective cross-cutting ties actually were in preventing violence is another matter. Consider Beowulf's words: 'Seldom where a prince has fallen does the avenging spear lie still, even though the bride may be good.' Ibid. ll. 2029–31. The person with ties to both sides need not necessarily be a force for peace. See, e.g., Styr's actions, in the preceding note. He resolved his conflict by killing on behalf of both parties. Yet despite Beowulf's cynicism and Styr's violent temperament, people acted as if they agreed with Gluckman. They still sought to create cross-cutting ties. They were well aware that such bonds would prevent violence in few or maybe even no cases, but they were convinced that peace stood a better chance if there were people on both sides with conflicting loyalties. See also J. Black-Michaud, *Cohesive Force*, supra note 4, 70–72.

18. See Fox, *Kinship and Marriage*, supra note 14, 50–52; Bullough, 'Early Medieval Social Groupings,' supra note 14, 15.

19. The English sources are remarkably opaque as to the relative size of the compensation paying and receiving groups. The evidence is assembled and discussed in Phillpotts, *Kindred and Clan*, supra note 7, 205–12 and G. MacCormack, 'Inheritance and Wergeld in Early Germanic Law,' *Irish Jurist* VIII (1973) 143–63 at 157–63.

20. The actual extent of the bilateral kindred, that is, exactly how distant a cousin can be before ego will cease to recognize him as his kin, is a complicated problem for both England and Iceland greatly beyond the scope of this introduction. For Iceland, cf. *I Grágás*, supra note 2, §§ 25, 35 where second cousins of litigants can be challenged for interest if they are judges or members of the panel of neighbors with *I Grágás*, § 113 where fourth cousins are included as wergeld receivers and payors. The saga evidence shows examples of kin recruitment out to second cousins once removed; see, e.g., *Njál*, supra note 6, chs. 73–74. See also Phillpotts, *Kindred and Clan*, supra note 7, 37–41. For England see generally the works cited supra note 14.

21. There are many competing factors governing the choice of expiator. The killer might not be available, having already been killed or outlawed, or it simply might be prudent to avoid him. There is often a very strong sense that the killer should suffer, but this is frequently at odds with the rule of equivalence. See supra note 7. The killer is not the best expiator when he is of considerably lesser rank or reputation than his victim. There

more fiery members. To this end people were encouraged to take counsel before they acted, either to ensure themselves of their kin's support or to refrain from acting should their kin not approve of the course of action. Unruly kinsmen could be repudiated or encouraged to go viking in order to take out their excesses on people too far away to demand wergeld or take vengeance.<sup>22</sup> Repudiation was a powerful sanction. The kinless man could be killed with virtual impunity since no one was likely to take action on his account.<sup>23</sup> On the other hand, the kin group also relinquished their right to vengeance or wergeld for the repudiated kinsman should he be killed.<sup>24</sup>

There were bonds other than blood ties. A kin group weak in numbers was not necessarily condemned to being bullied by more populous kin

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might also be an urge to humiliate the other side by killing its best man. In this regard, the following Norwegian law introduced into Iceland about 1270 is instructive:

May it be known to all men that a barbaric custom has prevailed in our countries for a long time: when a man has been killed, his kinsmen want to remove the best man in the [killer's] family, even though he is ignorant and innocent of the slaying. And they do not want to avenge themselves on the real killer, even when they have an opportunity to do so . . . .

Quoted in Lars Lönnroth, *Njáls saga: A Critical Introduction* (Berkeley, 1976) 146. Some sense of accomplice liability also extended the class of possible expiators. In the sagas vengeance frequently fell on those who accompanied the killer or even those who laughed at or heard a libellous insult. See, e.g., *Njál*, supra note 6, chs. 45, 91–92. See also the remarkable conversation between Guðrún and Snorri over choosing a vengeance target in which the merits and drawbacks of a series of possible expiators are discussed. *Laxdæla saga*, ch. 59, in *5 Íslensk fornrit*, Einar Ó. Sveinsson, ed. (Reykjavík, 1934) [hereinafter cited as *Laxdæla*]; English translation: *Laxdæla Saga*, trans. by M. Magnusson and H. Pálsson (Baltimore, 1969). I discuss rules of vicarious liability in the feud and factors governing the choice of expiator in my 'Justifying Skarpheðinn: Of Pretext and Politics in the Icelandic Bloodfeud,' *Scandinavian Studies* LV (1983) 316–44.

The heart of early legislation intended to limit the bloodfeud lay in efforts to limit the class of expiators to the killer. See, e.g., Robertson, *Laws of the Kings of England*, supra note 2, II *Edmund* c.1; and the 13th century Icelandic law quoted in the previous paragraph. The fair inference from these laws is that it was common and acceptable practice for the vengeance target not to have been the killer.

22. See Robertson, *Laws of the Kings of England*, supra note 2, II *Edmund* c.1. § 1; in some cultures the troublemaker is killed by his kin. For examples among the Eskimo, see E.A. Hoebel, *The Law of Primitive Man* (Cambridge, 1954) 91. Repudiations could apparently be made subject to a condition precedent. In *Njál*, supra note 6, ch. 13, Hrút, the spokesman for the kin, stipulated his niece's husband could kill her foster-father with impunity should the foster-father visit them for more than three days without the husband's permission.
23. The miserable lot of the kinless man is a common and moving theme of much Anglo-Saxon poetry. See, e.g., *Beowulf*, supra note 17, ll. 2231–70. He is also a frequent subject of the the laws. See, e.g., F.L. Attenborough, *The Laws of the Earliest English Kings* (Cambridge, 1922) *Ine* c.23. § 1, *Alfred* c. 31; Robertson, *Laws of the Kings of England*, supra note 2, I *Canute* c.5. § 2c.
24. See Attenborough, *Laws of the Earliest English Kings*, supra note 23, II *Edward* c. 6. Cf., Robertson, *Laws of the Kings of England*, supra note 2, II *Edmund* c.1. § 2.



groups or humiliated by the inability to enforce its rights. Much of the politics of bloodfeud lay in finding ways to extend the network of rights and duties to others beyond blood kin. Marriage was one of these ways. A daughter, a sister, and a widowed mother were valuable commodities; they could be married into other kin groups.<sup>25</sup> The Icelandic wergeld law makes the husband of a daughter, sister, or mother eligible to receive and liable to pay compensation, and husbands of daughters and sisters figure prominently among vengeance takers and leaders of legal actions in the sagas.<sup>26</sup> The obligations of affines in England are not as clear, but kinship terminology suggests that a sister's husband, and the parents-in-law, at least, were considered kin.<sup>27</sup>

In addition to the obligations of blood and affinity were the various types of fictive or quasi-kinship, such as fostering, blood-brotherhood, and sponsorial kinship. Fostering another's child was such a common practice in Iceland that sagas considered it noteworthy to record that a child 'grew up at home.'<sup>28</sup> The sagas consistently portray the bonds created by fostering as running as deep as, if not deeper than blood, and the laws are in accord.<sup>29</sup> Foster parents often love their foster children more than their own, and foster children figure frequently as avengers of their foster parents.<sup>30</sup> The

25. The mercantile diction reflects the language and sensibility of the early English and Icelandic laws, not my own views on the matter. The Icelandic laws provide that in order for children to be capable of inheriting, they must be born of a mother who was 'bought' with requisite brideprice—*mundi keypt*. 1 *Grágás*, supra note 2, § 118; 2 *Grágás*, § 58. A wedding ceremony went by the name *brúðkaup*, literally 'bride-purchase.' The early English laws use the phrase 'to buy a woman or wife' to mean 'to marry.' See Attenborough, *Laws of the Earliest English Kings*, supra note 23, *Ine* c. 31 ('*Gif mon wif gebycge...*'). See also *ibid.*, *Æthelberht* c. 77.

26. E.g., the vengeance Kári takes on behalf of Njál and his sons in *Njál*, supra note 6, chs. 146–47; the support Vermund gives to Þórarin in *Eyrbyggja*, supra note 1, ch. 19; the aid both Grettir and Atli receive from Gamli Þórhallsson, *Grettis saga Ásmundarsonar*, chs. 42–43, 48, in 7 *Íslenzk fornrit*, Guðni Jónsson, ed. (Reykjavík, 1936) [hereinafter cited as *Grettir*]; English translation: *Grettir's Saga*, trans. by D. Fox and H. Pálsson (Toronto, 1974). See also *Hoensa-Þóris saga*, chs. 12–14, in 3 *Íslenzk fornrit*, Guðni Jónsson and Sigurður Nordal, eds. (Reykjavík, 1938) where distant affines figure prominently in prosecuting the killing case and in vengeance-taking.

27. See Lancaster, 'Kinship in Anglo-Saxon Society,' supra note 14, 247–48.

28. E.g., *Laxdæla*, supra note 21, ch. 27; and also *Gísla saga Súrssonar*, ch. 2, in 6 *Íslenzk fornrit*, Björn K. Þórólfsson and Guðni Jónsson, eds. (Reykjavík, 1943) describing, however, events in Norway [hereinafter cited as *Gíslí*]; English translation: *The Saga of Gísli*, trans. by G. Johnston (Toronto, 1963).

29. See 1 *Grágás*, supra note 2, § 90 and 2 *Grágás*, § 293, which provide that a man has a privilege to kill for sexual assaults on any of six women: his wife, daughter, mother, sister, foster-daughter, and foster-mother.

30. E.g., *Njál*, supra note 6, chs. 42, 45, 92, 132; *Egils saga Skalla-Grimssonar*, ch. 40, in 2 *Íslenzk fornrit*, Sigurður Nordal, ed. (Reykjavík, 1933) [hereinafter cited as *Egíli*]; English translation: *Egíli's Saga*, trans. by H. Pálsson and P. Edwards (Harmondsworth, 1976).

English engaged in the same practice;<sup>31</sup> King Æthelstan of England, in fact, fostered the future king of Norway, Hákon the Good.

The obligations established by the fostering relationship become cloudier outside the immediate tie between fosterer and fostered. For one thing, it is not at all clear that the foster-son of ego's father was ego's foster-brother,<sup>32</sup> nor was it at all clear exactly what obligations bound the fosterer's kin to the kin of the foster child or vice-versa. To be sure, there had to be some obligation or much of the incentive for fostering would disappear. One saga episode shows that rights and duties were explicitly bargained for and made the subject of a formal agreement. Þórð offers to make over his property to Höskuld, foster his child, and make the child his heir in return for protection from Þórð's ex-wife's kin. Here it appears that fostering is just another decrease in Þórð's net worth and increase in Höskuld's.<sup>33</sup> Other fosterings are undertaken to improve relations between kin groups, the fosterer in each case being the party who is humbling himself before the other.<sup>34</sup>

Blood-brotherhood, on the other hand, was an affair of equals, involving a compact in which the participants took an oath that the survivor should avenge the death of the other.<sup>35</sup> It was not unknown for brothers to enter

31. Lancaster, 'Kinship in Anglo-Saxon Society,' supra note 14, 239.

32. The Old Icelandic word *fóstbróðir* applies to two types of relations: first, where two male children are raised together because one of them is being fostered by the other's parents, and second, where two men swear to avenge each other. See infra note 35. It does not appear that an adult son of the fosterer was considered the foster-brother of his father's foster-son. For example, in *Njál*, the Njálssons are nowhere referred to as foster-brothers of Njál's foster-son, Höskuld. See Miller, 'Justifying Skarpheðinn,' supra note 21, 319.

33. *Laxdæla*, supra note 21, ch. 16; this type of transaction was known in the laws as *arfsal*, literally 'inheritance transfer,' and it looked very much like a commendation of sorts. Þórð apparently does not lose his free status, but he clearly has bound himself for life as Höskuld's client. Elsewhere, the sagas preserve similar accounts of grants of inheritance in consideration of future support. E.g., *Eyrbyggja*, supra note 1, ch. 31; *Vápnfirðinga saga*, ch. 7, in 11 *Íslenzk fornrit*, Jón Jóhannesson, ed. (Reykjavík, 1950) [hereinafter cited as *Vápnfirðinga*]; English translation: *The Weaponfirthers' Saga* in *Four Icelandic Sagas*, trans. by Gwyn Jones (Princeton, 1935). See also 1 *Grágás*, supra note 2, § 127; 2 *Grágás*, § 67.

34. See, e.g., *Laxdæla*, supra note 21, ch. 27 where Ólaf wishes to patch up the rift between his half-brother Þorleik and himself by offering to foster Þorleik's son because 'it is said, always is the lesser man foster-father to the other's son.' See also Snorri Sturluson, *Haralds saga ins hárfagra*, chs. 38–40, in 1 *Heimskringla* 94, in 26 *Íslenzk fornrit*, Bjarni Aðalbjarnarson, ed. (Reykjavík, 1941); English translation: *Heimskringla*, trans. by L. M. Hollander (Austin, 1964) 92–93.

35. In Old Icelandic a blood-brother could be called *fóstbróðir* (see supra note 32) and also, variously, 'sworn-brother'—*svaribróðir*—or 'oath-brother'—*eiðbróðir*, the latter names clearly distinguishing the relationship from fostering. The parties confirmed the oaths of reciprocal vengeance by passing under raised strips of turf where they mingled their blood with the earth. Descriptions of the ceremony are found in *Gísl*, supra note 28, ch. 6; *Fóstbræðra saga*, ch. 2, in 6 *Íslenzk fornrit*, supra note 28; English translation: *The Sworn Brothers*, trans. by L.M. Hollander (Princeton, 1949).

into these pacts, apparently indicating thereby that the more ties that bound one another the better.<sup>36</sup>

Sponsorial kinship did not appear to bind kin groups in England or Iceland in any special way.<sup>37</sup> One saga, however, tells of Helgi Droplaugarson refusing to defend himself against Özur because Özur had sprinkled him with water.<sup>38</sup> The sprinkling is not baptism. The events in the saga predate the Icelandic conversion to Christianity in 1000 A.D. The pagan ceremony symbolized the infant's acceptance into the family and indicated it would not be exposed. But the saga dates from the thirteenth century, and it may well be recording contemporary attitudes towards spiritual kin. Özur, it should be noted, hesitated a few moments before spearing Helgi.

In England, however, a victorious King Alfred secured a promise from Guthrum, the defeated Viking leader, to receive baptism and leave his kingdom.<sup>39</sup> Alfred stood sponsor to Guthrum as his god-father, entertained him and the thirty best men of his army for twelve days, and gave them great gifts when they parted. Guthrum left Wessex and in a year had occupied and shared out East Anglia to his followers; but he kept peace thereafter with Alfred. The incident suggests that Alfred felt the spiritual bond between him and Guthrum would help secure the peace.<sup>40</sup> To Guthrum's mind the shattered state of his own army, the proven military genius of Alfred, even the feast and gifts, not to mention East Anglia, may have seemed a greater security.

The duties imposed by kinship, whether blood, affinal, fictive, or sponsorial, did not constitute a closed and altogether consistent system of obligation. The system was greatly impinged upon and influenced by residence patterns. In Iceland the basic residence unit was the household farm. Residence tended to be virilocal;<sup>41</sup> that is, sons remained in the

36. See *Gisli*, supra note 28, ch. 6.

37. See Lancaster, 'Kinship in Anglo-Saxon Society,' supra note 14, 239.

38. *Droplaugarsona saga*, ch. 10, in 11 *Íslensk fornrit*, Jón Jóhannesson, ed. (Reykjavík, 1950) [hereinafter cited as *Droplaug*]; English translation: *Droplaugarsona Saga* in *Three Icelandic Sagas*, trans. by Margaret Schlauch (Princeton, 1950).

39. *Two of the Saxon Chronicles Parallel*, 2 vols., Charles Plummer, ed. (Oxford, 1892–1899) i, 76, anno 878 A.D.

