

EXCURSUS TO CHAPTER 1

INTRODUCTION

1.1 On the wergeld hypothesis

The wergeld hypothesis may be formulated as:

During the Middle Ages the normal wergeld to be paid to the heirs of a slain free Frisian man by the slayer or his kin was equivalent to approximately 1,664g¹ of fine silver in coin.

I use the expression ‘normal wergeld’ to denote the fact that the amount of approximately 1,664g of fine silver in coin was just a norm for the actual wergeld to be negotiated between the relatives of the victim and the relatives of the slayer.² Furthermore, because this is not the place to discuss which relatives were exactly covered by the notions ‘heirs’ and ‘kin’, I want to make clear that in this study the term ‘kin’ is meant to exclude the relatives that are comprised by the notion ‘heirs’; thus, relatives = heirs + kin.

Before proceeding further, I must emphasise that the expression ‘approximately 1,664g’ is nowhere near as precise as it sounds. The silver equivalencies of this normal wergeld actually vary between c.1,768g and c.1,560g, so there is a variance of plus or minus 6.25% of 1,664g, the amount calculated (with appropriate proviso) from the first source that we have, the 8th-century *Lex Frisionum*, to be discussed in Excursus 3.3. I have preferred this amount to the more apparently rough approximation of 1,700g because, hypothetically, it might be closer to the medieval norm. The sources themselves do not provide us with straightforward information regarding that norm,³ and

¹ English notation: one thousand six hundred and sixty four grams. The continental notation would be 1.664g.

² See Chapter 1, ‘The wergeld hypothesis’.

³ Most likely wergeld was initially expressed as a given quantity of gold; see Excursus 3.4: ‘On the origin of the compensation amounts for homicide in the *Lex Frisionum*’.

so we can only tentatively reconstruct it as 64 German ounces (barley based),⁴ later known as Troy ounces.⁵

Apart from the question as to whether this was the right silver quantity, the truth of the wergeld hypothesis seems to me to be obvious.⁶ It was still clearly recognised as late as 1781, when Wichers,⁷ referring to the Groningen town-book, stated that

Hoe nu de prys van het geld verliep, de penning moest met deze inwendige waarde, overeengebragt en daar aan getoest kunnen worden, zoo dat het hoogste mannegeld by ons daarom nog met de zelfde looden zilver betaald worden, met welke het voor 400 Jaaren betaald is.

[i.e. However the price of money may go down, the penny has to be brought in accordance with and to be examined by its intrinsic value, in such a way that the highest wergeld with us is still to be paid with as many lots of silver as it had to be paid with 400 years ago.]

This rather enigmatic 18th-century statement may need clarification; it expresses that the wergeld has been a constant quantity of silver during at least the past 400 years and that the value of one penny is determined by the number of pennies that are needed to make their total silver content (= total intrinsic value) equal to that quantity. As obvious as the hypothesis seems, there is no irrefutable evidence, but it can be supported using examples, from a period stretching from c.790 to 1491.⁸

Unfortunately, documents giving a simple definition of normal wergeld at a certain time and in a certain place are scarce. The reason for this, I suppose, is that the wergeld norm as a given quantity of silver in coin was generally known; there was not much need for putting it in writing. Moreover, because a continuing decrease in the silver

⁴ See Excursus 3.3: 'On the silver equivalence of the wergeld in the *Lex Frisionum*' sub (b): in the metric system, the wergeld in Frisia was c.790 equivalent to $\frac{2}{3} \times 53 \frac{1}{3}$ Merovingian *solidi* = $\frac{2}{3} \times 160$ Merovingian *tremisses* $\approx \frac{2}{3} \times 160 \times c.1.3g$ of gold $\approx \frac{2}{3} \times 160 \times 12 \times c.1.3g$ of silver = c.1,664g of silver. But the early German system of weights was based on the barley grain $\approx 0.065g$ (Grierson, "La fonction", 350-352; Spufford, *Money*, 397). In this system 20 grains are a penny, 20 pennies are an ounce. So an ounce was $20 \times 20 = 400$ grains, hence $400 \times c.0.065g = c.26g$. Hence the wergeld in the German system of weights would have been c.1,664g : c.26g = 64 ounces of silver.

⁵ Grierson, "La fonction", 351.

