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Measuring Wounds in the *Lex Frisionum* and the Old Frisian Registers of Fines

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1 Introduction

According to medieval Frisian law, all flesh wounds inflicted during a conflict had to be compensated according to their size and to their seriousness. Sometimes however, this caused an internal conflict within the system of rules. What, for instance, if a wound had to be made longer by a physician in order to cure it? Because Old Frisian law very strongly took into consideration the consequences of wounds, not the size of the wound when it was first inflicted, but its size after the incision of the physician was to be measured and compensated. The following quotation shows how this worked:

*Fan da haude.*

*Huam so ma slacht iefta mit yrsen syuth iefta mit holte ieff mit stupa oen syn haud, dat ma him srya schil, so aegh hi dan des snides tua einsa; so aeg ma him om toe metten bi da lingra igh bi des tumma knockela langh, aller meta lyc xvi penninghen. Ende dat mei een ede oen to bringhen, dat hy den snei naet deen habbe oem nene fyafollinghe mer om sine liwes sonda.*

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1 This article is the first product of the research I am doing in preparation of my doctoral dissertation (NWO-project 350-50-002: ‘De taal van het lichaam: een analyse van het mensbeeld in middeleeuws Friesland aan de hand van de Oudfrisese boeteregisters’: promotor: Prof. Dr. Ph. H. Breuker, co-promotor: Dr. R. H. Bremmer Jr.). I would like to thank Rolf Bremmer, Kees Dekker and Sophie van Romburgh for critically reading earlier versions of this text.

Concerning the head.

Whomever is struck on the head with a piece of wood or with a club, or shot with iron, to such a degree that the wounded man has to be incised (by a physician), then this man must receive two ounces for the incision. And it (the wound) must be measured around along the longer side by the length of the (upper) knuckle-bone of the thumb, each measure to be compensated with 16 pennies. And he (the physician) has to swear that he did not make the incision in order to get more money but only for his (patient's) health.

The concluding statement from the above quotation shows that the law-makers tried as much as possible to curb any possible private agreements between the physician and the patient in order to get a larger compensation.

The phenomenon of establishing the compensation of wounds according to their size, which is mentioned in the various Old Frisian registers of fines (recorded between the 13th and 16th centuries), can be traced back to the so-called Lex Frisonum (ca. 802 A.D.). To date, it has not received much attention. The standard work on Old Frisian criminal law, Das Strafrecht der Friesen im Mittelalter, written almost a century ago by Rudolf His, provides information on the measuring of wounds, both in the Lex Frisonum and in the Old Frisian registers of fines. His gathered evidence from all periods and regions concerning the various topics of medieval Frisian criminal law, but the book does not go much further than simply presenting it. Its use is therefore relatively limited. The standard work on the Lex Frisonum is that by Harald Siems. Unfortunately, the measuring of wounds is not dealt with explicitly. Siems, however, extensively discusses the older studies on the Lex Frisonum, and he

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places the sections in which measuring wounds is described in the context of the
development of the *Lex Frisionum* as a whole.\(^4\)

In this study I would like to take a closer look at the phenomenon from a more
anthropological perspective — one that has not been taken so far. I will try to
clarify how the phenomenon operated within the larger context of Frisian law,
and how it had become an integrated part of that elaborate system of law. I will
also discuss a possible continuity between the *Lex Frisionum* and the Old Frisian
registers of fines with regard to the measuring of wounds. Finally, the question
of why the Frisians compensated a wound according to its length will prove to
be hard to answer, but an attempt will be made nevertheless.

\section{Backgrounds to the Registers of Fines}

The *Lex Frisionum*, the law of the early medieval Frisians, is now generally
thought to have been a draft, made at the court of Charlemagne in Aachen in
802, which has never been given legal status.\(^5\) There are no medieval manus-
scripts left containing a copy of the *Lex*; the only source at our disposal is the
text edition by Herold, dated 1557.\(^6\) The text forms part of a group of early
medieval texts called *Leges Barbarorum*, the laws of the Germanic peoples who
had fallen under the rule of the Merovingian and Carolingian kings (6th-8th
centuries). After their codification, the laws received the royal assent. In this
period too, the Germanic kings of England began to put their laws to writing,
not in Latin like their continental counterparts, however, but in the vernacular.

All *Leges Barbarorum* and the Anglo-Saxon laws contain lists of compen-
sations for perpetrations, the main purpose of which was to buy off an imminent
feud between two kindreds, since during most of the Middle Ages a legal pro-
cess was a matter between two individuals and, by extension, the two kindreds
they belonged to. There was no government which actively persecuted criminals
such as exists today, and people had to make their own case at the *thing*, the
assembly of free men.\(^7\)

All *Leges Barbarorum* also contain smaller or larger lists of bodily injuries
with the fines to be paid by the offending party to the injured party. In the Old

\footnotesize
I would like to thank Prof. Algra for having given me the opportunity to use his
material before publication.
\(^6\) J.B. Herold (1557), *Originum ac Germanicarum antiquitatum libri*. Basel:
\(^7\) P. Gerbenzon and N.E. Algra (1972), *Voortgangh des rechtes. De ontwikkeling
van het Nederlandse recht tegen de achtergrond van de Westeuropese cultuur*. 3d ed.;
Groningen: 41 and 50.
Frisian corpus such lists appear as separate texts and are known as registers of fines (Du. boeteregisters, G. Bussregister, Busstaxen or Wundbussen). The bulk of the Old Frisian texts concerns bodily injuries, but, mostly placed at the end, also contains sections on topics such as honour, disturbance of the domestic peace, and wounds inflicted by cattle, children and women (these three groups all fell under the responsibility of the master of the house). In the Lex Frisonium close to half of the text is taken up by registers of fines, but this is insignificant compared to the Old Frisian texts, which display such a wealth of detailed material that several scholars rightly characterise the registers of fines as 'unparalleled within the Old Germanic sources'.