40. Alfred may have thought that Guthrum's baptism would give Guthrum a surety acceptable to Alfred to whom Guthrum could swear his oaths—namely God. The Anglo-Saxon Chronicle, *ibid.*, notes that Guthrum's promise to accept baptism was secured with hostages and great oaths. There is no mention of Alfred having retained hostages after Guthrum accepted baptism. And a later treaty between them was confirmed with oaths 'for themselves and their followers, both living and unborn, who seek God's mercy and ours.' Attenborough, *Laws of the Earliest English Kings*, supra note 23, *Alfred and Guthrum*, preamble.

41. Victor Turner, 'An Anthropological Approach to the Icelandic Sagas,' in Thomas O. Beidelman, ed., *The Translation of Culture: Essays to E.E. Evans-Pritchard* (London, 1971) 349–74 at 364. Turner makes a case for the excellence of the sagas as resources for historical anthropological study. His discussion of *Njal* as an 'anthropological paradise' is, unfortunately, marred by occasional errors of detail.

paternal home, their wives joining them after marriage, and in turn, daughters went to live amongst their husbands' kin.<sup>42</sup> Daughters did not arrive without company, however.<sup>43</sup> It was thus possible for a household to include affines as well as collaterals. Landless freemen and women and the unfree were required to be attached to a household,<sup>44</sup> so any one household may have had several such freemen and slaves who were not kin to the *bóndi*, the head of the household. Some households were substantial affairs.<sup>45</sup> *Njál* has nearly thirty men in his and Geirmund Hell-Skin eighty.<sup>46</sup> These souls could constitute a substantial fighting force, and indeed, according to the sagas, a vengeance-taking party was as likely to draw on the non-kin members of the household as on kin who might live at a greater distance. Likewise, slaves and landless freemen often fell in vengeance attacks directed against the head of household.<sup>47</sup>

People who share neighborhoods may feud, but they also form friendships. Gunnar and *Njál*, because of their strong friendship, settled a seemingly endless series of killings between the members of their respective households. And *Njál*'s son helped Gunnar's son avenge Gunnar's death because of the father's friendship with Gunnar. As usual, abundant evidence in England is wanting, but there is no reason to doubt that residency rules and friendship ties cut across kinship obligations there as in Iceland.<sup>48</sup>

42. There are exceptions. See, e.g., *Laxdæla*, supra note 21, ch. 43 where Bolli lives with his wife's kin. See also *Gísli*, supra note 28, ch. 5; *Njál*, supra note 6, ch. 90.
43. E.g., *Njál*, supra note 6, chs. 11, 13, 27. The woman given in marriage as part of a settlement between feuding kin groups was probably more hostage than wife. See supra note 17. Her kin often took care to provide her with a retinue sufficient to protect her against the ruder types of mistreatment. See *Beowulf*, supra note 17, ll. 2032–61.
44. 1 *Grágás*, supra note 2, § 78; 2 *Grágás*, § 232.
45. Some were not. 1 *Grágás*, supra note 2, § 81; 2 *Grágás*, § 242, provide that a legal household exists if a man has land or if he has milk cows. This allowed tenant farmers to qualify as heads of households and hence be eligible to sit on a panel of neighbors. 1 *Grágás*, § 89; 2 *Grágás*, § 287.
46. *Njál*, supra note 6, ch. 128; *Landnámabók* 155, in 1 *Íslenzk fornrit*, Jakob Benediktsson, ed. (Reykjavík, 1968); English translation: *The Book of Settlements*, trans. by H. Pálsson and P. Edwards (Winnipeg, 1972) 59.
47. E.g., *Laxdæla*, supra note 21, chs. 48–49; *Njál*, supra note 6, chs. 126–28; *Grettir*, supra note 26, chs. 30, 43. Cf. Black-Michaud, *Cohesive Force*, supra note 4, 48.
48. Settlement patterns in Anglo-Saxon England and Iceland, however, were distinctly different. Farmhouses were not contiguous in Iceland as they were in England; there were no villages or hamlets. Moreover, the English picture changes markedly through the course of the Anglo-Saxon period, free peasant holdings giving way more and more to manorial organization. See generally H.R. Loyn, *Anglo-Saxon England and the Norman Conquest* (London, 1962) 156–70, 195–98. See also Charles-Edwards, 'Kinship, Status and the Origin of the Hide,' supra note 14, 3–15. A fair inference, assuming the Anglo-Saxon kin group did not extend much beyond the fourth degree coupled with the existence of villages, would be that ties of neighborhood and friendship played a major role in group recruitment for the bloodfeud.

Further complicating matters were the bonds of dependence between lord and retainer in England and chieftain and follower in Iceland. The lord-retainer relation, like the kinship bond, brought with it the obligation either to avenge the death of the other or to receive or pay compensation on the other's behalf. Thus Beowulf avenged his lord on the would-be pillager of his lord's corpse, while Hrothgar, the Danish king, paid Beowulf the wergeld of the retainer Beowulf lost to Grendel's ravenous appetite.<sup>49</sup> According to Tacitus, a retainer also had the duty not to survive his lord in battle, at least not by very much.<sup>50</sup> An early eleventh century Anglo-Saxon poem records the heroic sentiments of the followers of ealdorman Byrhtnoth, who chose to die beside their lord rather than leave the field where he lay.<sup>51</sup> Bede tells of the selfless Lilla, retainer of King Edwin of Northumbria, who saved his lord from an assassin's sword by making a shield of his own body.<sup>52</sup> This duty, however, may have been more the stuff of literature than of life or law.<sup>53</sup> Even in literature it is invoked more to chastise and humiliate those whose discretion got the better part of their valor, than to honor those who fell with their lord.<sup>54</sup>

Kin loyalty and loyalty to one's lord could conflict. Kings, being lords to more men than they were kin to, legislated, as would be expected, the precedence of the bond to one's lord. Thus, Alfred declared a man will not incur the feud if he fights on behalf of his lord when his lord is attacked; he can still fight on behalf of his kin *'buton wið his hlaforde: þæt we ne*

The Icelandic word for friendship—*vinátt*—also has a quasi-judicial significance, indicating an agreement between the friends to take counsel together and not to act inconsistently with the interests of the other. For further discussion see Miller, 'Justifying Skarphedinn,' supra note 21, 339–41 and Jesse L. Byock, *Feud in the Icelandic Saga* (Berkeley, 1982) 42, 95.

49. *Beowulf*, supra note 17, ll. 2501–08, 1053–55.

50. Tacitus, *De Origine et Situ Germanorum*, J.G.C. Anderson, ed. (Oxford, 1938) ch. 14.

51. See *The Battle of Maldon*, E.V. Gordon, ed. (London, 1937) ll. 202–325.

52. Bede, *Ecclesiastical History of the English People*, Bertram Colgrave and R.A.B. Mynors, eds. (Oxford, 1969) ii.9.

53. This point has recently been made in R. Woolf, 'The Ideal of Men Dying with Their Lord in the *Germania* and in *The Battle of Maldon*,' *Anglo-Saxon England* V (1976) 63–81. Ms. Woolf's thesis is that the ideal is peculiar to the sources mentioned in her title. A retainer's duty was to avenge his lord, not to acquiesce in a suicide-like death once his lord was killed. Cnut hoped to make life mirror art by legislating on the subject (c. 1020). The heriot was excused for the man who fell before his lord in battle and his heirs were confirmed to his succession. Robertson, *Laws of the Kings of England*, supra note 2, II *Canute* c.78. The enactment was less an inducement to be a hero than to be an heir, so Cnut also legislated severe penalties for the man who fled from his lord in battle—he forfeited all his possessions, his life, and his heirs lost all rights of succession. *Ibid.* c.77.

54. See, e.g., *The Battle of Maldon*, supra note 51, ll. 231–53; *Beowulf*, supra note 17, ll. 2650–56, 2864–91.

*liefað*—‘except against his lord; that we do not allow.’<sup>55</sup> Alfred’s legislation suggests a man’s instincts were otherwise. Nevertheless, the Anglo-Saxon Chronicle records a complicated feud between two factions for the throne of Wessex in which kinsmen of each lord’s retainers are found in both factions. The retainers on either side chose to be loyal to their lords even though this meant fighting against some of their kinsmen.<sup>56</sup>

Those who sought to avoid the conflict of loyalties by being lordless had their loophole closed by Alfred’s grandson Æthelstan, the same who fostered Hákon of Norway. Now the kinsmen of the lordless man were to produce him at the folk moot and find him a lord. Should they fail to do so the lordless man was to be declared an outlaw and to be killed as a thief; that is, without the killer incurring the feud. If his kin, or anyone else for that matter, continued to aid him they were liable for a fine in the amount of their own wergeld.<sup>57</sup> The law is especially interesting in its affirmation, ironically, of kin group corporate liability and in its reliance on the kin group for enforcement. It is the kin who are to produce the lordless man, and it is the kin who pay if they assist him.

The situation in Iceland was very different. There was no king, and there were no lords. Legislative and judicial authority were largely in the hands of the chieftains (*goði/goðar*[pl.]).<sup>58</sup> All freemen had to be attached to a chieftain, either directly or through the heads of the households to which they belonged.<sup>59</sup> The attachment had none of the irrevocability of vassalage; there was no aura of sanctity about the tie, and it was easily dissolved. A man could transfer his allegiance simply by making a public announcement

55. Attenborough, *Laws of the Earliest English Kings*, supra note 23, *Alfred* c. 42 §§ 5–6. This law is designed more to limit the feud than to induce retainer loyalty. The lord’s feuds were to remain affairs of the lord’s kin and followers; they were not to involve his followers’ kinsmen.

56. See Plummer, *Saxon Chronicles*, supra note 39, i, 46–50, *anno* 755 A.D.; and Woolf, ‘Ideal of Men Dying with their Lord,’ supra note 53, 69–70.

57. Attenborough, *Laws of the Earliest English Kings*, supra note 23, II Æthelstan c.2.

58. When the Althing was founded in 930, thirty-six chieftaincies (*goðorð*) were recognized. The constitution was reformed in 965 when the country was divided into four Quarters. At this time three new chieftaincies were created in the North Quarter. The other Quarters were brought up to parity with the North c. 1005, making forty-eight chieftaincies all told. Three chieftains holding the ‘ancient,’ that is, pre-965, chieftaincies presided over each of the three district things in each Quarter. They hallowed the assembly ground and supervised the business of the thing. All the chieftains sat together as a Court of Legislature at the Althing. The holders of the ancient chieftaincies selected the judges for the courts, both those which met at the district things and for the Quarter courts which met at the Althing. All of the chieftains selected judges for the Fifth court, which served roughly as court of appeals from the Quarter courts. Chieftaincies were transferable and inheritable; they could also be shared. Although the chieftains had wergelds no different from the ordinary freeman, they in fact constituted a recognizable aristocratic class. For further discussion see generally Jón Jóhannesson, *A History of the Old Icelandic Commonwealth*, trans. by Haraldur Bessason (Winnipeg, 1974) 35–82.

59. 1 *Grágás*, supra note 2, §§ 78, 81, 83; 2 *Grágás*, §§ 242, 243.

of his new attachment.<sup>60</sup> The obligations owed to a chieftain did not generally lead to any great conflicts of loyalty with the kin, for if they did, the conflict could be easily resolved by changing chieftains.

The chieftain as chieftain did, however, figure into the feuding process in several ways. 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.<sup>61</sup> It was in the less violent stages of the feud—lawsuits and arbitration—that the chieftains were usually involved. A chieftain and follower owed each other a duty of mutual support. In litigious Iceland this invariably meant support at law.<sup>62</sup> Chieftains, by virtue of their various judicial responsibilities, were frequently skilled in law, and it was as legal advisors or lawyers that they were often recruited into the feuding process.<sup>63</sup> A chieftain was a valuable ally. He controlled the appointment of twelve judges to the panel of thirty-six who heard cases at the district thing and of one judge of thirty-six in the Quarter courts at the Althing.<sup>64</sup> But a litigant needed more than just a lawyer's skills and friendly judges to get him through the complex maze of Icelandic procedure; he needed force. It was the litigant's responsibility to give the law its teeth, in procedure as well as in executing judgments, once obtained. Forcible disruption of a case was a very real possibility, and it was a near certainty if one side was significantly stronger in numbers than the other.<sup>65</sup> Plaintiff would bar defendant's access to the court, defendant would scatter a court if it were apparent that plaintiff's case was without a procedural

60. 1 *Grágás*, supra note 2, §§ 81, 83; 2 *Grágás*, § 243.

61. This is a very representative description of the course of an Icelandic bloodfeud. Wallace-Hadrill similarly characterizes the Frankish bloodfeud as 'drift[ing] from blood to arbitration and back again, without ever becoming what we would call legally clear.' Wallace-Hadrill, 'Bloodfeud of the Franks,' supra note 8, 142–43. For the view that feud is an interminable process characterized by different phases ranging from peace and composition to blood, see *ibid.* 146–47; Black-Michaud, *Cohesive Force*, supra note 4, 63–85, 109–18; Peters, 'Structural Aspects,' supra note 4, 268. This view of the feud is also implicit in Andreas Heusler, *Das Strafrecht der Isländersagas* (Leipzig, 1911) 38–47, where legal action and arbitrated settlement are considered no less characteristic of the Icelandic bloodfeud than blood vengeance.

62. A chieftain who could not help his followers win lawsuits, or simply got out-lawyered, would lose his followers to more successful practitioners. See, e.g., *Vápnfirðinga*, supra note 33, ch. 11; *Njál*, supra note 6, ch. 107.

63. For instance, when the sons as heirs of their chieftain father divided his property, it was the son skilled in law who would take the chieftaincy, or at least exercise the office on behalf of his brothers. See *Droplaug*, supra note 38, ch. 2; *Vatnsdæla saga*, ch. 27, in 8 *Íslensk fornrit*, Einar Ó. Sveinsson, ed. (Reykjavík, 1939); English translation: *The Vatnsdælar's Saga*, trans. by Gwyn Jones (New York, 1944).

64. 1 *Grágás*, supra note 2, §§ 20, 57.

65. The laws provide for the possibility of disruption by allowing as few as six of the thirty-six judges to reassemble in a safer place to finish judging. *Ibid.* § 41.

flaw.<sup>66</sup> It was to the chieftains that feuding factions turned when mustering the bodies they needed to ensure they would not get routed in court,<sup>67</sup> for with the chieftain came his followers. Because of their power and prestige, chieftains were also frequently selected by the factions to arbitrate compensation awards outside of court.<sup>68</sup> Yet, as important as the chieftains were to the governance of Iceland, the chieftain-follower bond did not engage the imagination of the saga writers in the same way as the lord-retainer bond engaged the Anglo-Saxon poets'. This is not to say the saga writers were not fascinated by chieftains. They were, but more as grand exempla of ordinary men caught up in the process of asserting the rights of their kin and households by means of bloodfeud.

The web of obligation was a complex affair. The bonds created by blood, marriage, fictive kinship, neighborhood, friendship, service or attachment to lord or chieftain could and did conflict. Nor was it just a matter of kin versus friend, or kin versus lord, etc. Within the kin group itself obligations pulled in different directions. Could a man, for example, attack the killer of his great-uncle and his great-uncle's son if the killer also helped avenge that man's father?<sup>69</sup> Could he oppose his sister's husband to aid his wife's brother?<sup>70</sup> The answers were not written in stone. Reasonable people

66. E.g., *Hrafnkel*, supra note 11, ch. 4 (English trans., ch. 11). See also *Eyrbyggja*, supra note 1, ch. 56; *Njál*, supra note 6, ch. 145; and *Vöðu-Brands þáttir*, ch. 4, in *Ljósveitinga saga* in 10 *Íslensk fornrit*, Björn Sigfússon, ed. (Reykjavík, 1940).