⁶ Not so to Algra, *Zeventien keuren*, 446, note 273. In some versions of the 23rd *landriocht* the wergeld of a killed *foetus* is determined by 'the people'. The fact that the people could determine wergeld from case to case is interesting, according to Algra, because some authors adhere tacitly to the idea that the wergeld was a social status dependent, fixed amount. But I adhere to these authors and I disagree with Algra. His case does not support his thesis. The case in the 23rd *landriocht* is very special in that the wergeld depended on the degree of growth of the *foetus*; it was that which had to be determined by witnesses. Moreover, Algra seems to neglect the numerous cases in the law in which a compensation is formulated in a proportion of 'the' wergeld, which would be impossibly cumbersome if the wergeld was usually determined by 'the people' from case to case.

⁷ Wichers, *Groninger munten*, 151.

⁸ See Appendix I.

content of coins was a general experience, the amount of the wergeld quoted in money only temporarily reflected the wergeld norm, so there was little sense in recording it. There are, however, many examples of expressions such as ‘a 7-fold wergeld’ or ‘half a wergeld’, and they demonstrate the existence of a general notion of what ‘a wergeld’ was. The logical consequence of this reasoning, of course, would be that the wergeld amount was never recorded, but fortunately that is not the case. In a few instances, regarding very important occasions or special circumstances, it is formulated in its pure form. In all such records we must take the context into account so that we can understand the reasons why the records were made and avoid misleading conclusions.

To be able to take the context into account, a few supplementary concepts regarding wergeld itself must be defined before the meaning of the wergeld amounts can be analysed.

Components of the compensation for homicide

A distinction must be made between the total compensation for homicide and wergeld. The word ‘wergeld’ itself - although a common term in Germanic languages - is hardly used at all in the medieval Frisian sources. The term that was mostly used in Old Frisian was simply ‘*ield*’, while in Low Saxon it was ‘*mangeld*’. It is the general term to denote compensation for homicide, but its meaning is ambiguous. In the sources it sometimes denotes the total compensation and sometimes only a particular part of it. This is most confusing. The total compensation was the sum of the part for the heirs of the victim and the part for the kin. So the term *ield/mangeld* sometimes refers to the sum total and sometimes to only the share of the heirs. It is assumed that the Old Frisian term *riocht ield* refers in any case to the share for the heirs.⁹ The kin’s share in the compensation is called ‘*meentele*’,¹⁰ ‘*meyle*’¹¹ in Old Frisian and ‘*machtale*’,¹² ‘*daddel*’¹³ in Low Saxon. The clearest examples of this distinction are found in a text in the Mid-Frisian *Landriocht/Skeltariocht* in one of the versions with the heading *Fan enis mannis ieldum*,¹⁴

... so is the *riocht ield* 8 pound and 10 ounces and 13 $\frac{1}{3}$ penny. So is the *meitele* of the kin 4 pounds 5 ounces and 6 $\frac{2}{3}$ penny.

⁹ Schwerin, “Wergeld”, 510.

¹⁰ Buma, *Das Westerlauwerssches Recht I*, 162 (§16).

¹¹ Buma, *Das Fivelgoer Recht*, 150 (§§1-4).

¹² Borchling, *Die niederdeutschen Rechtsquellen*, 194 (§1).

¹³ Von Wicht, *Das Ostfriesische Landrecht*, III Register, sv. *meenteel*.

¹⁴ Algra, “Rechtshistorische aspecten”, 270-273, shows a survey of the various versions of this *Landriocht*, found in the incunabulum ‘Druk’ (RQ, 410-411), in ms. ‘Dousa’ (Bostoen et.al., “Tekstuitgave”, 46-49) and in ms. ‘Jus’ (Buma, *Westerlauwerssches Recht I*, 102-105); the heading mentioned is found in this last manuscript.

and in a clause of the (so-called) second register with compensation tariffs of Hunsingo.¹⁵

When our Lord was born he was born to purify all criminals. Then he gave a new law by which the *ield* was determined at 12 marks unless one could clear oneself with 12 oaths. Then the kin received 6 marks to the 12 marks, the set *ield*.