When His wrote Das Strafrecht der Friesen, it was still communis opinio that one single legal system prevailed in all of Frisia. Only later it was taken into consideration that there were regional differences. On the measuring of wounds His says:

Die Masswunde (metewunde, HN) ... oder messbare Wunde ... grenzt sich nach unten ab von der blossen Blutunst (blodresne; HN) ... . Nach oben zu wird die einfache Masswunde bisweilen unterschieden von der qualifizierten Wunde, während anderwärts auch bei qualifizierten Verletzungen von der einfachen Masswunde ausgegangen wird, und die Nebenumstände als selbstständige Vergehen gebüsst werden.

His then, distinguished two categories or axes. First, there is a quantitative category which consists of simple flesh wounds, with the blodresne 'shedding of blood' at the lowest level, followed by the metewunde 'wound of a certain size', or 'wound with the length of a mete or “measure” '. The following quotation corroborates this: Also manich metha alst dolg halda mey, also manich metha dolch schelma beta ende isser littijck wr, dat is en bloet reesna. 'As many measures a wound has, as many metewunde must be compensated, and if there is a little (length of wound) left, then this is (to be compensated as) a blodresne.'

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10 His (1901), Das Strafrecht der Friesen, 301 (italics are mine).
11 A IVc.57; Buma, Gerbenzon and Tragter-Schubert (1993), Codex Aysma: 500. (See note 2).
Second, there is a qualitative axis, which His in the above quotation refers to as 'qualifizierte Wunde'. This category contains wounds that were not simple flesh wounds. The amount of money to be paid as compensation for an injury thus depended on its location on the body, its seriousness and its consequences. A cut in the face, for instance, was much graver than one in the leg, because the former could clearly be seen and disfigured the face (wlitewlemmelsa), whereas the latter could be covered up by clothing. Although His's ideas about the uniformity of Frisian law are out of date, it seems to me that the system he suggested is corroborated by the Old Frisian sources. In the following, I will use it as a working model.\(^\text{12}\)

The registers of fines further show a tendency to accumulative fines. One could have a wound of a certain length, to be compensated accordingly, but it might also have healed badly, leaving a scar that was higher or lower than the rest of the skin (abel and insepta), for which the injurer also had to pay, and it may also have been in the cheek, thus causing disfigurement of the face (wlitewlemmelsa) for which a separate fine had to be paid as well.\(^\text{13}\)

Seen on a scale of ascending graveness, the quantitative category comes first, followed by the qualitative category with at its extreme end wounds that were terminal. If a man was killed by another, the so-called wergeld (literally 'man-money') had to be paid to the kindred of the deceased. Some of the fines in the registers are clearly related to this wergeld, in the sense that they are portions of the complete wergeld. A typical example is the loss of one of the 'six limbs' (hands, feet and eyes), which is estimated at half of the wergeld: En age vte en half ield. Ene honde of alsa fule. En fot of alsa fule, 'One eye out, half a wergeld; one hand off, as much; one foot off, as much'.\(^\text{14}\) In some registers of fines the fines for the loss of the fingers and the palm of the hand were fractions of the fine for the loss of the complete hand.\(^\text{15}\)

The legal process in which these fines played a role went as follows: let us imagine a fictional case in which two men, Allert and Obba, got involved in a fight. Let us say that Allert inflicted a wound on Obba's arm; what happened next? First of all, Obba had to make it publicly known, burkuth, that he had suffered an injury during a fight, so that his neighbours could later bear witness

\(^{12}\) The problem I am referring to here is what is known from anthropological methodology as the distinction between 'emic' (from 'phonemic') and 'etic' (from 'phonetic') interpretation. In other words: did the Frisians in the Middle Ages also think in terms of a bloody wound, a measure wound and worse (emic), or is this just His's structuring of the material (etic)? Like I said, the sources seem to indicate that the Frisians thought in terms of these categories as well.

\(^{13}\) His (1901), Das Strafrecht der Friesen, 111-129, calls this 'Verbrechenskonkurrenz'.

\(^{14}\) F X, 330-332; Buma and Ebel (1972), Das Fivelgoer Recht: 120. (See note 2).

\(^{15}\) His (1901), Das Strafrecht der Friesen, 284-286.
to the fight. Next, he had to take his case to court and indict Allert. Obba would have to swear that Allert had injured him. Before ca. 1200, Allert could have simply rebuffed the allegations by swearing an oath of denial. According to the graveness of the deed, he would have to find several ‘oath-helpers’ to support him. These cojurors would not swear that he did not do it, but merely that he was an honourable man, who would not tell a lie. After ca. 1200, this possibility was trimmed down more and more. By that time, if a deed was *burkuth*, ‘publicly known’, it was also considered proven. Not only the possibility of denouncing a deed simply by swearing an oath, but also the ordeals, such as putting one’s hand in boiling water to see if and how fast it would heal, lost importance after the end of the 12th century. I will return to this point later.

The court would have been presided over by an official such as the bailiff (*skelta*) or the representative of the count (*jrana*), assisted by the law-speaker (*asega*), the one with expert knowledge of the law. If the case was considered proven, the *asega* would fix the fine to be paid by Allert, and Obba would have to take care to actually get the money. If the fine was higher than a certain amount, Allert would also have to pay the community a fine for having broken the peace.

Somewhere between the fight and the meeting of the court, Allert’s wound had to be inspected (*skowia*), ascertained (*wundscrifia*) and measured. As a rule, wounds were measured after they had healed, with the exception of bites and burns: *Thine bite and thine brande meta ma bi ther epena wunde and elles nene* ‘a bite and a burn must be measured while the wound is still open, but no other type of wound’. In other cases the wound was to be inspected and measured at a session of the court after it had healed (there were three main ‘things’ in a year).

To conclude the description of the legal process and the fictional case: Allert’s wounds may also have been measured by a physician. A physician’s involvement was already, albeit indirectly, mentioned in the quotation at the beginning of this article: it relates a situation in which a man incurs a headwound that has to be incised. Grave wounds were closed by burning with a hot piece of iron, or by stitching. In the latter case, a fine had to be paid for each stitch the physician had made: *Tha sex stekan ondere vnde, iefse sied is, elc lic vij schilling* ‘Six stitches on the wound, if it has been sewn, each 7 shilling’. In a few instances,
the physician is explicitly named as the one who has to testify at court as to the
graveness of a certain wound: *Thi cop thruchstat ieftha hauwen en merc mitha
etza to winnen* 'the head perforated or cut through (costs) one mark, to be testi-
fied by the physician'.

