

THE BODY LEGAL IN BARBARIAN LAW



Lisi Oliver

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in Barbarian Law



UNIVERSITY OF TORONTO PRESS
Toronto Buffalo London

© University of Toronto Press Incorporated 2011
Toronto Buffalo London
www.utppublishing.com
Printed in Canada

ISBN 978-0-8020-9706-4



Printed on acid-free, 100% post-consumer recycled paper with vegetable-based inks.

Library and Archives Canada Cataloguing in Publication

Oliver, Lisi
The body legal in barbarian law / Lisi Oliver.

(Toronto Anglo-Saxon series)
Includes bibliographical references and index.
ISBN 978-0-8020-9706-4

1. Personal injuries – Europe – History – To 1500. 2. Human body – Law and legislation – Europe – History – To 1500. 3. Law, Germanic – History – To 1500. I. Title. II. Series: Toronto Anglo-Saxon series

KJ806.045 2011 346.403'230902 C2010-906760-6

University of Toronto Press gratefully acknowledges the financial assistance of the Centre for Medieval Studies, University of Toronto, in the publication of this book.

University of Toronto Press acknowledges the financial assistance to its publishing program of the Canada Council for the Arts and the Ontario Arts Council.



Canada Council
for the Arts

Conseil des Arts
du Canada



ONTARIO ARTS COUNCIL
CONSEIL DES ARTS DE L'ONTARIO

University of Toronto Press acknowledges the financial support of the Government of Canada through the Canada Book Fund for its publishing activities.

This study is dedicated

to

Ben Guelfo

Louisiana Personal Injury Lawyer Extraordinaire

and to

Sadie and Jasper

*without any of whom the book would have been completed
much more quickly,
but with far less laughter.*

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Acknowledgments

It is a fashion among many academics to treat the daily horoscope as if it were simply an entertainment feature. However, the real and obvious influence that the stars can exert over our earthly lives is clearly demonstrated by my horoscope of 7 June 2008, printed in the Baton Rouge *Daily Advocate*:

You might find some exceptional thinkers at your disposal with whom you can discuss some complicated issues; they will help explain things most people wouldn't understand.

The startling perspicacity of the zodiac in this respect can be seen in the following list of exceptional thinkers who have helped me at many stages of the production of this book. Not only scholars but also non-academic specialists in various fields have been extremely generous in giving of their time and expertise to aid me in the analyses presented in this study. The following list of experts in wide-ranging fields of knowledge only begins to acknowledge my debt to the multitude of friends and colleagues who have patiently listened to and commented on my attempts to elucidate the social world hinted at in the early medieval personal injury laws. Those named below have all contributed in many areas beyond their listed specializations. If I have inadvertently omitted any from this list, I beg their forgiveness and thank them here. Any errors remaining in the analyses must be laid to my account: these exceptional thinkers have done their best to inform my scholarship.

- *Medieval law*: Marianne Elsackers, Stefan Jurasinski, Andy Rabin.
- *Medieval history and historical analysis*: Kent Hare, Tom Lambert, Sue Marchand, David Rollason.

- *Contemporary law*: Stuart Green, Ben Guelfo.
- *Medieval medicine*: Rolf Baumgartner, Florence Eliza Glase, Markus Hedeman.
- *Contemporary medicine and dentistry*: Toby Charamie, Jim McIlwain, Susan Postell, Ricardo Rodriguez, Cameron Rose, Elizabeth Strother, Jennifer Szurgot, Ken Wilkinson.
- *Linguistics and translation*: Ben Fortson, Maria Mahoney, Calvert Watkins, Ryan Williams.
- *Sports technology*: ‘Coach Hat’ Bachar, Peter Clayton, Amanda Harmata, John Woosley.
- *Rhetoric, theory, and argumentation*: Lilian Bridwell-Bowles, Stefan Jurasinski, Malcolm Richardson, Brooke Rollins.
- *Medieval religious theory and practice*: Maria Mahoney.
- *Research support*: Bob Doyle gave me my best graduation present from Harvard University: a day of photocopying whatever I wanted from the collection in Widener Library. This enabled me to bring to Louisiana copies of all the Germanenrechte editions of barbarian laws, without which this project would not have been possible.
- *Scholarly approach and editorial assistance*: To the anonymous readers assigned by UTP to comment on drafts of this manuscript; they have helped tremendously in shaping the final appearance of this book. I thank them for steering me from errors and towards solutions.
- The many libraries, museums, and photographic collections that provided the images produced herein. I am particularly grateful to Alfred Czarnetzki and his collaborators in the excellent exhibition and accompanying catalogue of *Menschen des Frühen Mittelalters im Spiegel der Anthropologie und Medizin* which provided invaluable archaeological evidence from medieval gravesites.
- Most importantly, to my editor at University of Toronto Press, Suzanne Rancourt, who believed in this book from the beginning, saw me through the dark ages of doubt, and is primarily responsible for bringing this book to conclusion. Every author should be so lucky to have such an editor, but very few are.