67. In actions in the district things the support of the litigant's own chieftain and his followers was usually sufficient. In actions in the Quarter courts at the Althing larger numbers were recruited and chieftains to whom the litigants were not attached were approached for support. See, e.g., *Njál*, supra note 6, chs. 119–20. If this broader based support was not forthcoming an action was as good as lost. Injustices could occur. See, e.g., *Bandamanna saga*, in 7 *Íslensk fornrit*, Guðni Jónsson, ed. (Reykjavík, 1936); English translation: *The Saga of the Eight Confederates* in Schlauch, *Three Icelandic Sagas*, supra note 38. See also, e.g., *Grettir*, supra note 26, ch. 46. But often the failure to get support was the result of a process similar to a verdict of the neighbors. It was a judgment on the merits of the case. See, e.g., *Droplaug*, supra note 38, chs. 7–8, where Helgi Droplaugarson could muster no support beyond his close kin because the case was 'unpopular.' Helgi had killed his step-father.

68. E.g., *Eyrbyggja*, supra note 1, ch. 10; *Njál*, supra note 6, ch. 122.

69. See *Njál*, supra note 6, ch. 129.

70. See *Droplaug*, supra note 38, ch. 4. This example is especially difficult. The laws provide that a sister's husband (SiHu) is part of ego's wergeld paying and receiving group. *I Grágás*, supra note 2, § 113. A wife's brother (WiBr), however, is not included in either group. Yet, from SiHu's viewpoint, it is to his WiBr that he owes a duty, and it would seem he would expect some mutuality of obligation. The problem could be avoided if SiHu and WiBr were the same man, as would be the case if a brother and sister each married into another brother-sister set. But these kinds of marriages were not especially favored in Iceland. The dilemma in *Droplaug* shows a chain reaction effect thus:

Helgi Ásbjarnarson = Sister ————— Hólmstein = Áslaug ————— Hrafnkel

Hrafnkel and Helgi were close kin; Hrafnkel asked Helgi for a half-share in the chieftaincy which had once belonged to their common paternal ancestor. Helgi refused, so Hrafnkel went to Hólmstein, his SiHu, for aid. Hólmstein said he, personally, could



differed as to which claims were stronger. Moreover, the question was rarely presented in such a way that one could simply count the degrees of kinship and choose the closer side. It was not always the closer blood tie that carried the greater duty. A man could be related to the same person in more than one way; he might be blood-brother to his wife's brother or the foster brother of his first cousin and so on.<sup>71</sup>

How far the web of obligation extended and whether, in fact, there was an obligation at all were constant sources of confusion and disagreement. A father was clearly obliged to his son, but did this obligation also extend to his son's blood-brother? If a man incurred liability for wergeld on account of his wife's brother, were his own brothers also under some obligation? There was room for disagreement at the margins of the kinship network as to whether a duty existed or not. I do not mean to imply that these people were sloppy in their way of thinking about rights and duties. The most cursory reading of a saga or *Beowulf* would show the contrary. They may be quite sure they owed no duty to avenge a corpse, as the maternal uncles were in Maitland's hypothetical case.<sup>72</sup> But they may be equally sure they were bound to the avenger, their sister's son. Can the uncles excuse their duty to their nephew if the beneficiaries of their action would be the corpse and its kin? Looking at it from the nephew's viewpoint discloses another problem: if his maternal uncles kill the killer of his father, can the nephew claim that he has fulfilled *his* duty to his father?

There is yet another major problem area: what actions were sufficient to discharge the obligation once it had been admitted to exist? In Iceland, all agree that a second cousin, a first cousin, a paternal uncle, and a brother are in the corpse's kin group. But are they all expected to take blood, or is that only the very close kinsman's task? Is the first or second cousin merely to receive his share of the wergeld, or will he be expected to be present at court, armed, giving support to an outlawry action against the killer? These too, not surprisingly, were matters about which reasonable people could differ, although as a general rule most all recognized, and indeed the law confirmed, that the magnitude of the obligation decreased as the blood thinned, and so too, the actions necessary to discharge sufficiently the obligation.<sup>73</sup>

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not help him because he would not go against his SiHu, Helgi Ásbjarnarson; he sent Hrafnkel for aid to Helgi Droplaugarson who remarked that Hólmstein should regard his marriage to Hrafnkel's sister as more important than his obligation to his SiHu. What we see in Hólmstein's actions is an admission that there was some reciprocity of obligation. Hólmstein will not go against his SiHu although as Helgi Droplaugarson says in strictly legal terms his duty is to his WiBr, i.e., to the man whose SiHu he is. The end of the matter was that Hólmstein broke up a fight at the thing between the two factions and was instrumental in bringing about a settlement.

71. E.g., Gísli to Véstein in *Gísli*, supra note 28, ch. 6; Bolli and Kjartan in *Laxdæla*, supra note 21, ch. 28.

72. See supra text accompanying note 15.

73. In Icelandic law, the monetary liability of a kinsman for wergeld diminishes as the degree of kinship from ego increases. See *1 Grágás*, supra note 2, § 113. The English picture,

The issues touched on in this section provide the context for the discussion that will follow. The specific matter to be dealt with is this: Old English and Old Icelandic sources preserve evidence of a ceremony whereby one party could charge another to take vengeance or prosecute a killing case where the person to be so obliged was reluctant to do so. The person to be charged might not have been sure that he was obliged to act; he might have been willing to act but not forcefully enough to satisfy the person charging him; or, he might have felt himself hopelessly immobilized by conflicting loyalties.

We will discuss the operative elements of the ceremony, why it obliged and what obligations it purported to give rise to or to transfer. We will also discuss the functional role the ceremony played in organizing the vengeance-taking group. In what follows we hope to shed some light on some of the darker aspects of the English and Icelandic bloodfeud and on some equally obscure matters of *intervivos* and posthumous succession.

## II. Choosing the Avenger: Bloody Clothing and Disembodied Heads

We left Vigfús's head in his wife Þorgerð's hands on her way to visit her mother's brother, Arnkel. Þorgerð had tried before to get Arnkel to agree to take up the case for Vigfús's killing. He had refused, saying it was the duty of Vigfús's kinsmen to prosecute the action. But Þorgerð found Vigfús's kin only slightly more interested than her own. None of them was willing to lead an action, although Vermund, a second cousin of Vigfús, promised to give aid to anyone who would; he also gave Þorgerð the strange bit of advice regarding her husband's head. When Þorgerð returned to Arnkel, she again asked for his help; he was annoyed at the request and refused it as before. It was then that Þorgerð pulled out the head from beneath her cloak, held it up to Arnkel and said: 'Here's the head which wouldn't have refused to prosecute an action on your behalf, if that were necessary.'<sup>74</sup> Arnkel was greatly upset and angered, but nevertheless immediately set about preparing the action over Vigfús's death.

At the very least, we may say that there was something compelling about Þorgerð showing her husband's head to Arnkel. Before the ceremony he was unwilling and not obliged to act; after it, he acts and apparently was obliged to do so. This, evidently, was what Vermund thought would happen when he counseled the course of action. Standing alone, the episode might not mean much, but it is not without company. I have identified seven other examples or variants of the ritual in other sagas and two incidents in *Beowulf* that remain largely inexplicable unless we assume the existence of

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though hazier, is in accord; see Phillpotts, 'Kindred and Clan,' supra note 7, 205–6 and passim; and MacCormack, 'Inheritance and Wergeld,' supra note 19, 160–63.

74. *Eyrbyggja*, supra note 1, ch. 27: '*Hér er nú þat höfuð er eigi myndi undan teljask at mæla eptir þik, ef þess þyrfti við.*'

an analogous ceremony there. These cases do not offer up their message easily, and the recalcitrance of the data demands a detailed analysis of several of the episodes.<sup>75</sup> Still, the evidence is sufficient to warrant a strong working hypothesis that this ceremony was a legal one, operating either to create duties where they had not before existed, or to compel their performance where they did.

There remain some troublesome problems in the case of Vigfús's death. Vigfús was a member of a collateral branch of a strong kin group. He had kinsmen who were clearly obligated to act on his behalf, and they admitted it.<sup>76</sup> Why then did Þorgerð have to seek aid from her kinsmen? For one thing, it seems Vigfús was not well liked; in the saga's words he was 'not easy to deal with.' The events leading up to his death confirm that view. Troubles started when Vigfús's nephew was wounded by an overseer of Snorri goði in an argument over sheep. Vigfús sued Snorri for the injury to his nephew and

75. I have discovered no nonliterary evidence of the ceremony for Iceland or England. Analogous rituals, however, have been recorded by anthropologists in the 20th century. Although the literary provenance of the ceremony leads to some problems of interpretation, they are not greater in degree than problems of interpretation peculiar to other types of sources. If there is a danger that the ceremony may be purely an author's invention, there is the advantage that the descriptions are the richer in circumstance and social context for being preserved in literary settings.

There are some thirty so-called Icelandic family sagas. Written mostly in the second half of the 13th century, they purport to describe the feuds and disputes of the Icelanders of the 'Saga-Age,' c. 930–1030. The 250-year time lapse between word and deed has occasioned much debate as to the historicity of the sagas. The earlier view was that they recorded actual disputes with little or no fictional accretion; the present view treats them as works of art that may also happen to preserve material of historical interest. Whether the sagas are historical or not in the sense this debate means historical, i.e. whether the sagas are accurate chronicles, is largely irrelevant for the social historian or anthropologist. The feuding and disputing process the author describes will, if the writer has any intention of being comprehensible to his audience, accord with the way things were done in his time or an earlier time whose procedures were still remembered. I consider the saga evidence to reflect mainly the practice of the 13th century, although there are cases where the saga writer consciously recalls an earlier state of law. See, e.g., *Eyrbyggja*, supra note 1, ch. 38. On the problem of saga historicity see generally T.M. Andersson, *The Problems of Icelandic Saga Origins* (New Haven, 1964) 41–55; Peter Hallberg, *The Icelandic Saga* (Lincoln, Neb., 1962) 49–69; S. Nordal, *The Historical Element in the Icelandic Family Sagas* (Glasgow, 1957). On the historicity of legal matters in *Njál*, see Lönnroth, *Njáls saga*, supra note 21, 241–48; and also see Karl Lehmann and H.S. von Carolsfeld, *Die Njálsage insbesondere in ihren juristischen Bestandtheilen* (Berlin, 1883). The best work on the law and the family sagas remains Heusler's *Strafrecht*, supra note 61.

76. *Eyrbyggja*, supra note 1, ch. 27. The excuses proffered by Vigfús's kinsmen for not acting on their duty are interesting in themselves. Of the three kinsmen approached by Þorgerð, one—a second cousin—excused himself because of a promise made to the killer not to sue him as long as there were others to take up the claim, and two—a second cousin and a second cousin once removed—saw no reason why the action should fall to them when there were other kinsmen equally, and in the case of the second cousin once removed, more closely related to Vigfús than they were. Apparently, the theory of corporate liability then as now could serve conveniently to deny individual accountability by locating it vaguely somewhere else.

lost. This rankled Vigfús considerably, and so he offered one of his slaves his freedom if he would kill Snorri. The attempt failed; the slave talked, and on the same day Snorri and six others killed Vigfús.<sup>77</sup>

Vigfús's actions were foolhardy and ill-advised. More accurately, they were not advised at all, and the reticence of his own kin may be owing to his not having taken counsel with them before acting. There is a distinct sense conveyed by the saga characters and the saga writer that Vigfús got what he deserved.<sup>78</sup> Even his widow admitted as much by never asking either Arnkel or Vigfús's kin to take blood vengeance. She scaled her demands to a less drastic action that she felt she had a better chance of getting. This does not mean, however, that the fault of the victim excused vengeance-taking. All this case can be said to show is that it may well be permissible for kinsmen as distant as second cousins to be influenced by such considerations where a brother, father, or son could not be. And Vigfús was without able kinsmen within the third degree.

There was also another factor at work: prudence. Vigfús had directed his assault against a man—Snorri goði—who was not only a chieftain but hard to deal with himself. Lawsuits were often dangerous business and could end in violence. A losing plaintiff could still resort to blood, as Vigfús's attempt on Snorri demonstrates. A manslaughter suit against someone as powerful as Snorri would require recruiting a larger number of supporters than was likely to be had for a killing which the community would feel was largely justified. Indeed, when Arnkel took up Vigfús's case he brought action against the six men who accompanied Snorri but not against Snorri himself. If prosecuting a killing case was fraught with danger, then taking blood vengeance was even more so; people who could avoid doing either without losing face would do so in spite of the existence of a duty in the abstract. A man's honor was not going to suffer much if he failed to avenge a kinsman as distant as a second cousin, who was unpopular and got what he deserved.

Arnkel was correct when he first told Þorgerð that the responsibility to take action was Vigfús's kin's, not his. The proper plaintiff or prosecutor—the *aðili*—in a killing case was the victim's heir.<sup>79</sup> Neither a wife, nor for

77. *Eyrbyggja*, supra note 1, chs. 23, 26.

78. Fault was very much a part of the Icelandic legal system. As in Vigfús's case, a community assessment of a party's fault figured prominently in what kind of support a legal action would get. Court procedure also allowed issues of fault to arise by way of counter-claim, or more frequently by putting in issue whether the injured party had become 'unhallowed' (*óhelgi*) by his own actions in the incident. A finding of *óhelgi* deprived a man and his kin of standing to maintain an action on his behalf. See, e.g., 1 *Grágás*, supra note 2, §§ 86, 90, 113; 2 *Grágás*, §§ 270, 271, 293. See generally 3 *Grágás*, 656, s.v. *óheilagr*. For the role of accident in bloodfeud, see Black-Michaud, *Cohesive Force*, supra note 4, 19–20, 112; Peters, 'Structural Aspects,' supra note 4, 270.

79. 1 *Grágás*, supra note 2, §§ 94, 118; 2 *Grágás*, § 297. The term *aðili* referred generally to both the rightful prosecutor and the chief defendant. The former could more specifically be designated as *sakar-aðili*, the latter as *varnar-aðili*. See R. Cleasby and G. Vigfusson, *An Icelandic-English Dictionary*, 2d ed., ed. W. Craigie (Oxford, 1957) s.v. *aðili*.

that matter, any affinal relatives, could be the husband's heir. Nor did a wife figure in the payment and receipt of wergeld for her husband's slaying.<sup>80</sup> Strictly speaking, then, Þorgerð had no cause of action. But the laws of the law books did not purport to set out all the rules which created expectations and rights and imposed duties.<sup>81</sup> Þorgerð was still very much in the class of people who could rightly take some form of hostile action against the killer and his kin. Those who might desire to take vengeance, or indeed would be expected to or even obliged to, were invariably more numerous than the heirs or possible class of heirs.<sup>82</sup> Þorgerð, simply, feels wronged and wants something done that, in her words, 'would make [her] enemies' lot a little more irksome than before.'<sup>83</sup>

Arnel in no way shared her feelings. He took little interest in Vigfús's death, and he appeared to have no special feeling that he owed it to his niece,

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The devolution of the right or duty to be the *aðili* in a killing case followed the inheritance law *except* that no killing case was allowed to fall to any male under sixteen or to a woman even though they may have been the heir. But at the time of Vigfús's death, the law read otherwise; women had not yet been disabled as plaintiffs in killing cases. The law was changed c. 993, ironically enough, because of later developments in the feud we are concerned with here. Arnel was killed by a group led by Snorri *goði*; Arnel's heirs were his sisters, and it fell to them to prosecute the action. The outcome was disastrous. Only one attacker received any penalty whatsoever and that was a mild one: three years banishment. 'Because the killing case of so great a chieftain as Arnel had been handled so embarrassingly a new law was enacted disabling women and men younger than sixteen winters from being killing-case-prosecutors (*vigsakaraðili*).' *Eyrbyggja*, supra note 1, ch. 38.

Single women over twenty and widows, however, had the power to settle actions for injuries to themselves, but they could not accept lesser compensation than the law provided for such an injury. If a woman wished to sue, she had to transfer the action to a man, since women were unable to take part in legal procedures at the thing. 1 *Grágás*, supra note 2, § 94; 2 *Grágás*, §§ 336, 340. Still, the case was hers to transfer.