3 The Systems of Measuring in the *Lex Frisionum*

The *Lex Frisionum* employs three different sets of descriptions of how to
measure wounds. The first set is found in chapter (*titulus*) 22, §§75 and 66-70. It
consists of six steps or measures:

1. The distance between the (extended) thumb and the knuckle-bone of the
curled up index finger (ca. 12 cm.): 4 *solidi*.
2. The distance between the extended thumb and the top of the extended
index finger (ca. 15 cm.): 6 *solidi*.
3. The distance between the (extended) thumb and the tip of the extended
middle finger (ca. 17 cm.): 8 *solidi*.
4. The distance between the elbow and the wrist (ca. 31 cm.): 12 *solidi*.
5. The distance between the elbow and the tip of the thumb (ca. 43 cm.): 18
   *solidi*.
6. The distance between the elbow and the tips of the fingers (ca. 49 cm.): 24
   *solidi*. Longer wounds are not compensated: this is the maximum.

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22 E3 I,32; Buma and Ebel (1967), *Das Emsiger Recht*, 170. (See note 2).
23 In the edition, section 75 has been placed before sections 66–70; K.A. Eckhardt
Fontes iuris Germanici antiqui in usum scholarum separatim editi XII. Hannover:
76–78.
24 For simple reference, I measured out all steps on my own body.
25 Vulnæ tria vel quatuor vel eo amplius uno ictu facta mensurantur, et iuxta
quod eorum fuerit longitudine compositio persolvatur. Si vero tria vel quatuor vel
quotlibet vulnæ totidem ictibus fuerint facta, quod ex his maximum fuerit, iuxta
sui longitudinem componatur; caetera vero remaneant.
66. Vulnus quod longitudinem habeat, quantum inter pollicem et complicati
indiciæ articulum nec spannum impleat, IIII solidis componatur; quod integre
spannae longitudinem habuerit, hoc est quantum index et pollex extendi possunt,
VI solidis componatur.
67. Quod inter pollicem et mediæ digiti spannum longum fuerit, VIII solidis
componatur.
68. Quod a cubito usque ad iuncturam manus longitudine fuerit, duodecim
solidis.
69. Quod a cubito usque ad summitatem pollicis longum fuerit, XVIII solidis
componatur.
In this set two subgroups can be discerned. The first one consists of steps (1) to (3), which use the so-called ‘span’, and have a series of compensations which adds 2 solidi each time (runs 4-6-8). Usually, a span refers to the distance between the extended thumb and the little finger (see below).26 The second subgroup (steps 4 to 6) uses a measure which was known as ‘ell’ in later times, and has a series of compensations which add 6 solidi each time (runs 12-18-24). Between steps (3) and (4), 4 solidi are added, but the real distance ascends from ca. 17 to ca. 31 cm., which is not logical to modern eyes.

The second set of measurings is found in the Additio sapientium (‘the addition of the wise men’) tit. IIIa, 8849-58. It consists of nine steps:

(1) The length of the top knuckle-bone of the index finger (ca. 2.5 cm.): 1 solidus.
(2) The length of the two top knuckle-bones of the index finger (ca. 5 cm.): 2 solidi.
(3) The length of the two top knuckle-bones of the index finger plus half of the third (ca. 6 cm.): 3 solidi.
(4) The length of the complete index finger (ca. 7.5 cm.): 4 solidi.
(5) The length of the complete index finger plus the distance between the index finger and the thumb (ca. 12 cm.): 5 solidi.
(6) Plus the lower knuckle-bone of the thumb (ca. 14 or 16 cm.): 6 solidi.
(7) Plus the upper knuckle-bone of the thumb, ‘which is called smeelo, which means that the wound has the length of a span’ (ca. 12 cm.): three times 8 solidi.
(8) The distance between the (stretched) thumb and the top of the extended middle finger (ca. 15 cm.): three times 12 solidi.
(9) When the wound is longer than this last measure, one is to return to the first step, and add these measures (and their fines).27

26. Quod pleni cubiti, id est ad summos digitos manus extensae, longitudine fuerit, XXIII solidis componatur; quod supra est, non componitur; Eckhardt and Eckhardt (1982), Lex Frisionum, 76-78.
49. Si quis alii duo aut tres aut eo amplius vulnera uno ictu intulerit, et negare voluerit, quod uno ictu tot vulnera fecisset, liceat ei qui vulneratus est sua solius manu sacramentum peragere, quod tot vulnera uno ictu ei fuissent illata, et compon(atur) iuxta quod vulneris fuerit magnitudo; unumquodque vulnus secundum suam longitudinem componendum est.
50. Si longum fuerit, quantum summus articulus indicis est uno solido compon(atur).
51. Si quantum duo articuli indicis sunt, duobus solidis.
52. Si quantum duo articuli et tertius dimidius, tribus solidis.
53. Si quantum totus index, III solidis.
Here again, two subgroups can be discerned. The second subgroup starts with step (7); the fine is raised by two solidi instead of one, and the word ter ‘three’ is inserted or added. This insertion or addition is an indication of a later stage in the development of the *Lex Frisionum*. The ‘seam’ between the two subgroups also becomes apparent when the measurements are checked in cm. It then turns out that from step (6) to (7) the size actually decreases a few cm., whereas the fine increases.

There are two obscure points in this second set. First, when the raising of solidi is compared to the increase in actual cm. in the first subgroup, step (3) strikes one as rather odd. Second, in step (6) it is not clear what is actually meant: must one take the distance of step (5), and add the distance described in step (6) (so more in line with the first subgroup), or should one already start to measure in a way that is common to the second subgroup, i.e. the distance between two extreme points? The former possibility yields ca. 16 cm., while the latter yields ca. 14 cm.