The formal text for a wergeld offer, found in a few Mid-Frisian manuscripts, also leaves no doubt about the distinction between *ield* and *meytele*.¹⁶ In Frisia the share of the heirs was $\frac{2}{3}$ rd and the share of the kin was $\frac{1}{3}$ rd of the total compensation. In other words, the kin's share was conventionally half the share of the heirs.

'Wergeld', at least as it is interpreted in this study,¹⁷ has the meaning of *riocht ield* and denotes the compensation to be paid to the heirs of the victim; the expression 'total compensation for homicide' is used when the kin's share is explicitly included and 'compensation for homicide' applies to the more general sense (*i.e.* if it comprises both wergeld and total compensation, or if the specific meaning is not clear); see also Excursus 3.3.

Status of the victim

A distinction must be made regarding the status of the victim. In the early Middle Ages there was a difference between the wergelds of a nobleman, a freeman and a serf. The wergeld of the freeman, however, was the norm.¹⁸ In the high Middle Ages these differences are no longer found. It is generally believed¹⁹ that, then too, the normal wergeld was what had been the wergeld of the freeman in former days, the nobleman and the serf having disappeared from legal texts. On the other hand, differences had emerged regarding the ecclesiastical status of the victim. There were differences between the wergelds of laymen and priests. The priest's wergeld depended upon his rank;²⁰ that is, the position he occupied in the church. In the late Middle Ages another differentiation was made - between priests, *hovetlingen* and obedient

¹⁵ Buma, *Hunsingoer Recht*, 66-69 (§20).

¹⁶ Buma, *Das Westerlauwersches Recht I*, 396-401 (§§ 6,7 and 10).

¹⁷ This interpretation is shared by Jaekel, *Forschungen*, 43-49, but not by His, "Untersuchungen", 66, who is of the opinion that it is to be doubted whether the Frisians discerned wergeld from the total compensation for manslaughter. He argues that in Latin the word *weregildum* always means the total compensation, but his examples to show this (footnote 4, a.o. referring to OGD1: 354 (1338, Groningen/Ommelanden) can be used to prove the contrary: '... *XVI marcas sterlingorum occisor solvat pro wergeldo seu emenda legitimo heredi...*' [*i.e.*... the slayer has to pay 16 marks sterling wergeld or compensation to the legitimate heirs ...], as heirs are to be distinguished from the relatives as a whole.

¹⁸ According to Von Richthofen, in all medieval Germanic laws the wergeld of the freeman was the basis for the determination of the wergelds for the various other men (De Geer, *De Lex Frisionum*, 61, note 22).

¹⁹ Jaekel, *Forschungen*, 43-49.

²⁰ Meijering, *De Willekeuren*, 40-43 (1323, all of Frisia); Buma, *Das Hunsingoer Recht*, 108-111 (c.1300, Hunsingo); Buma *Das Emsiger Recht*, 50-51 (14th century, Emsingo).

ecclesiastics, freeholders, tenant farmers, and riders and other common men.²¹ In this period it is particularly difficult to recognise what the normal wergeld might have been.

Aggravating circumstances

Moreover, distinctions were made regarding the circumstances of the manslaughter. Most often the circumstances are marked by the existence of so-called 'peace' conditions. There were special periods of peace (holy days for instance); there were special places of peace (the church, the churchyard, one's own home, the court, the army camp, a ship, *etc.*), and there were persons who were qualified for peace (judges in office, pregnant women, widows, orphans, pilgrims, and so on).²² In addition, special rules were made regarding compensation for *homicide* in peace treaties between parts of Frisia that had been at war.

On a number of occasions wergeld amounts are found as a multiple of the normal wergeld because aggravating circumstance have been taken into account. The magnitude of the multiplier depends upon the time and the place, but it is usually in a clear proportion to a normal wergeld of approximately 1,664g of silver. However, in a limited number of cases that I found, the proportion is odd. In these cases there are three possible explanations: the surviving text is misleading us; the text has been interpreted incorrectly, or the case does not confirm the wergeld hypothesis.

Injuries related to wergeld

Finally, a remark must be made regarding compensation for injuries which are directly related to the wergeld: half a wergeld is always found for blowing out an eye, or cutting off a hand or foot, and $\frac{1}{3}$ rd of a wergeld is usually found for blinding an eye or laming a hand or foot. This rule is helpful, of course, in cases where the wergeld itself is not mentioned.