80. 1 *Grágás*, supra note 2, § 113 recognizes only one woman, the daughter of the killer or the victim, as a participant in wergeld payment and receipt. A conflicting provision gives the compensation in the killing case to the heirs, whether men or women. *Ibid.* § 95; 2 *Grágás*, § 324. The wife, who is not an heir, is excluded by both provisions. 1 *Grágás*, § 118.
81. Making the responsibility for the killing case fall to the male heir was more a procedural and jurisdictional measure than an attempt to limit the extent of the bloodfeud. It provided a specific person, or at most, a group of brothers, in relation to whom challenges of judges and panels of neighbors could be made. 1 *Grágás*, supra note 2, §§ 25, 35. It also saved the defendant in a killing case from multiple outlawry suits at the hands of different branches of the victim's kin group who might not be related to each other and hence would not consider themselves bound by the other's actions. It is important to recognize that the failure to win a killing case did not preclude recourse to blood vengeance and, in most cases, it did not absolve the killer or his kin from liability for money compensation; 1 *Grágás*, § 113. Even a finding that the killing was justified because the victim was *óhelgi* (see supra note 78) did not necessarily mean his death would not be compensated for pursuant to an arbitrated settlement; see Heusler, *Strafrecht*, supra note 61, 61–65, 115–23.
82. E.g., foster-sons and fathers, blood-brothers, and affines could be avengers of the blood but were not possible *aðili*.
83. *Eyrbyggja*, supra note 1, ch. 27.

if not to Vigfús, to undertake the action. Mere words of the sort Þorgerð must have used on her first visit to Arnkel in order to convince him to act were insufficient to motivate him. The presence of the victim's head made an extraordinary difference. The incident suggests the existence of a formal ceremony that required certain symbols—as, for instance, the corpse's head or his bloody clothing—in order to be efficacious. Law is filled with such symbolic action: the conveyance of land by turf and twig or of a house by hasp or ring, the *spondesne-spondeo* of the Roman *stipulatio*, to name but a few.<sup>84</sup> Any failure in the formal requisites of the ceremony caused the intended legal consequences to fail too. There could be no conveyance without livery, no stipulation without the magic words, and no charging an unwilling party to act on behalf of a corpse unless some part of the corpse were present.

Important confirmation of both the existence of the ceremony and the necessity of the victim's real presence is found in *Njáls saga*.<sup>85</sup> Gunnar had a first cousin once removed named Sigmund. He was a poet with a talent for composing libellous verses. At the instigation of Gunnar's wife, Hallgerð, Sigmund versified on the inability of Njál to grow a beard, referring to him as 'The Beardless One' and his sons as 'Little Manure Beards.' Not long after this fine display of wit, Skarpheðin Njálsson killed Sigmund, cut off his head, handed it to one of Hallgerð's shepherds, and told him to take it to her and ask her whether 'that head had composed the slander about them.' The shepherd threw the head down as soon as Skarpheðin and his brothers left, since, in the saga's laconic style, 'he hadn't dared to while they were there.' Skarpheðin announced the killing as required by law and returned home. What follows needs to be quoted in full:

The shepherd returned to [the farm]; he told Hallgerð the news. 'Skarpheðin gave me Sigmund's head,' he said, 'and told me to bring it to you; but I didn't dare to, because I didn't know how you'd take it.'

'It was a mistake you didn't,' said Hallgerð. 'I could then have taken it to Gunnar, and he would then have had to avenge his kinsman or be subjected to everyone's disapproval.'

Later, she went to Gunnar and said to him, 'I want to tell you about the killing of Sigmund, your kinsman. Skarpheðin killed him, and he wanted to send me his head.'

'Sigmund should have expected something like that,' said Gunnar, 'for bad plans have bad results; besides, you and Skarpheðin have often dealt spitefully with each other.'

Then he walked away. He did nothing to prepare the killing case, and nothing else either. Hallgerð reminded him often that Sigmund had fallen without compensation. Gunnar ignored her goading.<sup>86</sup>

The scene is clear in its recognition of the ceremony, the importance of the head to it, and of the ceremony's power to oblige: 'he would then have *had*

84. See Pollock and Maitland, *History of English Law*, supra note 2, ii, 83, 85; R. W. Leage, *Roman Private Law*, 3d ed., ed. A. M. Pritchard (New York, 1961) 332–33.

85. *Njál*, supra note 6, chs. 41, 44–45.

86. *Ibid.* ch. 45.

to avenge his kinsman . . . .’ Hallgerð suspects, quite correctly, that she will need to do more than just inform Gunnar of his kinsman’s death to get him to act. Gunnar had previously warned Sigmund not to get involved in his wife’s troublemaking. But Sigmund had done so in spite of Gunnar’s counsel. Moreover, composing the libellous verses was an act sufficiently grievous to merit blood vengeance, and the law so recognized.<sup>87</sup> As in the case of Vigfús, there is here a sense among the victim’s kin that he got what he deserved.

Hallgerð needs the head to force Gunnar’s reluctant hand. She tries to make do without it by claiming a sort of constructive possession of it. This is much of the reason why she announces that Skarpheðin had, after all, tried to send her the head.<sup>88</sup> Yet this is as ineffective as her subsequent goadings turn out to be.

The episode demonstrates rather forcefully that goading and nagging, mere words, were not by themselves sufficient to motivate someone who did

87. *I Grágás*, supra note 2, § 238. If a man in any way suggested another was effeminate or took the passive role in homosexual or bestial couplings he could be killed with impunity. Calling attention to Njál’s beardlessness was such an insult, as was the implication of oral copulation with farm animals in the epithet for the Njálssons.

88. Corpse mutilation is susceptible to multiple meanings depending on who does it and why. When the killer mutilates the corpse, it is usually to humiliate it or its kin. Skarpheðin decapitated the dead Sigmund to return an insult for an insult, and perhaps also to horrify Hallgerð. Achilles avenged Patroclus less by killing Hector, than by mutilating his corpse afterwards. *Iliad* Bks. XXII-XXIV. Likewise, Beowulf decapitated Grendel’s corpse to repay him for his ravages of Hrothgar’s retainers. *Beowulf*, supra note 17, ll. 1577–84.

Exultant victors made trophies of their victims’ heads and other members. Beowulf bore Grendel’s head back to Hrothgar as a ‘token of glory.’ *Beowulf*, supra note 17, l. 1654. Jarl Sigurð of Orkney had his men tie the heads of the slaughtered Scots to their saddle bows ‘to show their victory.’ *Orkneyinga saga*, ch. 5, in 34 *Íslenzk fornrit*, Finnboði Guðmundsson, ed. (Reykjavík, 1965). David carried Goliath’s head with him back to Jerusalem as a sign of his feat. I *Samuel* 17:51–57; cf. I *Samuel* 18:25–27. No people are more famous for their head trophies than the Jibaro Indians who lavish great care on the heads of their victims as they skin and shrink them. See R. Karsten, ‘Blood Revenge and War Among the Jibaro Indians of Eastern Ecuador’ in Paul Bohannon, ed., *Law and Warfare* (Garden City, NY, 1967) 303–25 at 322–25.

More matter of fact, if not much less hostile, is the role mutilation plays in publishing or proving a killing. Grettir’s corpse was decapitated to humiliate it but also to bear the head to the person who had put a price on it. *Grettir*, supra note 26, chs. 82–84. The Salian Franks announced their killings either by stripping the corpse and hanging it from a stake in plain view or by impaling the head on a stake. See *Pactus Legis Salicae*, K.A. Eckhardt, ed. (Göttingen, 1955) ch. XLI, § 11.b. A bloody towel was sent by Clotild to her brother Childebert, the Frankish king, as proof of her husband’s mistreatment of her, which Childebert then avenged. Gregory of Tours, *History of the Franks*, trans. by L. Thorpe (Harmondsworth, 1974) III.10.

Some corpses were mutilated to prevent them from returning as ghosts or to lay to rest a ghost that had already returned. This appears to be why Grettir decapitated Glám’s corpse and placed the head against its buttocks. *Ibid.* ch. 35 and cf. ch. 18. A collection of other examples is available in Inger M. Boberg, *Motif Index of Early Icelandic Literature* (Copenhagen, 1966) §§ E431.7, E431.7.1, E446.3.

not wish to take action. The goading woman is a commonplace in saga literature long recognized as such by literary critics.<sup>89</sup> It is usually women who remind the men of any slight to the kin group's honor. It is they who frequently incite violence, and they are generally quite capable of finding the right combination of exhortation and insult to urge their men to action.<sup>90</sup> Yet goading is distinctly less formal than the ceremony we are concerned with here. At its best, the goad was cuttingly incisive, but it could degenerate into harping and nagging.<sup>91</sup> It could also be ignored, as Hallgerð's was by Gunnar. The hallmark of the ceremonial charge was that it never needed repetition; it was never ignored for long. The person to whom it was directed, if not the critics,<sup>92</sup> knew the difference between mere goading and nagging and the striking formalism of the ceremonial charge.

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Yet, as we have seen in the case of Vigfús's head, a corpse need not be mutilated by the enemy. Veneration of the corpse could lead to a dismemberment far more thorough than that carved by an enemy intent on humiliating it. The insatiable demand of the faithful for relics of saints could lead to a second martyrdom of sorts for the corpse or even worse. Thus, Umbrian peasants, c. 1000, wanted to kill St. Romuald in order to make sure they got his precious bones. J. Huizinga, *The Waning of the Middle Ages* (Garden City, NY, 1954) 167. The monks of Fossanuova decapitated, boiled, and preserved the corpse of St. Thomas Aquinas who had died in their monastery, for fear of losing the relics. Ibid. In 1231, during the lying in state of St. Elizabeth of Hungary, a crowd of worshippers cut off her hair, nails, and nipples. Ibid. The initial animus toward the corpse is about all we can say for sure differentiates relic worship from trophy display. Moreover, the faithful were not beyond punishing and humiliating the relics of saints who had been slow to answer their prayers. For a most interesting discussion of the 9th to 11th century ritual of relic humiliation, see P. Geary, 'L'humiliation des saints,' *Annales, économies-sociétés-civilisations* XXXIV (1979) 27–42.

89. See generally Rolf Heller, *Die Literarische Darstellung der Frau in den Isländersagas* (Halle, 1958) 98–122; A. Wolf, *Gestaltungskerne und Gestaltungsweisen in der altgermanischen Heldendichtung* (München, 1965); Einar Ó. Sveinsson, *Um Njálu* (Reykjavík, 1933) 130–39; R. Thomas, 'Some Exceptional Women in the Sagas,' *Saga Book of the Viking Society* XIII (1952–53) 307–27.
90. Heller, *Die Literarische Darstellung der Frau*, supra note 89, 98, 154, lists fifty-one occasions in the family sagas where women incite men to take vengeance or perform some other risky action.
91. See, e.g., Guðrún's repeated efforts to get her brothers to kill Kjartan in *Laxdæla*, supra note 21, chs. 47–48; and Þorgerð Egilsdóttir's attempts to get her sons to avenge Kjartan. Ibid. chs. 52–54.
92. Heller and the other critics (supra note 89) make no special distinction between those cases where a head or bloody token is used and those where goading or incitement is unaccompanied by such props. The critics treat all these incidents as literary commonplaces and discuss them in terms of literary influence. Heller, *Die Literarische Darstellung der Frau*, supra note 89, 107; Sveinsson, *Um Njálu*, supra note 89, 130. No doubt much in the saga's depiction of women as goaders is a matter of literary convention. Yet to make it completely so is to ignore the very real role forced on women in the bloodfeud. Making no distinction between those cases of incitement in which a bloody token is used and those in which it is not fails to account for Hallgerð having made such a distinction in her remark to the shepherd about the importance of the head. See supra text accompanying note 86. These critics have all ignored Hallgerð's statement when discussing these scenes. Heller, in fact, does not include it among his fifty-one cases, apparently because Hallgerð's goading was ineffective.



Consider further the following case. Skarpheðin Njálsson and his brothers had killed Höskuld Þráinsson, the foster-son of Njál, their father.<sup>93</sup> A killing action was started immediately by Höskuld's paternal kinsmen. Hildigunn, Höskuld's widow, had a paternal uncle Flosi, a powerful chieftain, who set out to attend the Althing to support the legal action raised by Höskuld's kin. Flosi, as Hildigunn's guardian, had been responsible for negotiating the marriage between Höskuld and his niece.<sup>94</sup> On his way to the Althing, Flosi and his men stopped at Hildigunn's farm to eat before continuing on. Hildigunn greeted Flosi with hyper-formality and exaggerated deference intended to make him ill at ease. After some additional subtle insults, Hildigunn came to the point:

'What action in this case or help am I going to get from you?' she said.

Flosi said, 'I will prosecute your case to the full limits of the law, or enter into a settlement which all good men will agree will honor us in every respect.'

She said, 'Höskuld would have taken blood vengeance for you if he had to

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The distinction is confirmed by the existence of analogous rituals recorded in nonliterary sources and observed by anthropologists. Those rituals requiring a corpse or a bloody token of the victim can be initiated by men as well as women and tend to compel action rather than merely urge it. Among the northern Albanians of this century, for example, a bottle is filled with the dead man's blood and is watched by the kinsmen day and night. As soon as the blood 'boils,' or ferments, they rush out to take vengeance. If the blood does not ferment, the kinsmen are more inclined to accept compensation in lieu of blood. Hasluck, *Unwritten Laws of Albania*, supra note 8, 231. Other examples from bloodfeuding cultures of the Mediterranean and Middle East are assembled in Black-Michaud, *Cohesive Force*, supra note 4, 79–80. Among the Frisians of the early Middle Ages, the corpse itself was hung in the house of the kinsmen, not to be taken down until it had been avenged. Bloch, *Feudal Society*, supra note 8, 126. A similar ceremony was apparently known among the biblical Hebrews; see the case of the Levite's concubine in *Judges* 19:27–20:11.

Goading, on the other hand, is commonly the provenance of real women who would be surprised to learn that the goading of their Icelandic sisters was attributable uniquely to male authors reworking stereotypes from earlier literary sources. In Greece, Albania, and Corsica women improvised funerary dirges whose purpose was to incite the victim's kin to take vengeance:

These dirges express ferociously bloodthirsty sentiments. . . and are repeated by [the] womenfolk for years after the event to instill into the male heirs of the deceased, who may have been infants at the time of the killing, the necessity to bring vengeance when they grow old enough to bear arms.

Black-Michaud, *Cohesive Force*, supra note 4, 78–79.

93. *Njál*, supra note 6, chs. 111–16; this case is treated at length in Miller, 'Justifying Skarpheðinn,' supra note 21, 318–20, 328–42.

94. Flosi was Hildigunn's *fastnandi*, literally, the man who gave her in marriage. As such he bears some obligation to support actions on behalf of her husband and his kinsmen. The precise extent of that duty is unclear and is at issue here. See also *Hænsa-Þóris saga*, supra note 26, chs. 11–12, where the *fastnandi*, Þórð, although obliged to support the legal action on behalf of his kinswoman's husband's father, does not feel this duty extends to vengeance-taking. Under certain circumstances the *fastnandi* also incurred duties of support for children born of the marriage. 1 *Grágás*, supra note 2, § 148; 2 *Grágás*, § 132.

prosecute an action on your behalf.’

Flosi answered, ‘You are not short on cruelty, and it’s clear what you want.’

Hildigunn said, ‘Arnór Örnólfsson had done less harm to your father, Þórð Freysgoði, but still your brothers, Kolbein and Egil, killed him at the Skaptafell thing.’<sup>95</sup>

Hildigunn was clearly unsatisfied with the course of action Flosi intended to take. He was willing to support Höskuld’s paternal kinsmen vigorously in their killing case, or he was willing to participate in an honorable settlement. Although Hildigunn strongly suggests that Flosi was being less than courageous, neither of Flosi’s intended courses of action was necessarily nonviolent. The successful prosecution of a killing case ends in outlawry for the defendant. The outlaw was the wolf; he could be killed with impunity by anyone.<sup>96</sup> An outlawry judgment, in effect, recruited the entire community to the kin’s vengeance-taking group and thus was one of the strongest inducements for people to go to law. Prosecuting a killing case to its conclusion was less a matter of foregoing revenge than of delaying it and reclassifying it under a different rubric: an execution of a judgment replaced a justified execution. Killing cases could also end in arbitrated settlements providing for the orderly payment of wergeld and variously mitigated outlawries.<sup>97</sup> Indeed, many killing cases were undertaken solely to provide an opportunity for good men to come forward and pressure the parties into accepting an arbitrated settlement.<sup>98</sup> But settlements could be broken and often only postponed vengeance.<sup>99</sup> People were never completely at ease with trading their kin’s blood for money.<sup>100</sup> Hildigunn, who as widow would

95. *Njál*, supra note 6, ch. 116.