The third set immediately follows the last step of the second set in the same *Additio sapientium*. It is the simplest of the three:

Among the western Frisians who live between the Vlie and Sinkfal: as many unciae that a wound is long is to be compensated with as many solidi, until the maximum of 53 solidi and a tremissum is reached; in that province a nobleman is compensated with 106 solidi and two tremissi. The same between the Weser and the Lauwers.

The only uncertain point in this passage is the interpretation of *uncia*. It literally means ‘twelfth part of something’. Since a measure of length is most probably

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54. *Si supra longitudinem indicis spatium, quod inter indicem et polllicem est, fuerit adiectum, V solid(is).*
55. *Si adiectus fuerit inferior articulus polllicus, VI solidis.*
56. *Si et superior adiiciatur, quod vocant smelo, hoc est unius spannae longitudinem habuerit, ter VIII solid(is) componatur.*
57. *Si quantum inter polllicem et medium extendi potest, longum fuerit, ter XII solid(is) componatur.*

28 Siems (1980), *Studien*, 158n214 and the index at 413.
29 *Apud occidentales Fresiones inter Flehi et Sincfalam quot unciarum fuerit longitudo vulneris, tot solidorum compositione persolvitur, donec ad L et tres solidos perveniat et unum tremissem; ibi nobilis homo centum et VI solidis et duobus tremissis simpia compositione solviur. Similiter inter Wisaram et Laubachi;* Eckhardt and Eckhardt (1982), *Lex Frisionum*, 94.
what is meant, and since the inch (known as a ‘thumb’ on the continent, measuring ca. 2.5 cm.) as a twelfth part of the foot (measuring ca. 30 cm.) was a common way of measuring lengths, I assume that it is an inch which is meant in the latter passage of the Lex Frisonum. If *uncia* is indeed to be interpreted as an inch, it would also reveal a correspondence between the second and the third sets, since the first knuckle-bone of the index finger, too, measures roughly 2.5 cm.

Comparing the three sets, an overlap becomes apparent: steps (7) and (8) of the second set are the equivalents of steps (2) and (3) of the first set. Both sets at this point describe two derivatives of the so-called ‘span’, and the fact that the vernacular *smelo*, meaning ‘small’, is added in step (7) of the second set, may indicate that the described measure was a ‘small version of the normal span’. The amounts of money to be paid in compensation for wounds of the described sizes are not equal, however: in the first set they are 6 and 8 *solidi* respectively, and in the second set they are 8 and 12 *solidi* respectively, not even taking into consideration the addition *ter* ‘three times’ in this set.

It seems possible then to distinguish different evolutionary phases in the *Lex Frisonum* where the measuring of wounds is concerned: 1) the first set (Tit. 22, §§75, 66-70); 2) the addition of steps (1) to (6) of the second set for wounds that were smaller than the first step of the first set (*Additio sapientium* III, §§49-55); 3) steps (7) and (8) of the second set (*Additio sapientium* III, §§56-57). Siems, however, ascribes these different sets not to chronological, but to regional differences. Concerning the registers of fines in the *Lex Frisonum* he arrives at the conclusion that Tit. 22 pertains to the main Frisian area (between the rivers Vlie and Lauwers), that the *Additio sapientium* II-IIa, §58 pertains to the eastern part of Frisia (between the rivers Lauwers and Weser), and that the sections from *Additio sapientium* IIIa, §59 onwards pertain to the western part (between the rivers Vlie and Sinkfal). The problem here is whether the third set, which is a section in italics following *Additio sapientium* IIIa, §58 in Herold’s edition belongs to the ‘eastern’ or to the ‘western’ part. Relying on the text itself, which begins with ‘Among the western Frisians who live between the Vlie and Sinkfal’, it is possible that the third set was the way of measuring and compensating wounds among the western Frisians. But since the same text ends with ‘The same between the Weser and the Lauwers’, the implication for its location is not very clear. The advantage of ascribing the third set to the western

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Frisians is of course that this would render a set for each of the three Frisian regions in the *Lex Frisionum*.

It is also of interest to notice the presence or absence of the notion of a maximum to the length of the wounds and to the height of the fines. The first set has such a maximum. In the sixth step it is stated explicitly that wounds longer than the distance between the elbow and the top of the fingers (i.e. the ell) are not to be compensated. The third set also has a maximum. Here it is a man’s *wergeld* according to his social status or class. It seems to me that different notions underlie these two maximums. In the first set, the maximum seems to be related to the actual wounds. It almost seems as if the author assumed that a wound larger than an ell (ca. 50 cm.) was somehow unthinkable, perhaps because to his eyes it could not be survived? When interpreted in this way, it brings to mind a section in the Fivelgo version of the ‘Common Registers of Fines’ which states:

Sex thing senter in tha liwe, ther ma thor nout scriwa, thettet ammer muge libba, ther ther ene dolch one hebbe. Thet ... senta thirman anta lunnglagan and thio milte and thio liwere, thio herte and thi wasanda. Hwasa thene breinsiama heth inda haude, sa mei hi thach libba and hi wert thach sere therfon ewert.32

There are six organs in the body that do not have to be ascertained (‘written’) in court, because he who is wounded in these organs cannot possibly survive. Those are ... (wounds to) the guts and the kidneys and the spleen and the liver, the heart and the gullet. When someone suffers from an infected brain wound, it is possible that he survives, but yet he will be severely worsened.

In the third set, the maximum is set at 53 *solidi* and a *tremissum*, which is the *wergeld* of a free man,33 thus making it impossible to attain a higher fine for very seriously wounding a man than for actually killing him. In the second set, there is no such maximum: the adding up of measures and fines can just go on and on.

Whereas the *Lex Frisionum* contains fairly detailed information on the measuring of wounds, nothing similar is found in the other *Leges Barbarorum*,

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32 F X,407; Buma and Ebel (1972), *Das Fivelgoer Recht*, 134. (See note 2).
33 This becomes clear, e.g. from *Lex Frisionum*, Tit. I, §§3 and 6 (Eckhardt and Eckhardt (1982), *Lex Frisionum*, 34). It must be noted that the *wergeld* here is set at 53 *solidi* and 1 *denarium*, whereas Add. III a §58 has 53 *solidi* and 1 *tremissum*. According to Siems (1980), *Studien* 252, both *denarium* and *tremissum* denote a third part of the gold coin *solidus*. See also Siems (1980), *Studien*, 274-282 on the *wergeld* in the *Lex Frisionum*. 