Evolution of the wergeld concept

As a social institution, the concept of wergeld evolved through the centuries as part of the evolution of society. The way society (including Frisian society) coped with homicide changed substantially during the period under discussion but without changing the core of the concept; that is, the commitment of the offender to compensate the heirs of the victim with a sum of money related to the legal wergeld norm.

The most important developments in the concept of compensation for homicide in Frisia during the Middle Ages were established on the following occasions:

²¹ GAG STAD: P16 RvR 135 (1422, all of Frisia).

²² Algra, *Zeventien keuren*, 290-293; 326-335; 417-419.

- (a) c.790, when the *Lex Frisionum* was drafted;
- (b) in the 11th century, when the Frisians began to put their statutes and jurisprudence into writing;
- (c) c. 1250, when a general territorial peace (called ‘peace of God’) was proclaimed for most areas of Frisia;
- (d) after 1400, in relation to social changes.

The rest of this Excursus is devoted to a description of these changes.

(a) Changes related to the drafting of the *Lex Frisionum*

The oldest records of compensation for homicide in Frisia are found in the *Lex Frisionum*. The wergeld amounts in the first paragraph of this *Lex* are quoted in *solidi*, each *solidus* being equivalent to 3 *tremisses*. The money of account was gold-based.²³ These compensation amounts explicitly included the kin’s share.²⁴

At the time the *Lex Frisionum* was drafted (c.790²⁵) the use of silver money as means of payment was already common. It may well have come into use as a measure of value alongside the *solidi*. In another part of the *Lex Frisionum* - apparently concerning East-Frisia - compensations for homicide are mentioned again but now quoted in the silver based money of account. In these cases the kin’s share was excluded.²⁶ The silver based amount for compensating the slaughter of a free Frisian in this part of the *Lex* was presumably equivalent to the gold based amount, kin’s share excluded, in the former part.

Both these changes in the customary compensation for homicide - from gold to silver and from inclusion to exclusion of the kin’s share - must have been felt as far-reaching. But in my interpretation they did not affect the intrinsic value of the normal wergeld in Frisia.

(b) Changes related to the first Old Frisian written statutes

The first Old Frisian statutes were recorded two to three centuries after the drafting of the *Lex Frisionum*. During that time the money of account valid in the Carolingian era had been replaced by ‘old-Frisian’ money of account, as will be shown.²⁷ This is, of course, reflected in the money amounts of the wergeld.

²³ See Chapter 3, ‘The measure of value’.

²⁴ See Excursus 3.3: ‘On the silver equivalence of the wergeld in the *Lex Frisionum*’.

²⁵ See Chapter 4, ‘The history of the measure of value’.

²⁶ This conclusion is drawn from a comparison of their silver equivalence with the silver equivalence of the gold based compensation amounts mentioned before, converted at the conventional silver:gold ratio of 12.

²⁷ See Chapter 5, ‘The measure of value’.

The latest mention of wergeld in the *Lex Frisionum* (already quoted in old Anglo-Frisian or Carolingian silver money of account) was a compensation for homicide, kin's share excluded (see Excursus 3.3). It had to be paid by the perpetrator, and it was claimed by the heirs of the victim. The exclusion of the kin's share in this early medieval source is continued in the high Middle Ages. Presumably this was already an established practice. In the high medieval sources regarding manslaughter, it is this part of the total compensation that is mentioned most often, the kin's share being mentioned only occasionally. This may suggest that the kin's share was gradually disappearing. It seems most likely to me, however, that it is seldom mentioned because it was generally known to be half the wergeld.²⁸ It was almost habitually a claim of the kin of the victim upon the kin of the perpetrator. Moreover, there may have been good reasons not to mention the kin's share explicitly in the statutes, for instance because the rights or duties of the kin could sometimes turn out to be more complicated than a simple rule would suggest.