96. *Í Grágás*, supra note 2, §§ 55, 110. An outlaw suffered loss of all status. His property was confiscated, and any assistance given to him was itself punishable by outlawry. Even if the outlaw managed to get away from Iceland he could still be killed wherever he was found. *Ibid.* §§ 48–49, 55.

97. *Ibid.* §§ 55, 60. Various forms of mitigation might include passage abroad and a limitation of outlawry to certain specified districts.

98. Of the 119 lawsuits in the family sagas recorded by Heusler, sixty ended in settlement, while fifty were taken to conclusion, and nine others were scuttled. Heusler, *Strafrecht*, supra note 61, 40.

99. For the view that compensation payments and the settlements based on them were merely stages in a continuing feuding process and not conclusions of the feud itself, see supra note 61. Black-Michaud claims that compensation payments are never a deterrent to future hostilities. Rather, because they tend to be paid over time in installments, they serve as mnemonic devices that perpetuate the memory of the feud. Black-Michaud, *Cohesive Force*, supra note 4, 116–18.

100. Saga characters speak disparagingly of those who would carry their kinsmen in their purse. See, e.g., *Grettir*, supra note 26, ch. 24; *Vápnfirðinga*, supra note 33, ch. 18. The Norwegian Gulathing law went so far as to provide that no ‘man or woman’ could accept wergeld more than three times ‘unless he has taken revenge in the meantime.’ Larson, *Earliest Norwegian Laws*, supra note 2, 140. In Denmark the party who accepted compensation rather than taking vengeance was entitled to a ‘levelling oath’ from his opponent that he, too, would accept compensation if he were in the same position. P.G. Foote and D.M. Wilson, *The Viking Achievement* (London, 1970) 428.

not receive wergeld anyway, had no inducement to settle; she could only be satisfied by blood.

There is also an indication in this passage that Hildigunn did not feel the benefit of the killing case ran to her. The case belonged to the heirs, and since she was childless her husband's heirs were not of her blood. She wanted something done for her by her blood. This is the clear import of her question to her uncle: 'What action in this case or help am *I* going to get from you?' Þorgerð, Vigfús's wife, apparently felt the same way. When she first heard of her husband's death she went to her uncle, just as Hildigunn turned to hers, even though neither man was kin to the corpse. There are other indications in the sagas that the benefit of successful vengeance, legal action, or settlement ran only to people of the blood of the avenger, prosecutor, or participants in the settlement.<sup>101</sup> The wrongdoer faced a very real possibility of double recoveries. Farsighted wrongdoers were well advised to anticipate claims of those who were not of the blood of the victim.

As soon as Hildigunn saw that Flosi was not talking as tough as she wanted to hear, she tried to goad him to plan a harsher course of action. In words nearly identical to those Þorgerð uttered to Arnkel, she hypothesized Flosi's death and Höskuld's presumed response to it: 'Höskuld would have taken blood vengeance for you . . .'<sup>102</sup> But when Þorgerð employed the same formula, she had her husband's head in hand. Flosi was irritated with Hildigunn but not moved to action. She continued to taunt him: his brothers were made of sterner stuff and did not hesitate to avenge a lesser matter with blood. Flosi, however, like Gunnar, was capable of resisting verbal incitement and outright appeals. Hildigunn gave up, left the hall and went to her chest:

She took out the cloak which Flosi had given to Höskuld and which he was wearing when he had been killed; she had preserved all his blood in it. She returned to the hall with the cloak and quietly went up to Flosi. Flosi had eaten and the food had been cleared from the table. Hildigunn flung it over Flosi and the blood clots showered all over him.

Then she said, 'You gave this cloak to Höskuld, Flosi, and now I am giving it back to you. He was killed in it. I call God and all good men to witness that I charge you by all the powers of your Christ and your manhood and bravery to avenge all the wounds he had on his body when he was killed or else be called a nothing, a contemptible creature, by all men.'<sup>103</sup>

Flosi, like Arnkel, was upset and enraged, so much so that the author treated him to three of the 148 similes recorded in the entire corpus of the Icelandic family sagas: 'his face was now red as blood, now pale as dead

101. See, e.g., the case of Lýting in *Njál*, supra note 6, chs. 93, 98 and also ch. 106 (claim of illegitimate son); see also *Gunnlaugs saga ormstungu*, ch. 13, in 3 *Íslensk fornrit*, Guðni Jónsson and Sigurður Nordal, eds. (Reykjavík, 1938) (brother takes his own revenge because he considered the two people his father had already killed in vengeance to be insufficient).

102. '*Hefna mundi Höskuldr þín, ef hann ætti eptir þik at mæla.*' *Njál*, supra note 6, ch. 116.

103. *Ibid.* ch. 116.

grass, now black as Hell.<sup>104</sup> Nevertheless, within thirteen short chapters and three months he burned Njál and his sons in their house.

This episode shows that blood, or bloody clothing, would serve as well as the victim's head. The ceremony, it appears, required some real presence of the corpse that could be readily identified as belonging to that corpse. This is why a head worked so well, but distinctive clothing of the victim bloodied with his wounds, or the blood-stained killing weapon, signed in some way as the killer's, would also do.<sup>105</sup>

The scene provides a convenient departure point to discuss the elements of the ceremony. Three people are necessary: the corpse, a party who feels aggrieved at the death of the corpse (grievant), and a party to be charged to take action, either blood or the prosecution of a killing case, or in one case, to forbear acting on behalf of the killing party. The grievant may or may not be related by blood to the victim. In the seven Icelandic examples, the grievant was the corpse's widow in four cases, as, for example, were Hildigunn and Þorgerð, its mother in three, and a distant affine in the case of Hallgerð.<sup>106</sup> Hallgerð's nexus with the corpse was probably less that of an affine than of an accomplice in the action that led to the victim's death. It was she who had solicited the libellous verses, and, in fact, coined the lethal epithets. The English materials, which we will analyze in detail later, show that a retainer could also be the grievant and possibly anyone who performed the ceremony whether aggrieved or not. The grievant is usually a woman, but it does not appear that this need be the case as the English materials and evidence from other cultures suggest. The failure of the Icelandic evidence to record any instances of males as grievants is consistent with and probably attributable to the sex-typing of women's roles in the bloodfeud. Just as they were not appropriate expiators, they were not appropriate avengers.<sup>107</sup>

104. See P. Schach, 'The Use of the Simile in the Old Icelandic Family Sagas,' *Scandinavian Studies* XXIV (1952) 149–65.

105. The killing weapon figures as the bloody token in *Óláfs saga helga*, ch. 123, in 2 *Heimskringla* 211–13, in 27 *Íslenzk fornrit*, Bjarni Aðalbarnarson, ed. (Reykjavík, 1945); English translation by Hollander, supra note 34, 393; *Beowulf*, supra note 17, ll. 1142–45. See infra Appendix no. 8 and cf. Appendix nos. 9, 10.

106. See Appendix under appropriate headings.

107. There were, of course, exceptions. The women who actually take blood vengeance with their own hands are considered distinctly deviant. Thus Grendel's mother, who avenged her son, is literally a monster woman (*ides aglæcwif*). *Beowulf*, supra note 17, ll. 1259ff. In *Laxdæla*, supra note 21, ch. 35, both saga characters and writer join in mocking Breches-Auð as a cross-dresser; she avenged her divorce by wounding her former husband. In 20th century Albania, a woman was allowed to take an active part in the bloodfeud only if there were no close male kinsmen available. If she chose to take vengeance, she was obliged to become a sworn virgin and wear male dress. Once having assumed the role, she was not allowed to forsake it, and she was henceforth treated as a man for purposes of the feud, i.e., she could kill and be killed legitimately. See I. Whitaker, '“A Sack for Carrying Things”: The Traditional Role of Women in Northern Albanian Society,' *Anthropological Quarterly* LIV (1981) 146–56 at 151.

Like the grievant, the person to be charged may or may not be kin to the corpse. Arnkel and Flosi were related to the grievant, not to the corpse, but in all the other Icelandic cases and in one of the two English cases the person to be charged was a member of the corpse's kin.<sup>108</sup> The class of people who could be charged, then, did not appear to include the whole world; apparently, there had to be some bond to either corpse or grievant. To understand why a bond was necessary we need to take a closer look at the operative elements in the ceremony.

The sanction for failure to carry out the charge is the shame and ostracism of being *hvers manns niðingr*, 'called a nothing by all men.'<sup>109</sup> About this Hildigunn is emphatically clear. Nothing was a status term, very similar to outlaw, but carrying an even greater opprobrium with it.<sup>110</sup> A person could be outlawed as a killer and yet not be a nothing. The nothing was the lowest of the low; he was the violator of a trust, a truce-breaker,<sup>111</sup> the betrayer of friend, kin, or guest, the murderer, and more. Conviction of certain crimes carried nothing status with it automatically;<sup>112</sup> in other cases it appears that naming someone a nothing was itself a solemn juridical ceremony.<sup>113</sup> The Anglo-Saxon Chronicle relates how Earl Swein Godwinsson, through deceit and treachery, slew his cousin Earl Beorn.<sup>114</sup> King Edward and the whole army convened and declared Swein to be a nothing. The effect of the designation was immediate: six of Swein's eight ships deserted him, and Swein was forced to flee across the channel to Flanders.

For the ceremony to achieve the desired results, the person charged had to think it quite possible that not carrying out the charge would be looked

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*Gíslí*, supra note 28, chs. 34–37, offers another viewpoint. Gíslí's wife, also named Auð, fought well on her husband's behalf during his last stand and was considered a paragon of wifely virtue. Gíslí's sister, Þórdís, tried to avenge her brother by stabbing his killer, Eyjólf. The saga writer makes no explicit judgment about the propriety of the action, unless his judgment be found in her failure to kill Eyjólf.

108. See Appendix under appropriate heading.

109. The phrase *hvers manns niðingr* figures directly in three of the Icelandic examples. (Appendix nos. 2,5,8). It is also strongly suggested by Hallgerð's *hvers manns ámæli*. (Appendix no. 3) The phrase is not explicitly mentioned in the other examples although it is implied and, as I suppose, silently supplied by the parties anyway. The sanction is invoked both in cases where the corpse and person to be charged were kin (Appendix nos. 5,8) and where they were not related (Appendix no. 2).

110. See generally Foote and Wilson, *Viking Achievement*, supra note 100, 426. See also F. Ström, *Nið, Ergi, and Old Norse Moral Attitudes* (London, 1974).

111. A truce breaker was branded a *gríðniðingr*. 2 *Grágás*, supra note 2, §§ 284–86. See also *Njal*, supra note 6, ch. 68 and *Grettir*, supra note 26, ch. 72, which preserves the anathema describing the lot that awaits the *gríðniðingr*.

112. In the medieval Norwegian Gulathing and Frostathing laws, an outlaw forfeited all his moveables but not his land; land, however, was forfeited for nothing crimes, which both the Gulathing and Frostathing laws specifically enumerate. Larson, *Earliest Norwegian Laws*, supra note 2, 137, 256–57; see also *ibid.* 198–99.

113. See Sir Frank Stenton, *Anglo-Saxon England*, 3d ed. (Oxford, 1971) 430.

114. See Plummer, *Saxon Chronicles*, supra note 39, 171, anno 1049.

upon by the community, 'all men,' as a nithing's deed. By issuing the charge, the grievant has already made it known that she thinks it would be a nithing's work not to carry it out, and she has strongly implied that it has been a nithing's work not to have done so already. Indeed, the sanction's force may be borne as much by the present insult of the grievant's public insinuation as by the fear that people in the future will concur with it.<sup>115</sup> To the person charged, the issue is whether the community will be more sympathetic to the grievant or to him should he fail to act. Here, then, can be found the explanation for why the class of people to be charged does not realistically include the whole world. If the ceremony is to work, that is, if the sanction is to be sufficiently feared to compel performance of the charge, there must be some bond either with grievant or victim to which the obligation created by the charge can attach. If Hildigunn or Þorgerð had approached a person with no ties either to her or her husband, few if any would call that person a nithing for not acting as the grievant wished.

The nithing sanction required a pre-existing bond with either corpse or grievant to work, but the theory underlying the charging ceremony itself recognized only the bond between the corpse and the person to be charged. The charge never invokes the relationship between the grievant and the person whose aid she seeks. In the ceremony itself the grievant does not say 'avenge my wrong,' but, 'avenge all the wounds he had on his body.' More exactly, it is the corpse itself that is understood to do the talking, with the grievant acting merely as a vehicle to convey the corpse's words. In *Laxdæla saga* Guðrún shows her young sons the bloodstained clothes of their father, saying 'these same clothes which you see here charge you to avenge your father.'<sup>116</sup> Hamlet's ghost must utter his own charge. And in the first recorded example of a corpse trying to recruit an avenger it is Abel's blood that cries out from the ground.<sup>117</sup> There would be no urgent reason to

115. The perception of a present public insult better accounts for the immediate violent rage and discomfort of the person to be charged than assuming the rage to be a literary convention. See *infra* Appendix nos. 1,2,6,7,8. With one exception these ceremonies took place before witnesses. Interestingly enough, in the unwitnessed case the person to be charged showed no emotion at the sight of the bloody token. See Appendix no. 4. Publicity was crucial to the validity of legal ceremonies in Icelandic law. See generally *Þ Grágás*, *supra* note 2, 643 s.v. *lýsa*.

Our point is confirmed by an analogous Corsican ritual. A man slow to avenge the death of his kinsman faced having the funeral dirges that the women had composed for the dead kinsman (see *supra* note 92) sung to him by men. When this happened it was said that the singer had *dato il rimbecco*—'levelled an insult'—at the man intended to hear the song.

The opprobrium suffered by a man who did not take vengeance after such a powerful provocation was at one period in Corsican history generally regarded as so unendurable that a jury would acquit any man charged with murder if it could be proved that he had been the object of a *rimbecco*.

Black-Michaud, *Cohesive Force*, *supra* note 4, 79.

116. *Laxdæla*, *supra* note 21, ch. 60.

117. *Genesis* 4:10. See also the examples cited from Albania, Frisia, and *Judges*, *supra* note 92, where it is the corpse or blood that does the charging.

use the head or bloody clothing unless it were understood to be the corpse that was asking for aid. This is all, to be sure, a fiction. The real party of interest is as much the grievant as the corpse. But although Hildigunn can ask Flosi what she herself can expect to get from him, this is before she has retrieved the bloody token. Once embarked on the ritual she ceases to be self-referential.

When there is no bond between corpse and would-be avenger the ceremony sets about creating one. It seems especially significant that in both cases in which the victim and person to be charged are not related, the grievant hypothesizes a reversal of roles between the person to be charged and the victim. Both Þorgerð and Hildigunn declare that the victim would have taken the requested action on behalf of the person to be charged were he in the other's position.<sup>118</sup> The same declaration does not occur in any of the examples where the person to be charged is kin to the victim. The effect of the statement is to postulate a hypothetical reciprocity of obligation nearly identical to the oath taken by blood-brothers: viz., that the survivor of them would avenge the death of the other. Although this is not a posthumously celebrated blood-brotherhood ceremony, the ritual certainly evokes that ceremony.