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except in the laws of the Anglo-Saxon King Alfred (871-900). Sections 45 and 45.1 state that ‘If underneath the hair of the head there is a wound an inch long, the fine is one shilling. If next to the hair of the head there is a wound an inch long, the fine is two shillings’. This distinction resembles a remark in the Brokmonnabref: *hwersa hit ne mey nauder her ny halsdoc bihella* ‘if it (the wound) cannot be covered up by either hair or scarf’. As I already mentioned, visibility was an important issue.

It may be concluded, then, that the Frisians had three different elaborate systems of measuring and compensating of wounds. They can perhaps be ascribed to the three different regions (middle, west and east) the *Lex Frisionum* distinguishes. The first and second set seem to consist of two subsets each, and both show inconsistencies and illogical steps. The first and the third set reveal the notion of a maximum fine. In the first set this is 24 *solidi*, and in the third it is a man’s *wergeld*, which amounts to 53 *solidi* and a *tremissum*. This means that the third set is more securely imbedded into the overall system of compensations than the first. The Anglo-Saxon laws also contain the notion of measuring wounds, if only at a rudimentary level. Concluding the observations on the *Lex Frisionum*, one is almost tempted to state that the Frisians had not yet worked out a completely logical and consistent system of measuring and compensating wounds.

4 The Systems of Measuring in the Old Frisian Registers of Fines

In the Old Frisian registers of fines there is no sign of the elaborate systems of measuring mentioned in the *Lex Frisionum*. In the registers of fines mention is made only of what is called *metewunde* or *metedolch* ‘measure-wound’. This *mete* or ‘measure’ seems to have been a standard unit, which can be deduced from sections that state e.g.: *Senter sex meta, vij scillingan alleree, thet is xij panningen*, ‘If there are (wounds the size of) six measures, each (measure is to be compensated with) 7 shillings, that is 13 pennies’.

This standard measure appears to have been familiar to the people who worked with the registers of fines to such a degree that in the Old East Frisian

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36. F X, 144: Buma and Ebel (1972), *Das Fivelgoer Recht*, 96. (See note 2). Von Richthofen (1840), *Alfrisches Wörterbuch*. Göttingen: 927, also noticed this implied standard unit: ‘In vielen stellen die auf wundenmessung sich beziehen muss unter mete ein bestimmtes längenmaass gemeint sein ...’.
corpus there is no description of its actual size. It is only in the Old West Frisian corpus that an explicit definition is found: *ene meta is dat foerste lid fan da tomma* 'a measure is the first knuckle-bone of the thumb'. Scattered throughout the Old West Frisian corpus the first knuckle-bone of the thumb is mentioned as the size of the *metewunde*. This does not mean that a *metewunde* always required the same compensation; that again depended on the type of wound and on its location on the body.

When compared with the three sets of ways of measuring in the *Lex Frisionum*, the third set described there comes closest to the way of measuring found in the Old Frisian registers of fines. Not only are both based on one size only, but also the (knuckle-bone of the) thumb is in all probability what is meant by Latin *uncia*, as discussed above. This would strangely enough mean that a way of measuring that was common to a part of Frisia of which no texts in Old Frisian are handed down became the standard way of measuring in the Old Frisian tradition.

Before discussing the various ways in which the *metewunde* was treated in the registers of fines, two further ways of measuring require attention. First, in the Old West Frisian material there are a few sections which mention measuring in finger-breaths, but only in connection with bruises (*dustslek* 'a blow which results in a bruise') and portions of unscathed skin (*helis felis*). A typical example is: *Thes dustsleki bote oppa sinne frya hals, fyf finghera breyd twiscka wede and sced ...* 'The fine for a blow on the bare neck which results in a bruise the breadth of five fingers and located between the clothes and the hair (i.e. so that it is in full view) ...'.

Second, in Old Frisian there is some mention of the ‘span’ encountered earlier in the *Lex Frisionum*, but only at a rudimentary level. It is encountered in the verb *hispanna*, ‘to span with one’s fingers, to measure out with one’s hand’, which is attested five times in the Old West Frisian fines and nowhere else in Old Frisian. The attestation in the registers of fines in *Codex Aysma* may serve as a typical representative:

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37 Manuscripts stemming from the Frisian regions east of the river Lauwers.
38 Manuscripts stemming from the Frisian regions west of the river Lauwers.
39 A IVc,64; Buma, Gerbenzon and Tragter-Schubert (1993), *Codex Aysma*, 502. (See note 2).
40 Attestations in: J XXIII,114; Buma and Ebel (1977), *Westerlauwersschtes Recht I*, 450; J XXIX,120; Buma and Ebel (1977), *Westerlauwersschtes Recht I*, 554; J XXIV,55; Buma and Ebel (1977), *Westerlauwersschtes Recht I*, 460; U XXVII,98; D XIV,36; U XXV,119.
41 J XXIX,87; Buma and Ebel (1977), *Westerlauwersschtes Recht I*, 546. (See note 2).
Five bloedresne may a man indict another for, and no more. He must declare that they were inflicted on him by a man in one single blow or stab. If he can measure them out with his hand (bispensa) and there is a measure of unscathed skin between them, then he is more justified to bring them (the five bloedresne) together in the form of two metewunde and one bloedresne than the other party is to deny this.

It is not only the verb bispanna in this section that reminds us of the Lex Frisionum. The whole tenet of this section corresponds to the opening sections of the first and second sets of descriptions of how to measure wounds in the Lex Frisionum, Tit. 22 §75 and Additio sapientium IIIa §49, which are very similar to one another. I will cite Additio sapientium IIIa §49:

If someone inflicts two or three or more wounds on another with one single blow, and wishes to denounce that he has done so, then the wounded man is allowed to testify alone (i.e. without supporting oaths) that so many wounds were inflicted to him, and they must be compensated according to their size; each wound must be compensated according to its size.43

I think this congruity forms part of the (affirmative) answer to the question of whether there is any continuity between the Lex Frisionum and the Old Frisian registers of fines.