Apart from the ecclesiastical status, social differences in the compensation for homicide are not mentioned in the Frisian sources between c.1100 and c.1400. The wergeld for the free Frisian in the *Lex Frisionum* had apparently become the wergeld for any Frisian. It still had a silver equivalence of c.1,664g. This is what I have called 'the normal wergeld'. However, another form of differentiation is made - one which takes a particular vulnerability of the victims into account. This vulnerability is defined by one of the various kinds of peace condition that may have been valid for the victim: a judge, a widow, a pilgrim, or someone in the church, in the court, on the market place, and so on. Apparently the peace conditions aimed to give some protection to potential victims. When particular peace conditions were valid, the normal wergeld was multiplied by a factor expressing this vulnerability.

(c) Changes related to the proclamation of the 'peace of God' in Frisia.

We have already seen that wergeld amounts were adapted in cases where the manslaughter was committed under particular peace conditions. In around 1250 a condition emerged in Frisia under which there was a people's peace, sometimes known as 'the peace of God', that resulted in a doubling of the wergeld for manslaughter perpetrated under this peace. It is assumed to have been a condition that obtained when all members of a community were supposed to have promised (sworn?) to lay down their weapons.²⁹ The topic is analysed more extensively in Excursus 5.4.

²⁸ An exception to this rule is found in the Hunsingo register of compensation tariffs (Buma, *Das Hunsingoer Recht*, 66-69, §§20-21). When money depreciation compelled the judges to increase the money amounts of the wergeld, they left the money amount of the kin's share frozen. This caused much conflict.

²⁹ Algra, *De zeventien keuren*, 326-335 (11th and 12th Frisian *kest*).

As it was a condition that apparently applied almost everywhere in Frisia, it follows that, as a rule, any manslaughter was committed under the peace of God and hence, also as a rule, the wergeld was a doubled normal wergeld. Soon the condition was no longer explicitly mentioned, having become implicit in the wergeld institution itself for the time being.³⁰ Although there is no documented information, the condition vanished around 1380. At that time the conflicts between factions - ultimately between the Schieringer and Vetkoper factions - were beginning to arise all over Frisia.³¹

(d) Changes related to social changes in the 15th century

After 1400 three new developments in the wergeld systems in Frisia are found:

- wergeld again came to be differentiated according to social class;
- the new basis for wergeld calculations became the wergeld of the lowest social class;
- the kin's share had to be paid by the perpetrator himself instead of by his kin.

These changes may have been caused by the new political and social conditions in Frisia, initiated by the coming to power of the *hovetlingen* and the consequences of their rivalries: anarchy and social dislocation.³²

Rivalry between these *hovetlingen* often resulted in military conflicts. Consequently the armed riders employed by them would have been perpetrators as well as victims of manslaughter.³³ It was felt that the wergeld to be paid for them should not be as high as for the farmer (*husman*) - the late medieval personification of the free Frisian man,³⁴ and so the need for a new type of wergeld arose. This need is expressed in the 'small wergelds' (*litika yeldan*) that are found in the undated Mid-Frisian conversion directive.³⁵ This small wergeld had a silver equivalence of only half a 'normal wergeld'.³⁶ A wergeld having this silver equivalence is found for the first time in 1416, in

³⁰ See Excursus 5.4: 'On the peace of God in Frisia'.

³¹ Emmius/Reeken, *Friesische Geschichte*, 214.

³² This phenomenon is discussed in Chapter 7, 'The context'.

³³ Buma, *Das Fivelgoer Recht*, 186-187 (Statutes of Fivelingo and Oldambt, §6-§9).

³⁴ OFO2: 27 (Treaty between districts in Westergo, 1449): *Item nyn lichten man als ruteren hagere to jelden dan hy self jelda mey (= Item, no common man be higher compensated than he should be compensated)*.

³⁵ In the Oostergo districts a 'small wergeld' æ 27 Oostergo marks (Buma, *Westerlauwerssches Recht I*, 428-429 (§20)).

³⁶ See Chapter 13, 'The measure of value' and Appendix I, 1417/1422.