If the bloody-token ceremony has resemblances to obligation-creating rituals, like blood-brotherhood, it also has them with obligation-transferring ceremonies. Some of the rationale underlying the charge can be found in the law of succession, half interred between intervivos transfer and succession after death. *Grágás* provided that the *aðili* could transfer either the prosecution or defense of his case.<sup>119</sup> The transaction did not accomplish a complete succession of the transferee to the rights and duties of the transferor. The process was less an assignment, as we would understand it, than the engagement of an attorney or agent. The transferee, for example, could not himself transfer the action except back to the original transferor, unless he fell ill or was wounded while on the way to the Althing. If the transferee died the case reverted to the transferor. The transferee was liable for a lesser outlawry of three years duration at the suit of the transferor if he willfully failed to pursue the action. Judges and members of the panel of neighbors were stricken for relation to the transferor and not to the transferee.<sup>120</sup> And the benefits or liabilities of the suit accrued to the *aðili* (transferor). *Grágás* records the transfer procedure in detail as does *Njáls saga* where the description caught the eye of Oliver Wendell Holmes.<sup>121</sup> The

118. See supra notes 74 and 102.

119. See supra note 79. See also 1 *Grágás*, supra note 2, § 77.

120. 2 *Grágás*, supra note 2, § 307; 1 *Grágás*, §§ 35, 75, 77.

121. *Njál*, supra note 6, ch. 135 and 2 *Grágás*, supra note 2, § 307; O.W. Holmes, *The Common Law*, M. Howe, ed. (Cambridge, Mass., 1973) 279–80. Holmes uses the episode in *Njál* to illustrate his theory that intervivos succession was patterned on succession after death. In his view, the transferee takes as a fictional heir of the transferor. In support he cites the words of the transferee as he accepts the suit: 'thou handest over to me this suit to plead and to settle. . . as though I were the rightful next of

transferor and transferee are to take each other's hand, name witnesses to witness that the former gives to the latter the case to prosecute or settle just as if the transferee were the rightful *aðili*. The handclasping betokens the transfer and gives the transferred suit its name: *handseld sök*, literally, a hand-given suit.

The corpse, it appears, could be called on to play the part of the transferor of a killing action. The Icelandic corpse had an especially active legal existence. The laws provided for the survival of its legal person for purposes of holding it liable. A dead man could be summoned and prosecuted for acts he committed while living which may have put him outside the law.<sup>122</sup> He could even be declared the killer in an attack in which someone else had done the actual killing. If the dead man were summoned properly and named the killer in accordance with certain definite procedures the declaration could not be traversed:

'How could it happen that Gunnar announced Kol [the dead man] as the killer of Hjört when it was the Norwegian who killed him?' said Mörð.

'That was lawful,' said Njál, 'because Gunnar chose him as the killer before witnesses.'<sup>123</sup>

In both cases in which the person to be charged was not kin to the corpse, we noted that there was a statement by the grievant that the victim would have taken action on behalf of the other had their positions been reversed. In each case the Icelandic employs the idiom *mæla eptir þik*, literally, 'to prosecute the killing case for you.' The grievant is claiming, in effect, that the victim would have agreed to accept the transfer of the killing case for the death of the person to be charged, hence, he should accept the transfer of the victim's case. The idiom indicates that the grievant understands the ceremony as a transfer by the corpse of an action it still possesses to the person to be charged.<sup>124</sup> In reality the case belongs to the victim's heir, but

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kin.' Unfortunately 'next of kin' is a mistranslation of *aðili*—i.e. prosecutor or chief defendant. The error is easy to account for since the *aðili* incurred his designation in a killing case because he was the victim's heir. But *aðili* itself has no etymological connection with kinship or heirship. See Cleasby-Vigfusson, *Icelandic-English Dictionary*, supra note 79, s.v. *aðili*. The mistranslation costs Holmes a fine example, but his general argument survives without it. Moreover, it suggests that we are not being too fanciful in finding some of the force of the bloody-token ceremony to lie in the notion of a transfer of a suit from a living one.

122. *1 Grágás*, supra note 2, §§ 87, 90, 107; *2 Grágás*, §§ 280, 335; see also Heusler, *Strafrecht*, supra note 61, 114–23.
123. *Njál*, supra note 6, ch. 66; see also *1 Grágás*, supra note 2, § 87. The passage shows that the procedure's wondrous elevation of form over substance even baffled Icelandic lawyers like Mörð. See also *Víga-Glúms saga*, chs. 9, 22, in *9 Íslenzk fornrit*, Jónas Kristjánsson, ed. (Reykjavík, 1956); English translation: *Víga-Glúms Saga*, trans. by L.M. Hollander (New York, 1972); Heusler, *Strafrecht*, supra note 61, 108–9.
124. The killing of a person was thought of as more an injury to his kin than to him as an individual. Thus, the kin receives compensation for its member's death, not the victim's estate. But there exists a competing notion that the individual had an injury personal to himself. We must distinguish between the corporate liability underlying the feud and



the ceremony ignores that, just as it lets the mere presence of the corpse or blood suffice for the handclasp.

All of this should not be pushed too far. If we have identified resonances to obligation-creating ceremonies, like blood-brotherhood, or obligation-transferring ones, like handselling a case, they are there because the real parties of interest, the grievants, put them there. It is the grievants to whom we ultimately owe the forms of the ceremony. They wished to compel others to take action who often had no duty to act. To achieve that end it should not be surprising that women like Hildigunn and Þorgerð borrowed elements from well known ceremonies that also obliged others to take action.

The same resonances are not superfluous where the party to be obliged is kin to the corpse. Kinsmen transferred suits to each other, and they entered into vengeance-taking compacts with each other.<sup>125</sup> In these cases the ceremony can be understood to be creating additional obligations or reaffirming prior relationships. It is in these cases that we can discern more clearly the range of functions the bloody-token ceremony serves in the bloodfeud.

At times the ceremony served merely to determine when vengeance should be taken. When Guðrún's husband Bolli was killed there were no eligible avengers in either his or her kin group. Bolli was survived, however, by a four year old son and left Guðrún pregnant with another boy. Guðrún bided her time for twelve years and then treated her boys to a display of their father's bloody clothing.<sup>126</sup> The boys did not deny their duty, although they excused their prior inaction with their youth. Guðrún's charge is to remind them that they are now of an age when people 'will speak poorly of [them] if [they] don't raise [their] hand.' Within a week, the twelve year old killed his father's killer. The ceremony here is a mnemonic but no less effective for that.<sup>127</sup>

The power of the ceremony to choose an avenger gave the grievant an important role in organizing the vengeance-taking group. The bilateral kin group, as we noted, was not a permanently organized unit. It had to be

those discrete incidents within the feud, such as an assault or a wounding, which were dealt with by the legal system as injuries personal to the injured party. *Grágás* provided for the survival of legal actions arising from such incidents which then descended to the heir as *aðili*. See 1 *Grágás*, §§ 75, 77. This is also the implication of 2 *Grágás*, § 283, where the *aðili* in the killing case can make a separate case out of the attack that preceded the killing. He could merge them or not at his election.

125. See, e.g., *Hrafnel*, supra note 11, ch. 3 (English translation, ch. 7); *Gisli*, supra note 28, ch. 6.

126. *Laxdæla*, supra note 21, ch. 60.

127. Similarly, see the Frisian ritual discussed supra note 92. See also Black-Michaud, *Cohesive Force*, supra note 4, 79–80. The Albanian ritual in which a bottle of the victim's blood is watched to see when it ferments is used to determine when vengeance will be taken or if it will be taken at all. See supra note 92. The oracular quality of this ritual differentiates it from the Icelandic one where the grievant decides, not the blood.

assembled, *ad hoc* according to Maitland, once a killing had taken place.<sup>128</sup> The vengeance-taking group often could be virtually self-organizing, as when the victim had close male kinsmen living with him in the same household unit. The household supplied a more permanently organized group than the kin group and could provide the core around which non-household kin were recruited. But where the victim had no close male kinsmen in his household—no brothers, father, sons, or uncles—a real problem of organization existed. Consider Vigfús again, whose meager household is thus described. His kin lived elsewhere, and when his widow Þorgerð sought them out, each excused his performance because other kinsmen of Vigfús were equally or more obliged. The kin group, we see, did not just organize itself *ad hoc*. Hildigunn's husband, too, was without male kinsmen in his household. So it is that both Þorgerð and Hildigunn went to the strongest member of their own kin groups and chose him to lead the vengeance-taking. Arnkel and Flosi were powerful chieftains and had large households. Once they had been obliged, with them came their household organizations.

Even when the victim was survived by brothers able and willing to take vengeance, the grievant could select the one most likely to succeed in the endeavor as the one to bear primary responsibility. Thus Hróðný propped up the open-eyed corpse of her dead son Höskuld, Njál's illegitimate son, and charged the formidable Skarpheðin to avenge his half-brother 'even though he was illegitimate.'<sup>129</sup> Skarpheðin had two very capable and willing brothers equally obliged to the corpse, and Hróðný had an able brother of her own, but she made her choice.

Grievants would resort to the ritual in order to clarify the priorities of existing duties when they were in conflict. The same Hróðný had a brother Ingjald who was married to Hildigunn's paternal first cousin; hence, his wife was also Flosi's niece.<sup>130</sup> By virtue of this marriage bond Flosi claimed Ingjald's support for the legal action over the killing of Hildigunn's husband and eventually for an attack on Njál and his sons in their home. Ingjald agreed to support Flosi. Ingjald, however, had been saved from outlawry three times by Njál's good legal counsel; he was also the uncle, the mother's brother, of Njál's illegitimate son, Höskuld. Hróðný went to visit her brother and called him the 'greatest of nithings'<sup>131</sup> for having sworn an oath to kill Njál and his sons. To compel Ingjald to forbear fulfilling his oath, she displayed the bloodstained cap her son had been wearing when he was killed. Ingjald's reaction was noticeably different from other targets of the ritual. He did not fly into the obligatory rage, but calmly agreed 'not to go against Njál whatever may come of it.' Ingjald's calm owed more to the nature of Hróðný's request than to any special mildness of character. He

128. See *supra* text accompanying notes 14–15.

129. *Njál*, *supra* note 6, ch. 98.

130. *Ibid.* chs. 116, 124.

131. *Allmikill niðingr*, *ibid.* ch. 124.

was not asked to take revenge but to forbear assisting in someone else's vengeance-taking. Moreover, he was not called a *nithing* in public. Before Hróðný insulted him and displayed the cap, she and her brother had gone away from the farm to sit by themselves. The scene, then, is not really a performance of the ceremony at all; it is rather a dress rehearsal, a threat to perform it.

The case is especially interesting for what it reveals about the *nithing* sanction. No sooner had Ingjald agreed not to support Flosi, than Hróðný raised her demands. Still with her son's cap in hand, she asked her brother to betray Flosi's plan to Njál. Ingjald refused, because 'I would be called a *nithing* by all men (*hvers manns nithingr*) if I did that.' Hróðný could not disagree with his assessment and pressed him no further. She knew that her threatened sanction had no more force. Ingjald will be a *nithing* if he attacks Njál or if he betrays Flosi. The best he can give and the best Hróðný will be able to get is his forbearance.

The case can be read to show that the person to be charged rationally evaluated the threatened sanction, and as soon as the probable force of the sanction decreased so did the effectiveness of the ceremony. But the ceremony, if it had any design at all, was designed to horrify and appall and to suspend the clean rationality and quiet reflection of the person to be charged. It had such force that it could lead not only to action that was merely ill-advised, as in the case of Flosi and Hildigunn,<sup>132</sup> but in some cases to action that was *nithing's* work itself.

Consider the quandary of Bjarni. He was raised by Geitir, his foster-father, who also happened to be his mother's brother.<sup>133</sup> Bjarni loved his foster-father dearly; but there was no great love between Bjarni and his own father, Brodd-Helgi. Brodd-Helgi and Geitir had a falling out, and after years of not getting on well, Geitir, with great provocation, slew Brodd-Helgi. Geitir paid Bjarni *wergeld*, and the two continued to see each other often. But Brodd-Helgi left a widow, stepmother to Bjarni, who, as we should guess, showed Bjarni his father's bloody clothing.<sup>134</sup> Bjarni was enraged, called her the vilest of women, but later that day he planted his axe in his foster-father's skull. Bjarni's remorse was immediate, for he caught Geitir as he fell and held him in his lap as he died. The general reaction of the community was hostile, and it seemed to everyone 'an unmanly deed.'

Sons were obliged to avenge fathers, and foster-sons, foster-fathers. Bjarni thought he could avoid the problem by accepting *wergeld*. But as we have seen, compensation rarely concluded the feud. To Brodd-Helgi's widow it was as if nothing had been done. The benefit of the friendly

132. Hildigunn's charge led to the burning of Njál and his sons and consequently, to a pitched battle at the Althing and eventually to the killing of more than twenty of Flosi's followers. *Njál*, supra note 6, chs. 129–59.

133. *Vápnfirðinga*, supra note 33, chs. 13–14.

134. Ibid. ch. 14 (English translation, ch. 13). The manuscript is badly damaged, and many of the details of the ceremony have been lost.

settlement between the killer and his foster-son did not run to her. She resorted to the ceremony because she wanted her husband avenged, but also, it seems, because she wanted to punish her husband's son by forcing him to choose between his conflicting obligations which he had hitherto kept in delicate balance. Why the ceremony should have worked is another matter. We can only assume that Bjarni was ill at ease for having carried his father in his purse and for preferring his father's killer to his sacred duty.<sup>135</sup> The ceremony worked because it appealed to the irrational; it thrived on the uncertainties created by the tangled web of cross-cutting ties.

The ceremony also contributed uncertainties of its own. For instance, on whose behalf did the person charged think he was acting? The ceremony itself purported to claim that he acted on behalf of the corpse alone. This is a fiction. In those cases where the only kinship tie was between the grievant and the person to be charged it would have been recognized as such. Arnkel and Flosi knew whose loss they were avenging. But in the cases where the person to be charged was already obliged to avenge the corpse, the fiction depicted an ideal which the person to be charged had failed to live up to.<sup>136</sup> The ceremony generally has to do more than simply serve as a mnemonic of prior obligations. Those obligations had already proved to be insufficient to motivate the would-be avenger. Could it be that the grievant was adding a

135. See *supra* note 100. Compare this interesting account in Gregory of Tours, *History of the Franks*, *supra* note 88, IX.18:

After having murdered Chramnesind's relatives, Sichar formed a great friendship with him, and they became so devoted to each other that they often had meals together and even slept in the same bed. One day as twilight was falling Chramnesind ordered his supper to be prepared and then invited Sichar round to eat with him. He came, and they both sat down to table. Sichar drank far more wine than he could carry and began to boast at Chramnesind's expense. He is reported to have said: 'Dear brother, you ought to be grateful to me for having killed off your relations. There is plenty of gold and silver in your house now that I have recompensed you for what I did to them. If it weren't for the fact that the fine which I've paid has restored your finances, you would still today be poor and destitute.' When he heard Sichar's remarks, Chramnesind was sick at heart. 'If I don't avenge my relatives,' he said to himself, 'they will say that I am as weak as a woman, for I no longer have the right to be called a man!' Thereupon he blew the lights out and hacked Sichar's skull in two. Sichar uttered a low moan as life left his body, then he fell dead to the floor. The servants who had come with him lost no time in making off. Chramnesind stripped Sichar's corpse of its clothes and hung it from a post in his garden-fence.

Stripping the corpse and hanging it on a post was the Frankish equivalent of announcing the killing; not to have done so would have made the killing a murder. Cf. *Pactus Legis Salicae*, *supra* note 88, ch. XLI, § 11.b.