When the sections on metewunde in the Old Frisian registers of fines are considered the following categories can be distinguished, which show how much the concept was imbedded in the whole system of Frisian law: (1) general remarks on the metewunde; (2) the relationship between the metewunde and the bloedresne, i.e. a bleeding wound that is not a metewunde, but smaller than the

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42 A IVc,21; Buma, Gerbenzon and Tragter-Schubert (1993), Codex Aysma, 496. (See note 2).

43 49. Si quis alii duo aut tres aut eo amplius vulnera uno icetu intulerit, et negare voluerit, quod uno icetu tot vulnera fecisset, liceat ei qui vulneratus est sua solius manu sacramentum peragere, quod tot vulnera uno icetu ei fuissent illata, et compon(atur) iuxta quod vulneris fuerit magnitudo; unumquodque vulner secundum suam longitudinem complementum est; Eckhardt and Eckhardt (1982), Lex Frisionum, 92.
knuckle-bone of the thumb; (3) the relationship between the *metewunde* and the *thruchgongande dolch*, i.e. a wound inflicted by a knife, arrow, or the like, that penetrates the head, arms or legs, or the trunk; (4) the relationship between the *metewunde* and the *gersfallich lappa*, ‘a hewn off piece of flesh’; (5) the relationship between the *metewunde* and the so-called *benis utgong*, ‘the extrusion of splinters of bone’; (6) the relationship between the *metewunde* and bite wounds; (7) the relationship between the *metewunde* and burns; (8) *metewunde* in the region of the head and the neck; (9) *metewunde* in the region of the abdomen; (10) *metewunde* on the hands, feet and toes. Categories (2), (4), and (5) are only found in Old West Frisian texts. In the following, I will concentrate on general patterns and relations between the various registers of fines.

A point to be discussed firstly is the matter of measuring the circumference or the length of a wound. Although measuring the length would appear to be the most logical option, there are a few pieces of evidence on measuring circumference of the *metewunde*, while other types of wounds are explicitly said to be measured around. One piece of evidence for measuring around ordinary wounds occurs at the end of a section on a case when two men have simultaneously inflicted a *metewunde* on one another in a text with ‘Miscellaneous Decrees’ in the Fivelgo manuscript: *Thene orde met ma al vmbe, thervmbe hat hit een metedolch* ‘the sides of a wound are measured all around; therefore it is called a *metewunde*’. A further piece of evidence comes from the opening quotation, where it is also stated that the incision in the head made by the physician is to be measured around. These two remarks imply that a wound was by rule measured around, which contradicts all other evidence on the ordinary *metewunde*.

Since burns and the *gersfallich lappa*, ‘a hewn off piece of flesh’ were roughly circular or patch-shaped, they could not be simply measured by length. This problem was resolved in most cases by measuring the circumference of these wounds. About half of the sections on the subject state that only three quarters of this measure is to be compensated for. One section explicitly states that a bum is to be measured *an den wey, deer hit linghest is, and nath vmbe* ‘along the longest cross-section, and not the circumference’. However, in the Fivelgo version of the ‘Common Register of Fines’ a bum is measured by its length.

Taking this evidence together, there are some statements on measuring circumference that are fairly logical given the nature of the wounds (burns and

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44 I have collected and compared all attestations of articles concerning the *metewunde* and the measuring of wounds in Old Frisian, mostly stemming from the registers of fines. This yielded an overview which contains 26 different types in the Old East Frisian material, represented by 68 tokens, and 39 types in the Old West Frisian material, represented by 117 tokens.

45 F XVI, 15; Buma and Ebel (1972), *Das Fivelgoer Recht*, 160. (See note 2).

46 F X, 374 and 382; Buma and Ebel (1972), *Das Fivelgoer Recht*, 128. (See note 2).
gersfallich lappa), while in one source it is stated that the ordinary metewunde was measured around. The problem with this statement is that it cannot be countered with explicit statements from the registers of fines that in ordinary cases a metewunde was measured length-wise, for the same reason that there is no description of the metewunde in the Old East Frisian material: it was apparently considered common knowledge. Only implicit statements are found, for instance in: *Hu long sa thio vnde is, sa ach ma buta sex meta to there frumdede to scruane, allerec bi xvij scillingum, buta ethe* ‘however long a wound is, only six measures are to be ascertained to the main wound, each costing 17 shilling, without an oath’;\(^{47}\) and in the register of fines known as ‘Bireknada Bota’: *Blodresne, epen in thine buuch viij scillingen. Jef hit langhera is, soe ach ma hit to betane buta ney der metha ...* ‘Blodresne, or an open wound in the abdomen (is to be compensated with) 8 shillings. If it is longer it must be compensated according to its measure’;\(^{48}\)

Considering the available evidence, I assume that the normal metewunde was measured in length, and not around, and that because of their nature, burns and hewn off pieces of flesh were measured in circumference. Because the sections on the measuring of these latter types of wounds are not equivocal, I think this was a rather new phenomenon in the registers of fines, which had not reached the same degree of matter of course as the normal metewunde. This could also be the explanation for the section of the opening quotation, which as a type is not very widespread.

In the *Lex Frisionum*, the measuring of wounds is a rather isolated phenomenon, whereas in the Old Frisian registers of fines, the metewunde has merged with the rest of the fines, and is sometimes used in a way which lies slightly outside its original area. Some examples are: measuring a bite wound, which actually comprises a series of punctures; an injury to the eye which is to be compensated as if it were a metewunde;\(^{49}\) relating the graveness of the wound, i.e. whether it was shorter or longer than a metewunde, to the legal status of the injury;\(^{50}\) and finally the statement that the openings of a wound which penetrates the arm or the leg must be compensated with a higher fine if the distance between these two is longer than a ‘measure’.

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\(^{47}\) F X,61; Buma and Ebel (1972), *Das Fivelgoer Recht*, 84. (See note 2).

\(^{48}\) J XXVIII,208; Buma and Ebel (1977), *Westerlauwerssches Recht I*, 516. (See note 2).