³⁷ GAG STAD: RvR 118. See Appendix I. This new wergeld is set at 20 old French *schilden*. The silver equivalence of this gold-based unit is not specified. In the following years, however, an old *schild* is usually expressed as a silver-based multiple unit of account: it is considered equivalent to 30 old *vleemse groten*. In Groningen the silver equivalence of an old *vleemse grote* was defined at 1.37g in 1394. If that was the legal value being referred to in the example of 1416, the silver equivalence of a new wergeld would be: 20 x 30 x c.1.37g = c.822g. See Appendix I, 1416.

a treaty between Groningen, Westerkwartier and Achtkarspelen: 20 old French *schilden*,³⁷ and in the 1420 treaty between members of one of the rivalling parties within Frisia the wergeld for a rider was 20 old *schilden*.³⁸ Gradually this small wergeld became the habitual basis for wergeld calculations. In a treaty between Oostergo, Westergo and Sewenwalden in 1461,³⁹ the wergeld to be paid for breaking the peace is 7 times the old wergeld (= *aelda jelden*), but in 1473, in a renewed treaty between the same parties,⁴⁰ this was expressed as 14 times the new wergeld (= *bynija jelde*⁴¹) as far as *hovetlingen* were concerned; the wergeld for farmers, judges and common men was to be determined according to the law of the district or town in which the crime was committed. This last case demonstrates not only the differentiation of wergeld between different social groups, but it confirms that the new ('small') wergeld was by definition worth half the old ('normal') wergeld. The differentiation is demonstrated in three other treaties within Frisia: in 1420,⁴² 1422⁴³ and 1491.⁴⁴ Apart from riders and *hovetlingen*, members of the clergy and farmers are mentioned, and in the last of these treaties there is even differentiation between freeholders and tenant farmers; the normal wergeld was still valid for the freeholder.⁴⁵ The new wergeld amounts are all clearly multiples of the small wergeld.

The third development - the treatment of the kin's share - was no less important. It reflects a gradual evolution in the sense of justice, in Frisia as elsewhere. In the previous period, since the *Lex Frisionum*, the kin's share of the total compensation for homicide was seldom mentioned in the sources, but it had not disappeared. It had been a commitment of the kin of the perpetrator to the kin of the victim, compelled by necessity of habit. The money amount of this commitment was conventionally linked with the wergeld.⁴⁶ It was equal to half the wergeld; in other words, the wergeld was $\frac{2}{3}$ rd and the kin's share was $\frac{1}{3}$ rd of the total compensation - just as it had been set down in the *Lex Frisionum*. But however simple the determination of kin's shares may have been, their execution was less so. They had to be gathered from all the contributing kin and divided among all the receiving kin. This operation followed

³⁸ Chbk1, 416-418.

³⁹ OFO2: 49.

⁴⁰ OFO2: 73.

⁴¹ In the treaty between Oostergo and Westergo in 1467 the number of the new wergelds is apparently corrupted (4 instead of 14 times); their circumscription is: *by da nya jelden* in (OFO3: 8).

⁴² Chbk1, 416-418.

⁴³ GAG STAD: P16 RvR 135. But see my remarks below.

⁴⁴ PG: 47.

⁴⁵ By then to be increased by the kin's share; see next paragraph.

⁴⁶ An exception to this rule is found in Buma, *Das Hunsingoer Recht*, 66-69 (Second Hunsingo register of Compensation tariffs, §20-21). The text is rather ambiguous; as I read it, it tells us that the wergeld was originally 12 marks and that, additionally, the kinship of the victim received 6 marks, but when the wergeld was increased, the kin's share share was not.

various local rules, which seem to imply the involvement of very distant relatives. It is not difficult to imagine the conflicts that must have arisen, both between the parties and within the parties, as a consequence of this process.

In the early Middle Ages, manslaughter involved the kin of the perpetrator as well as the kin of the victim, so their role both in the feud and in the money compensation was obvious. In the late Middle Ages, these roles must have become obsolete. The meaning of kin had changed. The sense of justice in being held primarily responsible for manslaughter committed by other members of one's own kin was losing its hold.⁴⁷ This responsibility was finally abolished in Frisia in the first quarter of the 15th century.⁴⁸ This abolition obviously had to be founded in a statute embracing the whole of Frisia. It is found in the charter of privileges issued to Frisia in 1417 by the Emperor Sigismund:⁴⁹

... And as it is right and fair, that the rigour of the statutes are prudentially and wisely moderated, in order that the punishment of the perpetrators of evil is not burdened on their innocent children and relatives, so we require and grant, that this will not occur but instead, only the perpetrators themselves are punished according to their Frisian laws and habits.