136. This fairly represents the situation in the cases *infra* Appendix nos. 2, 5, 7, 8. In case no. 4, the charge was issued within hours of the killing. Skarphedín had not failed in his duty and had no intention of not fulfilling it. As noted, the charge to him was purely a matter of organizing the vengeance taking. In case no. 8, the charge also followed closely on the killing, but there the prior relation between the victim and the person to be charged was such as to suggest strongly that the latter had no intention of avenging his brother's son.

claim she possessed to the claim the corpse already had? That is, she was serving notice to the person to be charged that he also had a duty to be the means through which women and old men, all those whom the society disabled from actual vengeance-taking, could act on behalf of the corpse. In the ceremony itself, grievant and corpse were inextricably bound together. The corpse's blood called for vengeance but through the grievant's voice. It was the grievant who touched the bloody clothing, preserved it, displayed it, decapitated the corpse, and held its head. Amidst this conflation of personae in a self-consciously horrifying ceremony, it was unlikely that the person to be charged would keep straight exactly what he owed to whom. He knew only that he must act or be called a nithing by all men.

A caution is in order. By speaking in terms of *in personam* rights and ill-defined notions of third-party beneficiaries, we risk losing sight of the most crucial function of the ceremony: to organize a vengeance-taking. In the Icelandic bloodfeud, in the absence of close male kin of age in the household, the responsibility for the organizing fell to women: the wife or mother of the corpse. The bloody-token ritual was one of the devices she had available to accomplish her task.

### III. England: Swords and Mailshirts

English evidence for a ceremony by which one party could oblige another to take vengeance is found in *Beowulf*.<sup>137</sup> Unlike the saga examples which are rich in contextual circumstance, those in *Beowulf* are especially obscure. The incidents occur in digressions from the main story and are written in a

137. *Beowulf* survives in a single manuscript which can be dated by paleographic means to c. 1000 A.D. The date of the poem itself, as opposed to the manuscript, is still the subject of very active scholarly debate. Until two years ago most scholars accepted an 8th-century origin for the poem. But some recent studies have proposed later dates ranging from the 9th century to the early years of Cnut's reign. The arguments for any particular dating variously depend on linguistic, metrical, stylistic, paleographic, and codicologic evidence too detailed and technical to resume here. See generally Colin Chase, ed., *The Dating of Beowulf*, 6 Toronto Old English Series (Toronto, 1981) and the controversial codicological and paleographic argument for an early 11th-century origin in Kevin S. Kiernan, *Beowulf and the Beowulf Manuscript* (New Brunswick, 1981); see also R.D. Fulk, 'Review Article: Dating *Beowulf* to the Viking Age,' *Philological Quarterly* LXI (1982) 341-59, for an intelligent critical reading of both books.

The usefulness of *Beowulf* for describing aspects of the Anglo-Saxon bloodfeud is not vitiated any more by an early 11th century date of composition than a late 7th-century date. The bloodfeud was, after all, a continuous feature of Anglo-Saxon life for the entire period; see, e.g., Bede, *Ecclesiastical History*, supra note 52, iv, 21-22; and *Vita Wulfstani*, R.R. Darlington, ed. (London, 1928) 38. Although the poem does not speak specifically of Anglo-Saxon feuds, it is an Anglo-Saxon poem destined for Anglo-Saxon audiences. When it describes bloodfeud, the lord-retainer bond, and the various norms associated with them, it is as useful an indication as any we have of what the Anglo-Saxon audience's expectations were in such matters, even if we cannot confine that audience definitely to the 8th century. See also Dorothy Whitelock, *The Audience of Beowulf* (Oxford, 1951) 12-19.

highly allusive and elliptical style that assumes the audience's knowledge of much of the stories' broad outlines.<sup>138</sup> The nature of the evidence, such as it is, requires us to take a close look at the text. We will begin with our best evidence first.

The day after Beowulf had killed Grendel, there was much celebration in the hall. King Hrothgar's court poet entertained the assembly with the story of a bloodfeud, the rough outlines of which are as follows:<sup>139</sup> Hnæf, the leader of a group of Danes, visited the hall of Finn, ruler of the Frisians and Jutes. Finn was married to Hnæf's sister, Hildeburh, the marriage presumably having been arranged as a settlement of earlier hostilities between the two groups. For some reason the Frisians attacked the Danes in their guest quarters,<sup>140</sup> and in severe fighting Hnæf was killed, along with Finn's son by Hildeburh. The fight ended in a stalemate, both sides so severely weakened that they were unable to continue. A settlement was concluded between Finn and Hnæf's retainer Hengest, who had taken over the leadership of the Danish group. The settlement provided, among other things, that Finn was to share his hall with the surviving Danes and honor them with gifts as good as those he gave to his Frisian men.<sup>141</sup> Above all, no one was to make any allusion by either 'words or works' to the fact that the Danes 'followed the slayer of their lord, out of necessity being now without a lord themselves.' If any Frisian were to bring the feud to mind, 'the sword's edge would settle it.' The agreement was formalized by oaths, and wergeld was paid to Hengest and his men.<sup>142</sup>

Hengest brooded the entire winter while staying with Finn. He was torn between his oath to honor the settlement and his duty to avenge his lord. Moreover, no matter how it was glossed over, the settlement was a dishonorable one, and its very terms admitted it; hence, the absolute ban on

138. See Whitelock, *Audience of Beowulf*, supra note 137, 39–70.

139. *Beowulf*, supra note 17, ll. 1066–1159. This digression is known as the *Finn* or *Finnsburh Episode*. The *Episode* is distinguished from another Old English poem known as *The Fight at Finnsburh* or the *Finnsburh Fragment*. As the latter name indicates, the 48 surviving lines of this poem are all that remain of a longer heroic lay. Taking the two together the larger outlines of the feud can be reconstructed. But no one agrees about the particulars, and the *Episode* and *Fragment* have been the subject of active scholarly debate for over a century. Klaeber edits the *Fragment* with notes and commentary in his *Beowulf*, supra note 17, 231–53. For a recent edition that also contains an extensive bibliography, see Donald K. Fry, *Finnsburh: Fragment and Episode* (London, 1974). See also R. W. Chambers, *Beowulf: An Introduction*, 3d ed. (Cambridge, 1959) 245–89.

140. The attack is the substance of the *Fragment*; see Klaeber, *Beowulf*, supra note 17, 245–47.

141. *Beowulf*, supra note 17, ll. 1089–94. Because of some pronouns with uncertain antecedents, it is not clear who offers terms to whom. The terms of the settlement itself, however, are reasonably clear.

142. *Ibid.* ll. 1100–9. I follow the manuscript reading *að* (l. 1107), i.e., 'oath,' not Klaeber's unnecessary emendation *ad*, i.e., 'pyre.' On these lines see Whitelock, *Audience of Beowulf*, supra note 137, 18 and n.4.

mentioning that the Danes were following the killer of their lord. As has been noted earlier, in matters of honor, accepting wergeld, though not in itself dishonorable, was a poor substitute for revenge. The dishonor of this settlement lay in its provisions for continued social contact, enforced conviviality between Finn and the Danes, as if the killing had never taken place. The Danes were to share Finn's hall with him, drink with him and his retainers, and receive his gifts. These were the acts which constituted 'follow[ing] the slayer of their lord.' The poet tries to excuse the Danes by blaming the truce on necessity rather than cravenness, yet the excuse only emphasizes the intolerableness of the Danes' position.<sup>143</sup> So it was no wonder that with the coming of spring when it was time for Hengest to depart, 'he thought more of vengeance than his sea journey.'<sup>144</sup> Still, he did not take action until the following incident occurred; it deserves full quotation:

Swa he ne forwyrnde woroldrædenne,  
 þonne him Hunlafing hildeleoman,  
 billa selest on bearm dyde;  
 þæs wæron mid Eotenum ege cuðe.  
 Swylce ferhðfrecan Fin eft begeat  
 sweordbealo sliðen æt his selfes ham,  
 siþðan grimne gripe Guðlaf ond Oslaf  
 æfter sæsiðe sorge mændon,  
 ætwiton weana dæl; ne meahte wæfre mod  
 forhabban in hrepre. Ða wæs heal hroden  
 feonda feorum, swilce Fin slægen,  
 cyning on corþre, ond seo cwen numen.<sup>145</sup>

1145

So [Hengest] did not refuse the universal law,  
 when Hunlafing laid the best of swords,  
 battle-bright, in his lap;  
 its edges were well-known to the Jutes.  
 Then it was, that cruel sword-evil  
 caught up with bold-spirited Finn  
 in his own home, when Guðlaf and Oslaf  
 complained of the fierce attack,  
 their sorrow after the sea voyage,  
 imputed blame for their measure of misery;  
 the restless spirit could not be contained  
 in the breast. Then the hall was decorated  
 with the enemies' lives; thus Finn was slain,  
 the king among his men, and the queen taken.

143. On the problems of the peace settlement, see B. Moore, 'The Relevance of the Finnsburh Episode,' *Journal of English and Germanic Philology* LXXV (1976) 317-29 at 318-21.

144. *Beowulf*, supra note 17, ll. 1138-39.

145. Ibid. ll. 1142-53. Again I follow the manuscript reading *woroldrædenne*, 'universal law or custom,' rather than Klaeber's unnecessary emendation *weorodrædende*, 'troop-leader.'

The outlines of a formal ritual similar to the ones in the sagas are easily discernable.<sup>146</sup> A sword is ceremoniously placed in Hengest's lap, words of blame and complaint are spoken, and vengeance follows. This much is incontrovertible. The details are fuzzier, but a reasonable reconstruction is possible.

We know from the *Finnsburh Fragment* that Guðlaf and Oslaf were members of Hnæf's band and accompanied him to Finnsburh.<sup>147</sup> Other sources confirm that they were brothers and had another brother named Hunlaf.<sup>148</sup> It is Hunlaf's son, Hunlafing,<sup>149</sup> who places the sword on Hengest's lap. The identity of the sword is less certain. In all probability it is the dead Hnæf's,<sup>150</sup> for if Hengest were to be urged to vengeance no ordinary sword would do. It must be one whose sight would recall the obligation, the 'universal law'—*woroldrædenne*<sup>151</sup> to avenge one's lord. The general similarity between this scene and the Icelandic materials we have discussed supports the suggestion that the sword was Hnæf's, since something of his would be necessary to perform the rite. His sword would have to suffice. His corselet and helmet, all his bodily remains had been

146. The symbolic nature of Hunlafing's action has been recognized by critics. See, e.g., E. Talbot Donaldson, *Beowulf*, J. Tuso, ed. (New York, 1975) 21 n.1; E. Anderson, 'Formulaic Typescene Survival: Finn, Ingeld, and the Nibelungenlied,' *English Studies* LXI (1980) 293–301; H. Ayres, 'The Tragedy of Hengest in Beowulf,' *Journal of English and Germanic Philology* XVI (1917) 282–295 at 292; Moore, 'Relevance of the Finnsburh Episode,' supra note 143, 321. The resemblance of the scene to one of our saga examples has been noted. See Ayres, 'Tragedy of Hengest,' 292 n.17 and Appendix no. 6.
147. See supra note 139; Klaeber, *Beowulf*, supra note 17, 246, l. 16.
148. See Chambers, *Beowulf*, supra note 139, 252 n.2.
149. The 'ing' is a patronymic suffix; hence, Hunlafing is the son of Hunlaf.
150. The case for the sword belonging to Hnæf is especially well argued by Anderson, 'Formulaic Typescene Survival,' supra note 146, 295.
151. The meaning and form of *woroldrædenne* is the subject of thorough discussion in Adrien Bonjour, 'The Climax of the Finn Episode,' in *University of California Publications in English* III (1943) 312–30. I have adopted his gloss 'universal law,' 'universal obligation,' which he takes to indicate the obligation to take vengeance for one's lord. Ibid. 329–30. This is probably the case. Yet it is possible that *woroldrædenne* refers more precisely to vengeance taken in response to the ceremony Hunlafing performs, the ceremony itself being a universal custom. The word occurs nowhere else in Old English; the only context we have to judge its meaning is here. The syntax of the sentence supports the more particular meaning as well as the general one: 'he did not refuse the universal law when Hunlafing laid the best of swords. . . in his lap.' I only suggest the possibility.

The poet is, however, making an unambivalent and witty reference to the ceremony in his use of the word *sweordbealo* (l. 1146), literally, 'sword-evil,' 'sword-bale,' to describe how Finn came by his death. *Sweordbealo*, also, is unattested elsewhere in Old English. The poet, apparently, has invented a compound that describes both the efficient cause of Finn's death—a cruel sword thrust delivered most likely by Hengest—and the cruel sword-evil that was the efficient cause of the thrust—the ceremony of placing Hnæf's sword in Hengest's lap.



claimed by the flames of his funeral pyre; his sword, however, was spared.<sup>152</sup>

The text is not precise as to when Guðlaf and Oslaf complained or to whom they directed their blame. They might have complained at some unspecified time after Hunlafing laid the sword on Hengest's lap, or at the same time. They could have blamed either Finn for the attack or Hengest for accepting a truce and compensation. The poetry seems to prefer the view that the complaint and blame accompanied Hunlafing's gesture. The very swiftness of events that follow once Hengest received the sword indicates there was no delay, no added goading necessary.<sup>153</sup> As Hunlafing laid Hnæf's sword on Hengest's lap, Guðlaf and Oslaf, I suspect, were reminding Hengest that serving his lord's bane was nothing's work. Uncles and nephew joined together to play the grievant's role in the ceremony.

152. The poet is quite specific about what is placed on the pyre. Hnæf's corselet and helmet were mentioned, his sword was not. *Beowulf*, supra note 17, ll. 1111–12. See also Hilda Davidson, *The Sword in Anglo-Saxon England* (Oxford, 1962) 10–13, where it is noted that swords or their remains are rare in cremation graves. Swords often escaped burnings or burial because they were valued as hereditary goods or were subject to death tax—the heriot.

The destruction of the corpse by fire may also explain the surrogate for the bloody token in a gruesome goading recorded in *Guðmundar saga dýra*, ch. 17, in *Sturlunga saga*, Jón Jóhannesson, Magnús Finnbogason and Kristján Eldjárn, eds. (Reykjavík, 1946) 195. Önund had been burned to death by Guðmund in his own home. A year later Önund's daughter, Guðrún, serves her brothers and husband nothing but burned sheeps' heads and feet for breakfast. The message is not lost on the men who ride out immediately thereafter to avenge Önund.

153. Elsewhere in *Beowulf*, the sight of a dead kinsman's sword is used as a mnemonic device to goad a young man to take vengeance in violation of a settlement. *Ibid.* ll. 2032–66. But in that case the sword is not part of a ceremonial charge. It had been appropriated as spoils by the other faction and so was not available to the grievant. Without it, much like Hallgerð without Sigmund's head, the grievant must resort to repeated eggings to move the would-be avenger to action.

In the sagas, the victim's own weapon figures frequently in avenging him without ever being formally handed to the avenger as part of a charging ceremony. The victim's weapon would normally pass to one of his heirs along with his other property, and it was often the heirs who took vengeance. See, e.g., *Droplaug*, supra note 38, ch. 13; *Laxdæla*, supra note 21, ch. 64; *Njál*, supra note 6, chs. 132, 146. In cases where the corpse was despoiled of its weapon, the avenger could even resort to trickery to obtain it. *Grettir*, supra note 26, ch. 86. There was, no doubt, a special sense of appropriateness in using the victim's weapon to avenge him. Besides the grim irony apparent to the expiator of dying virtually at the hands of the victim, it satisfied the rule of equivalence, the talion, with flourish.

A similar sense of appropriateness also made the killing weapon a desirable choice to do double service as the avenging weapon. Thus, the spear that killed Ásbjörn, stained with his blood, served not only as the bloody token in a formal charging ceremony but was also used to avenge him. *Óláfs saga helga*, supra note 105, chs. 133, 228. See also *Gísli*, supra note 28, chs. 13, 16. That saga mentions a custom nowhere else recorded, and not current during the author's time, that the responsibility to take vengeance fell to whoever removed the weapon from the corpse. The custom, if indeed preserving an earlier practice, bears some resemblance to the bloody-token ceremony at issue in this article.