\(^{49}\) J XXIV,74; Buma and Ebel (1977), *Westerlauwerssches Recht I*, 464; D XIV,63; J XXVIII,78; Buma and Ebel (1977), *Westerlauwerssches Recht I*, 500; U XXVII,33. (See note 2).

\(^{50}\) A IVb,39; Buma, Gerbenzon and Tragter-Schubert (1993), *Codex Aysma*, 486–488; J XXIII,72; Buma and Ebel (1977), *Westerlauwerschess Recht I*, 440. (See note 2).
The sections on *thruchgongande dolch*, ‘penetrating wounds’\(^{51}\) all state the same: if a man has a wound, made by an arrow or a spear or the like, which penetrates his head (rare), abdomen, or his arms, hands, legs, or feet, then each opening of the wound is to be compensated as if it were a *metewunde*, even though these wounds were probably sometimes less than a ‘thumb’ long. Next, the shortest distance between the two openings of the penetrating wound were measured and three-quarters of this distance were compensated as *metewunde*. Furthermore, the Rüstring register of fines explicitly states that when a man is shot through *thet klene thes maga* ‘the small part of the stomach (i.e. the side?)’, he has the choice whether *ma him thruch mete tha umbe mete* ‘he is to be measured through or around’.\(^{52}\) The former measurement demonstrates that the concept of *metewunde* was used to deal with wounds that were not simple flesh wounds.

The sections on bite wounds in the Emsigo register of fines states: *Tothes bite en metevnde. Fiouuer ach ma to betane ief ma hia bituiskia mey, elkers bete ma hia alsa hit bereth bi there mete* ‘A bite wound is (to be compensated as) a *metewunde*. One has to compensate four (such wounds) if they can be distinguished; if not, the wound is to be compensated according to the measure’.\(^{53}\) The considerations which led to the rather severe fine on bite wounds were probably something like the following: in the Old West Frisian fines it is stated explicitly that *thi bete js banscheldich*, i.e. a man who bites another is put under the ban of the Church.\(^{54}\) Other registers of fines speak of a man biting another as becoming *manetich* ‘man-eating: a cannibal’, which was obviously taken seriously.\(^{55}\)

From the evidence presented here I conclude that the concept of *metewunde* had become such an indivisible part of the system of compensating for wounds that it had become what might be called a building block. This means that the term *metewunde* could be used in ways slightly different from its original purpose. This mechanism of making new mental concepts or solutions to problems from old pieces or material that already existed within a given culture is called *bricolage* ‘lit.: pottering, tinkering’, by Claude Lévi-Strauss in his work *The Savage Mind*, a term which he coined when discussing the process of ‘primitive science’. He compared this to a do-it-yourself person who had to make a certain item. The do-it-yourself person would go to his shed and see what tools and

\(^{51}\) There are 9 attestations in Old East Frisian and 21 in Old West Frisian.
\(^{52}\) R2 I,11g; Buma and Ebel (1963), *Das Rüstringer Recht*, 130. (See note 2).
\(^{53}\) E1 VII,51; Buma and Ebel (1967), *Das Emsiger Recht*, 68. (See note 2).
\(^{54}\) J XXI,77; Buma and Ebel (1977), *Westerlauwersches Recht I*, 416. (See note 2).
\(^{55}\) J XXVIII,253; Buma and Ebel (1977), *Westerlauwersches Recht I*, 522 and D XIV,229. (See note 2).
materials he had lying around and make something with and out of these. The same pattern emerges when looking at the evidence for the measuring of wounds in Old Frisian. This seems to me to be the reason why the number of types of sections on metewunde grows with time, and why burn wounds and bite wounds are interpreted in terms of a metewunde.

5 Cultural Contexts of the Measuring of Wounds

Until now, I have described the systems of measuring wounds in the Lex Frisonum, the simplified and at the same time more integrated system in the Old Frisian tradition, and the evidence for assuming a continuity between them. This leaves one tantalizing question unanswered: why did they measure wounds in the first place? It is obvious that more things were measured than just wounds, both in early medieval Frisia and in the period of the Old Frisian tradition. Measuring is a universal human phenomenon, dating back thousands of years. The problem of verifying measures and weights and the phenomenon of false measures followed in its wake. Thus it is not surprising to find a number of other measures of length mentioned in the Old Frisian dictionaries like elne ‘ell’, fethm ‘fathom: the distance between the outstretched arms’, three types of feet: the holtfot, literally ‘foot for measuring wood’, the ierdfoet ‘yard foot’ and the mollesfoet ‘half yard’, and finally ierde lit. ‘yard’.

58 The field of ancient measures is notoriously swampy and, for the Low Countries, not much trodden (see also notes 2, 6 and 30). See J.M. Verhoeff (1983), De oude Nederlandse maten en gewichten. Amsterdam, for early modern measures (17th century onward), and on the Old Frisian ‘foot’: O. Postma (1924), ‘Virga en Pes in de registers der kloosters te Fulda en Werden. Bijdrage tot de kennis van de oud-friesche hoeve’, De Vrije Fries 27: 268–301. The existing Old Frisian dictionaries are known to cover only part of the entire Old Frisian corpus. My thanks to Rolf Bremmer for drawing my attention to a few attestations in the Old Frisian charters: mannis foeten ‘man’s feet’ (P. Sipma (1933), Oudfriesche Oorkonden II. Oudfriesche Taal- en Rechtsbronnen 2. The Hague: 108), roede, ‘yard’ (Sipma (1933), Oudfriesche Oorkonden II, 204), handbred ‘hand’s breadth’ (Sipma (1933), Oudfriesche Oorkonden II, 83) and thummel ‘thumb’ (Sipma (1927), Oudfriesche Oorkonden I. Oudfriesche Taal- en Rechtsbronnen 1. The Hague: 185). Moreover, mention is made of measuring a certain distance of land met den lijne ‘with a line, a measuring rope’ (Sipma (1933), Oudfriesche Oorkonden II, 204).
Moreover, in the ‘Market Law’ (OFris. *merkedriucht*), dated to the late 12th or early 13th century,\(^{59}\) there are some clear statements on measures: *omme falscha meta, omme falscha ielne, omme fad* ... ‘concerning false measures, concerning false ells, concerning clipping the edges of coins ...’;\(^{60}\) and:

_Deer mit falscher meta anda merkedes bigripwen wirt, hweeroen soe hit is, her soe hit is an onriochter wichte so an onriochter falscheed so hit is, zoe aegh ma dae schelta toe jaen een ende tweintich scillingha._\(^{61}\)

‘If someone is caught in the market place with a false measure of whatever type; whether it is an unlawful weight or an unlawful measure, or with whatever form of deceit, then he has to pay 21 shillings to the bailiff.’