A similar statement is found in the all-Frisian peace treaty of 1422⁵⁰:

... Item in case someone breaks the law by harming a body or goods, he has to atone with his life or his goods, obliging by no manner of means the life or goods of someone else.

The kin of the perpetrator were thus excused, but the kin of the victim kept their rights. As a consequence the perpetrator himself, rather than his kin, became responsible for the kin's share to be paid to the kin of the victim. In practice he had to pass it to the heirs of the victim, who in their turn had to transmit the share to the kin of the victim. This procedure is confirmed in the *Excerpta Legum*, a preparatory study for a draft of a (never realised) future Frisian code that was made in Mid-Frisia in the second half of the 15th century or the first years of the 16th century, probably before 1504.⁵¹ It appears from this study that the kin's share was still existent at that time. It

⁴⁷ Von Amira, *Erbenfolge*, 154. A similar tendency is found, for instance, in late medieval Holland (Hoppenbrouwers, *Maagschap*, 81-92). In Rijnland, in the 14th century, the opportunity provided to redeem one's obligation to give security for one's kin; according to the massive registration of the redemptions in 1371, this was widely welcomed (*ibidem*, 89).

⁴⁸ *Ibidem*, 154-155. Von Amira is of the opinion that the primary responsibility of the kin had already disappeared a long time before and that in the 15th century it was the subsidiary responsibility that was being abolished. In this opinion he may be following Von Wicht (*Das Ostfriesische Land-Recht*, annotations 114; 659-662). I do not agree, as will be clear from the sequel.

⁴⁹ Chbk1, 399-401.

⁵⁰ Chbk1, 446.

⁵¹ See Buma, *Codex Aysma*, xii-xiv.

contains a clause that regulates the claim of the kin of the victim on the heirs of the victim for their share in the total compensation for homicide. This share is called *weerfal* (= ‘return’) ‘because it is to be returned by the legal heirs to the victim’s relatives as compensation for the grief of missing their friend’.⁵²

Consequently the amount the perpetrator had to pay was raised by the amount of the kin’s share, equivalent to half the wergeld. If he could not pay that share with goods or money, he had to pay with his neck. However, the secondary responsibility of the perpetrator’s kin remained. In the Ommelanden common law of 1448, for instance, it was stated that if the perpetrator of manslaughter had fled the jurisdiction, or if he was too poor to pay the compensation, then where possible his kin had to pay the $\frac{2}{3}$ rd part of the total compensation (apparently the wergeld), whereas the missing $\frac{1}{3}$ rd part (the share due to the victim’s kin) was paid with his neck.⁵³ This secondary responsibility was quite usual and well-established; it had been stated, for instance, in the 1252 statutes of Hunsingo.⁵⁴

Thus, the compensation to be paid for homicide by a perpetrator was increased by half the ‘normal’ wergeld to c.2,496g silver equivalence or, if based on the ‘small’ wergeld, to c.1,248g. This change is already visible in the 1425 statutes of the water board of Vredewold.⁵⁵ In a special resolution of the town government of Groningen in 1427, a new wergeld system was also defined.⁵⁶ It stated that from then onwards the *maenghelt* (= wergeld) would be 30 old *schilden* (hence 150% of the new (‘small’) wergeld of 20 old *schilden*). In Appendix I it is shown that this change - the increase of the wergelds by 50% - seems to have been applied all over Frisia before the 1470s. After that the term wergeld (*mangeld*) was often expressed again in the old meaning - without kin’s share, although the compensation for *homicide* of a *huesman* (= a peasant farmer) remained in silver equivalence what it would have been inclusive of the kin’s share: 3 times a small wergeld = $1\frac{1}{2}$ times the normal wergeld of 1,664g. There is, however, an exception.

This exception occurs in the all-Frisian peace treaty of 1422, the ‘reconciliation of Groningen’. In a treaty in 1416 a small wergeld was determined at 20 old French

⁵² *Ibidem*, 54-55 (§66): *Want hit haith al deeromme weerfal ende seerlawwa, dat hy weer falla scel van da riuchte eerwa on dat nesta bloed om da sericheit, dattet nesta bloed syns vryondis myst, ... is translated in: Sie wird nämlich deshalb zurückfallende Totschlagbuße oder Magsühne genannt, weil sie von dem gesetzlichen Erben an die nächsten Verwandten zurückfallen soll wegen des Schmerzes darüber, dass den Nächstverwandten ihr Blutsfreund entfallen ist,*

⁵³ RQ, 322 (§§18-19).