If, as is entirely possible, the ceremony was performed in Finn's hall and in his presence, the grievants have assured themselves of immediate violence. Their actions were open violations of the settlement that had banned any provocative words or deeds. By thus breaking the agreement, they have done much to tip the balance in favor of vengeance in Hengest's mind. As long as the agreement was being adhered to, not wishing to violate his oath to maintain it held Hengest's contrary desire for vengeance in check. But the open repudiation of the truce by his men, coupled with the force of the charging ceremony itself, made Hengest's choice an easy one. He must take vengeance and quickly, too, before Finn can prepare to defend. As in Iceland, the ceremony was here used to clarify conflicting obligations and set the proper time for taking blood.

Our final piece of evidence is, perhaps, the strangest and most difficult to understand. Beowulf was in the midst of his last battle, the fight against the dragon, and he was faring badly. Wiglaf, one of his retainers and also a kinsman, came to his aid.<sup>154</sup> But at the moment Wiglaf drew his sword, the poet leaves him suspended and Beowulf enveloped in flames, in order to digress on the history of Wiglaf's sword:

gomel swyrd geteah	2610
<p>þæt wæs mid eldum Eanmundes laf,          suna Ohteres; þam æt sæcce wearð,          wræccan wineleasum Weohstan bana          meces ecgum, ond his magum ætbær          brunfagne helm, hringde byrnan,          ealdsweord etonisc; þæt him Onela forgeaf,          his gædelinges guðgewædu,          fyrdsearo fuslic,—no ymbe ða fæhðe spræc,          þeah ðe he his broðor bearn abredwade.          He ða frætwe geheold fela missera,</p>	
bill ond byrnan, oð ðæt his byre mihte eorlscipe efnan swa his ærfæder; geaf him ða mid Geatum guðgewæda, æghwæs unrim þa he of ealdre gewat frod on forðweg. <sup>155</sup>	2620

he drew the old sword  
 known by men as Eanmund's heirloom,  
 the son of Ohtere; Weohstan killed [Eanmund],  
 the friendless exile, in battle by sword's edge;  
 and [Weohstan] bore the shining helmet,  
 the linked mailshirt, and the old sword of giants  
 to [Eanmund's] kinsmen. Onela gave him  
 his nephew's battle-gear, his ready armor—  
 he didn't speak about the feud at all,

154. *Beowulf*, supra note 17, ll. 2591–2610.

155. Ibid. ll. 2610–25. Unlike the *Finnsburh Episode*, this digression has received little critical attention. See Adrien Bonjour, *The Digressions in Beowulf* (Oxford, 1950) 35–39; Robert Kaske, 'Weohstan's Sword,' *Modern Language Notes* LXXV (1960) 465–68.

even though [Weohstan] had killed his brother's son.  
 [Weohstan] held the equipment many years,  
 the sword and the mailshirt, until his son was able  
 to do manly deeds as his father had done before.  
 [Weohstan] gave him while among the Geats battle-gear  
 of all types, when he departed this life,  
 wise in his life-leaving.

Wiglaf's pedigree was given in the lines immediately preceding this passage; Weohstan is his father. The poet, however, is just as interested in the pedigree of the sword, helmet, and mailshirt and how they came to be in Wiglaf's possession. Wiglaf's father had stripped them from Eanmund's corpse and borne them to his lord Onela.<sup>156</sup> Onela, however, also happened to be Eanmund's father's brother; that is, Onela and Ohtere were brothers. Onela was at this time king of the Swedes. We know from an earlier passage in *Beowulf* that the sons of Ohtere, Eanmund and Eadgils, had failed in some unspecified manner in their duties to their uncle Onela and fled to the court of Beowulf's lord, Heardred, in Geatland for protection. There Onela sought them out. Heardred lost his life for sheltering Eanmund and Eadgils, and it was apparently during this raid that Weohstan killed Eanmund, despoiled him of his sword and armor, and presented his spoils to Onela.<sup>157</sup>

There are two deliveries of property we need to discuss before the sword and armor can pass from Weohstan to Wiglaf to do service against the dragon: the tradition from Weohstan to Onela, and then, from Onela back to Weohstan.

Weohstan's act of bearing Eanmund's armor to his lord is susceptible to at least three explanations. First, Weohstan was presenting proof of a successful mission which also served as a proper publication of the killing. Onela was clearly pleased at the outcome; he had probably ordered the killing. Second, Weohstan was giving the spoils which he had won in battle to his lord. This is the customary practice of a good retainer.<sup>158</sup> Third, Weohstan might be seeing to it that Eanmund's heriot is paid.<sup>159</sup> If Onela

156. Weohstan is said to bear the spoils to *his magum*. I follow Klaeber, *Beowulf*, supra note 17, 217, in taking *his* to refer to Eanmund, and in taking the dative plural *magum*, literally 'to kinsmen,' to be a generic term specifically referring to Onela as the head of the kin group to which both he and Eanmund belong.

157. *Beowulf*, supra note 17, ll. 2379–96.

158. E.g., like Weohstan, the Geatish warrior Eofor despoiled the corpse of his victim Ogentheow and carried Ogentheow's helmet, sword, and mailshirt back to his lord Hygelac. *Beowulf*, supra note 17, ll. 2985–88. Beowulf gave Hygelac the gifts he received from King Hrothgar for vanquishing Grendel. *Ibid.* ll. 2155–62. He gave Hrothgar the sword-hilt he took from the Grendel kin. *Ibid.* ll. 1677–79. The Frankish warrior Dæghrefn tried to despoil Hygelac's corpse in order to take the armor back to his lord, but was killed by Beowulf in the process. *Ibid.* ll. 2501–06. Examples from other sources are available in Whitelock, *Beginnings of English Society*, supra note 11, 30–31.

159. See *ibid.* 35–36. 'Heriot' is a later form of Old English *heregeatu*, a compound meaning generally 'army-equipment,' and specifically the exaction later known as 'heriot;' see J. Bosworth and T.N. Toller, *An Anglo-Saxon Dictionary* (Oxford, 1898) and Toller and A. Campbell's *Supplement* (Oxford, 1921) s.v. *heregeatu*.

were Eanmund's lord as well as kinsman, as appears to have been the case,<sup>160</sup> any armor and weapons he had been invested with by his lord would be owing to the lord on his death. For example, before Beowulf fought Grendel he requested that Hrothgar, king of the Danes, send his armor back to his lord Hygelac if he should fail in battle.<sup>161</sup>

Unfortunately, Weohstan cannot present proof of Eanmund's death, grant his booty to his lord, or render Eanmund's heriot without at the same time performing the ritual which should charge Onela to avenge his nephew. Weohstan, I assume, was painfully aware of the ironies of the situation. Even though he knew Onela was complicit in the killing he must have had some anxiety that the sight of kin blood might bring a violent repentance down on his head.<sup>162</sup>

Onela received the spoils from his retainer and like a good lord rewarded him for his loyal service by regrating the spoils.<sup>163</sup> At its simplest level this is all Onela's action meant. Yet the poet takes pains to suggest that Onela's regrating of the spoils was as various in its meanings as Weohstan's rendering the spoils to him had been. When he regrated the sword and armor 'he didn't speak about the feud at all, even though [Weohstan] had killed his brother's son.' The tone of ironic understatement is hard to capture in translation.<sup>164</sup> In his offhand manner the poet is reminding the audience that whether it was mentioned or not, Weohstan had incurred the bloodfeud, and he is also reminding us that Weohstan had just reminded Onela that he had incurred the feud. The irony of the poet's comment depends not upon whether Onela *said* anything about the feud but whether he *did* anything about it. There is nothing in not speaking about the feud to provoke the poet's wry comment; there is, however, plenty to provoke it in not doing anything to avenge his kinsman.

There are clear indications in the passage that Onela did indeed make clear his feelings about the feud. The verb used to describe Onela giving Weohstan the sword and armor is *forgeaf*, not *geaf*.<sup>165</sup> Old English *forgifan*,

160. See *Beowulf*, supra note 17, ll. 2379–90.

161. Ibid. ll. 452–55.

162. The episode of Sichar described supra note 135 is especially instructive in this regard.

163. The ceremonial gift-giving from lord to retainer was the central ritual of the hall-life of the *comitatus*. The ritual symbolized and reconfirmed the bond between lord and man. Its importance is attested by Old English synonyms for lord like *sincgifa*, 'treasure-giver,' and *beahgifa*, 'ring-giver.' Bosworth-Toller, *Anglo-Saxon Dictionary*, supra note 159. For an interesting discussion of the politics of gift exchange in *Beowulf*, see H. Berger, Jr. and H. Leicester, Jr., 'Social Structure as Doom: the limits of heroism in *Beowulf*,' in R. Burlin and E. Irving, Jr., eds., *Old English Studies in Honour of John C. Pope* (Toronto, 1974) 37–79 at 44–50. See also *Beowulf*, supra note 17, ll. 168, 2633–45, 3010–21 and Whitelock, *Beginnings of English Society*, supra note 11, 30–31.

164. Understatement, *litotes* in the terminology of rhetoric, is a characteristic feature of the *Beowulf*-poet's style. In his commentary to these lines, Klaeber notes the presence of the trope. *Beowulf*, supra note 17, 218.

165. See l. 2616 and cf. l. 2623 in the passage quoted in the text supra accompanying note 155.

like *gifan*, meant to give, to grant; it also, however, had the root sense of modern English ‘forgive;’ that is, to pardon a wrong, to remit a penalty. The verb was used in distinctly legal contexts in Old English, as, for example, the Lord’s prayer’s *forgyf us ure gyltas*,<sup>166</sup> ‘forgive us our debts.’ When Onela ‘forgave’ the sword and armor to Weohstan, he forgave or released his right to pursue the feud on Eanmund’s behalf. Weohstan accepted the regrant knowing that this was what the regrant meant. In this regard it is noteworthy that this is the only example in *Beowulf* where a retainer got back the exact items he offered up to his lord. The lord always makes a return gift, but the same articles are not handed back. To have handed back the same items, in any other context, would have been the severest of insults, a gift spurned,<sup>167</sup> not a feud forgiven. We also know that Onela kept the agreement,<sup>168</sup> for Weohstan held the equipment many years and was able to ‘give,’<sup>169</sup> not ‘forgive’ the sword and armor to his son Wiglaf.

Let us return briefly to Weohstan at the moment he presented Onela the presumably bloody armor and the sword of his nephew. He knew he had committed an act that incurred the feud *vis à vis* his lord. He also knew his lord wanted the act committed. What could be neater than to ask Onela to reconfirm their prior understanding by 1) enacting the ceremony that obliges Onela to pursue the feud so that 2) the lord can formally and publicly release his claim against his ideal retainer. Onela’s action gave reassurance to Weohstan and assured the public that Weohstan was not in a state of feud with his lord.

The charging ceremony in effect has been transformed here into a highly ritualized request for forgiveness. When the grievant’s role in the bloody-token ceremony is played by the killer the entire ceremony undergoes a major semantic shift. The ceremonial aspect remains, but now instead of choosing the avenger, it pardons the killer. Similarly, other cultures recognize a ritual request to forgive the feud, or forbear taking vengeance by having the killer present himself to the avenger and offer himself up for

166. *Matthew* 6:12 in *Anglo-Saxon Gospels* quoted in *The Oxford English Dictionary* s.v. forgive, v. 3.b. *Forgyf us ure gyltas* renders the Vulgate Latin *dimitte nobis debita nostra*; see Bosworth-Toller, *Anglo-Saxon Dictionary*, supra note 159, s.v. *forgifan*.

167. See Berger and Leicester, ‘Social Structure as Doom,’ supra note 163, 44–50.

168. Onela’s release bound only himself, not his kin. Eanmund was survived by a brother, Eadgils, who had not forgiven Weohstan the feud. Eadgils later succeeded Onela as king of the Swedes, and it was perhaps for this reason that Weohstan is said to have given Wiglaf Eanmund’s sword and armor among the Geats. There are strong hints in the poem that Eadgils and the Swedes attack Wiglaf and the Geats to avenge Eanmund. See Bonjour, *Digressions in Beowulf*, supra note 155, 36–39.

169. The poet’s use of *geaf* to describe the transfer from Weohstan to Wiglaf contrasts with his use of *forgeaf* to describe the Onela-Weohstan transfer. The use of *geaf* some seven lines after *forgeaf* can only be intended to point out the distinction between the two transfers since there are no compelling metrical reasons requiring the choice of either verb.

easy expiation.<sup>170</sup> One saga shows a killer laying his head on the knee of the victim's father.<sup>171</sup> Here, too, the forgiveness ceremony parodies the charging ceremony. It is very unlikely that anyone would go through this ceremony without strong assurances that his offer will not be accepted. Weohstan no doubt found those assurances in Onela's complicity in Eanmund's death.

The Weohstan-Onela episode is remarkable in that the acts of handing over the spoils and regranting them are legally significant gestures in some three or four different legal contexts. Announcing a killing, granting the lord his spoils, paying the heriot, charging the lord to take vengeance, and requesting a release from incurring the feud are all enacted by Weohstan's handing over the sword and armor. Rewarding a retainer, waiving the heriot, and forbearing to take up the feud are all enacted by 'forgiving' the sword and armor to Weohstan.

Both in England and Iceland the ceremony for charging the avenger made use of symbols and signs already established in the lexicon of legal rituals. In both countries, the symbols were ones which figured in obligation-creating or obligation-transferring ceremonies. The English charge borrowed from the rituals of gift exchange and weapon investiture common to a society of lords and retainers, whereas in Iceland it resorted to blood-brotherhood compacts and the transfer of killing cases. Our English evidence, however, is skewed to the noble classes. We have no way of knowing what the formalities of the obliging ceremony were among local kin groups. My suspicion is that they looked more to bloody tokens and severed heads than to gold-hilted swords.

170. Peters, 'Structural Aspects,' supra note 4, 270, records that among the Bedouin the killer might present himself to the 'owner of the blood,' accompanied by a holy man, and make an offer of his life: 'Here is my knife, my life is yours.' Peters notes that 'no Bedouin would agree for a moment to undertake this journey if he thought the offer might be accepted.'

171. *Þorsteins saga hvíta*, ch. 7, in 11 *Íslensk fornrit*, Jón Jóhannesson, ed. (Reykjavík, 1950); English translation: *Thorstein the White's Saga*, ch. 8, in *Four Icelandic Sagas*, trans. by Gwyn Jones (Princeton, 1935); and also *Hrafn's saga Sveinbjarnarsonar*, ch. 14, in *Sturlunga saga*, supra note 152, 218.

## APPENDIX: INDEX TO CASES

Case no.	source	discussed at	relation of grievant to corpse (ego)	relation of person to be charged to grievant (ego)	relation of corpse to person charged (ego)	type of bloody-token	reaction of person to be charged
1.	<i>Eyrbyggja</i> , supra note 1, at ch. 27	text at notes 1, 74-84	Wi	MoBr	SiDaHu	head	enraged and upset
2.	<i>Njal</i> , supra note 6, ch. 116	text at notes 93-105	Wi	FaBr	BrDaHu	blood clots and a bloody cloak	enraged and upset
3.	Ibid. ch. 45	text at notes 86-92	FaBrDaSoWi	Hu	MoFaBrSo	head (see supra text at note 86)	not applicable (see supra text at note 86)
4.	Ibid. ch. 98	text at note 129	Mo	So½Br	½Br	corpse with eyes open	see note 136
5.	Ibid. ch. 124	text at notes 130-32	Mo	Br	SiSo	bloody cap	calm
6.	<i>Laxdæla</i> , supra note 21, ch. 60	text at notes 126-27	Wi	So	Fa	bloody clothing	grief and upset
7.	<i>Vápnfirðinga</i> , supra note 33, ch. 14	text at notes 133-35	Wi	HuSo	Fa	bloody clothing	enraged and upset
8.	<i>Óláfs saga</i> , supra note 105, ch. 123	note 105, 136	Mo	HuBr	BrSo	bloody killing weapon	enraged and upset
9.	<i>Beowulf</i> , supra note 17, ll. 1142ff.	text at notes 139-53	retainer	lord	lord	corpse's sword	not given
10.	Ibid. ll. 2610-25	text at notes 154-71	killer	lord	BrSo	corpse's sword and armor	forgives feud