From such provisions it appears that there must have been standard weights and measures. Who established these, and where they were kept, remains unclear.

There may also have been a metaphysical connotation of the phenomenon of measuring. Set in the context of other irrational features in the medieval legal process, like the swearing of oaths and the ordeal, I do not think that this line of inquiry is too far off the beaten track. As I already mentioned, these features were replaced by a more rational form of ascertaining accusations in the course of the Middle Ages, i.e. after ca. 1200.\(^{62}\)

OFris. _māa_ ‘to measure’, and its derivative _māg_ ‘measure’ can be traced back to a Proto-Indo-European root *med-*, meaning not only ‘to measure’, but also ‘to govern, think, care for’. According to Benveniste, its meaning had something to do with knowing the right order of things. Someone who possessed such knowledge was able to ‘take measures’ to restore matters to their right order. In case of a sick person this meant to heal him (cf. Latin _medicus_ ‘physician’). The definition of *med-*, as finally reconstructed by Benveniste, is: ‘to take with authority measures appropriate to a present difficulty; to bring back to normal – by tried and tested means – some particular trouble or disturbance’.\(^{63}\) Since Benveniste, Lincoln has attempted to reconstruct the medical practice of Indo-European culture and found it to be connected to order in the cosmos and cosmogony.

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\(^{60}\) J XIV,1; Buma and Ebel (1977), _Westerlauwersches Recht I_, 240. (See note 2).

\(^{61}\) J XIV,5; Buma and Ebel (1977), _Westerlauwersches Recht I_, 242. (See note 2).


known from e.g. the Old Norse myth of the slaying of the primeval giant Ymir and the creation of the universe out of his corpse. Because the universe was thus made of various parts of a primeval creature, these parts could in turn be used to heal a person. An example would be the use of grasses and other plants to cure baldness, because these had been made from the hair of Ymir in the days of yore. Benveniste’s and Lincoln’s findings were taken up in the Encyclopedia of Indo-European Culture, so that the article on ‘Medicine’ ends with: “The restitution of health, in short, constitutes a restoration of the cosmic “wholeness” to revive that of the body”.

The field of folklore forms a second source of evidence for metaphysical connotations of the concept of measure and measuring. There appears to be a large and fairly consistent body of evidence concerning the taking of measurements, which can be divided into a diagnostic and a curative aspect. The underlying idea to the diagnostic aspect is that a human body possesses certain correct proportions, i.e. that its length (measured from head to toe) is the same as its width, measured from fingertip to fingertip of the outstretched arms. The curative practices that have been recorded all have to do with the manipulation of this measure in the form of a piece of string or the like with which the measure had been taken. These practices are based on an idea which Grabner describes as follows: ‘Measure, like image, weight and shadow is something mysterious and at the same time a man’s representative’.

So if a man was sick, he was measured in the two ways described, and these two measures were compared. If they were not the same, the man was said to have ‘lost his measure’, which meant that he was ill. The next step would then be to manipulate the ‘wrong’ measure. The piece of string with which he had been measured was buried or burned or hung to the wind, all to destroy it. Again, as in the Indo-European concept *med-, there is the idea of ‘correct proportions’, or ‘correct order of things’.

If these findings are transferred to the measuring of wounds in Frisia, it could be argued that the Frisians saw the measuring of wounds as an act of healing,


though not primarily in a physical sense of the word, but rather in a transferred social sense. Perhaps, the unmeasured wound represented a state of (social) chaos, which was to be brought back to a state of balance, order and 'social healedness' by measuring it and compensating it according to its length. It is doubtful that this notion of measure played as big a role in the high Middle Ages (after ca. 1200), when, as I have shown, the more supernatural elements in the legal process had started to give way to more rational ones. Perhaps it is at this point in time that the mechanism of *bricolage* could have begun to set in, since measuring wounds by then did not have its original, more sacred meaning. This would have meant the path was clear for other uses of the concept of measuring wounds.

6 Conclusion

In this study, I hope to have demonstrated that at the time of the recording of the Old Frisian registers of fines, the *metewunde* had become part and parcel of the system of compensating wounds in general. By this time, the mechanism described as *bricolage* by Lévi-Strauss had set in: the *metewunde* was used as a concept within the larger system, sometimes to fill in gaps by stretching its original application and definition. Thus studying the phenomenon of measuring wounds not only provides an insight into its possible origins, but also into the evolution of the system it formed part of. The Frisians seem to have lived by the axiom 'weight and measure take away strife'.

A continuity between the *Lex Frisionum* and the Old Frisian registers of fines where the measuring of wounds is concerned seems very likely. Not only is the measuring of wounds in the complexity encountered both in the *Lex Frisionum* and in the Old Frisian registers of fines unparalleled in the other Germanic and medieval laws, but the congruity between Tit. 22 §75 and *Additio sapientium* IIIa §49 on the one hand, and the Old West Frisian sections I discussed in section 4 on the other, adds further weight to this observation. Furthermore, if Latin *uncia* may be put on a par with the Old Frisian *thummis kata*, 'thumb', this also points to a continuity.

Finally, I think the early period of Frisian law, with its ordeals, its oaths and its ritualized form of legal process was a setting within which the symbolic connotations of the act of measuring may have played a role in the genesis of the phenomenon. After ca. 1200, when the whole legal process became more rational, as I sketched in section 5, it would have been less likely to measure wounds in order to restore 'the right order of things'.

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