⁵⁴ Buma, *Das Hunsingoer Recht*, 120-121 (§ 11).

⁵⁵ RAG MANUSCRIPTS: 13b (Convolute Wittewierum): 1029-1032; 1035-1038.

⁵⁶ Telling, *Stadboek*, 1 (§2)

schilden.⁵⁷ According to the revised concept of compensation for homicide, this small wergeld was raised in the 1422 treaty to 30 old *schilden* (for a rider). Accordingly, the ‘normal’ wergeld should have risen from 40 to 60 old *schilden*, but the treaty sets a wergeld of 80 old *schilden* for a *huesman* instead.⁵⁸ Does this case falsify the wergeld hypothesis? I think that such a conclusion would be too hasty; the amount of a normal wergeld at 60 old *schilden* according to the new rule is repeatedly found afterwards, as we have seen. However, I am unable to offer any explanation as to what caused the deviating amount in the treaty itself.

Apart from this case, the changes mentioned in this Excursus may have affected the structure of the wergeld system in Frisia during the 15th century, but they did not affect the core: the stable silver equivalence of what I have called the ‘normal’ wergeld of ‘the free Frisian’. The silver equivalence of the wergeld of a freeholder in the 1491 treaty between Groningen and Oostergo was 200 old *schilden* (c.1,720g⁵⁹), and that was almost equal to the silver equivalence of the wergeld of 5½ pounds *per veteres denarios* (c.1,716g/1,664g) of the free Frisian in East Frisia seven hundred years before.⁶⁰

Final remark

Taking the characteristics of the concept of wergeld into account, the wergeld hypothesis is supported by the following records, all of which mark important occurrences:

- The *Lex Frisionum* (between 789 and 794).
- The Mid-Frisian *Landriocht /Skeltariocht* (between 1086 and 1165)
- The general Frisian treaty of the Upstallisbam in 1323.

⁵⁷ GAG STAD: P8 RvR 118

⁵⁸ GAG STAD: P16 RvR 135. A copy of this treaty in Sicke Benninge, *Chronickel*, 419, has *dre ende enentachtig schijlden* (Feith, *De kroniek*, 114). This must be an error made either by Johan van Lemego, the author c.1480 (*ibidem*, viii) of the part of the chronicle concerned, or by Sicke Benninge, who copied this part from Lemego (c.1530). It is known that Sicke Benninge was not very capable in language (*ibidem*, xx-xxi). Unfortunately his chronicle was used for making a copy of the treaty of 1422 by Van Mieris, *Groot-Charterboek*, IV, 620, published in 1756, and he has probably emended the amount to *dree en dertich schilden*. This amount was copied in turn by Schwartzenberg in 1768 (Chbk1, 445-449). Schwartzenberg did not correct it, although he claimed to have checked Van Mieris’ copy against a very old manuscript of the late S.A. Gabbema (probably ms. 9056 Hs.D in the Provinsjale en Buma Bibliotheek van Fryslân, according to information kindly supplied by Mr M. Engels, custodian) and against the chronicle of Worp van Thabor (Worp Tyaerda van Rinsumageest, *Kronijken*, 63-64), both of which copies correspond to the original charter.

⁵⁹ See Appendix I: the compensation for the freeholder in 1491 was 200 old *schilden* = c.2,580g; with the kin’s share excluded, it would be $\frac{2}{3}$ x c.2,580g = c.1,720g.

⁶⁰ See Excursus 3.3: ‘On the silver equivalence of the wergeld in the *Lex Frisionum*’, sub (c).

- The Groningen town resolution of 1427 and the Ommelanden common law of 1448 in relation to the imperial privileges of Frisia of 1417 and the all-Frisian reconciliation treaty of 1422.

There are a number of other, less clear, examples, and these are enumerated in Appendix I. In this survey, treaties with countries or towns outside Frisia have been excluded. The survey is not aimed at proving the hypothesis; its only aim is to investigate whether the wergeld cases found in Frisia can be interpreted in a plausible way if the wergeld hypothesis is applied, and, apart from a few exceptions, it appears that they can.