Further, I owe a tremendous debt of thanks to my students at Louisiana State University who have provided help in the collection, organization, and interpretation of the data incorporated in this study. Although many remain unnamed for reasons of space, particular credit must go to those who helped organize the data: Sally O’Rourke, Greg Molchan, Caroline Newman, and – far more than any citation can credit – Candice Scott.

Also to Melissa Norman, who prepared the initial index, and Joshua Hamburg, who helped bring it to conclusion. And, finally, to numerous neighbours and friends who have listened to me work out problems which must have seemed both arcane and boring during long walks with our dogs.

For financial support, I would like to thank Louisiana State University, in particular, the Department of English, for providing me with a semester's research leave and subsequently with a sabbatical leave (supported by the College of Arts and Sciences) to collect the data underlying this study. I also thank the Medieval Centre at the University of Toronto for a generous grant to subvent the publication, and the National Institutes of Health/National Library of Medicine for underwriting an extended teaching release which allowed me to complete the manuscript. Funding for this Scholarly Works project was made possible by grant 1 G13 LM009300-01 from the National Library of Medicine, NIH, DHHS. The views expressed in any written publication, or other media, do not necessarily reflect the official policies of the Department of Health and Human Services; nor does mention by trade names, commercial practices, or organizations imply endorsement by the U.S. Government.

Abbreviations

<i>Edict Roth.</i>	Laws of Lombards. See Friedrich Bluhme, ed. <i>Leges Langobardorum</i> .
<i>Forum Iud.</i>	Laws of Visigothic Spain. See Karl Zeumer, ed. <i>Leges Visigothorum</i> .
<i>Kent.</i>	Laws of Kentish kingdom. See Lisi Oliver, ed. <i>Beginnings of English Law</i> .
<i>Lex Ala.</i>	Laws of Alamanns. See Johann Merkel, ed. <i>Leges Alamannorum</i> .
<i>Lex Baiu.</i>	Laws of Bavarians. See Johann Merkel, ed. <i>Leges Baiuvariorum</i> .
<i>Lex Cham.</i>	Laws of Chamavan Franks. See Rudolf Sohm, ed. <i>Lex Francorum Chamavorum</i> .
<i>Lex Fris.</i>	Laws of Frisians. See Karl von Richthofen, ed. <i>Lex Frisionum</i> .
<i>Lex Rib.</i>	Laws of Ripuarian Franks. See Franz Beyerle and Rudolf Buchner, eds. <i>Lex Ribvaria</i> .
<i>Lex Sal.</i>	Laws of Salian Franks. See Karl August Eckhardt, ed. <i>Lex Salica, 100-Titel Text</i> .
<i>Lex Sax.</i>	Laws of Saxons. See Karl von Richthofen and Karl Friedrich von Richthofen, eds. <i>Leges Saxonum</i> .
<i>Lex Thur.</i>	Laws of Thuringians. See Friedrich von Richthofen, ed. <i>Lex Thuringorum</i> .
<i>Liber Const.</i>	Laws of Burgundians. See Friedrich Bluhme, ed. <i>Leges Burgundionum</i> .
<i>Wessex.</i>	Laws of West Saxons. See Felix Liebermann, <i>Die Gesetze der Angelsachsen</i> .

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THE BODY LEGAL IN BARBARIAN LAW

Introduction

This is a book about laws, bones, and related stories emanating from western Europe in the sixth to early ninth centuries. The primary focus is on the personal injury tariffs included in the legal codes established for the various continental kingdoms and dukedoms ranging from Visigothic Spain in the west to Bavaria in the east, from Italic Lombardy in the south to Saxony in the north, and incorporating the Anglo-Saxon island regions of Britain.¹ The discussions which follow present a wide variety of pictures: the causes and results of injuries inflicted in private altercation; the evidence for methods and successes (or lack thereof) of healing techniques; the process of individual redress or public litigation; and indications of how the early medieval laws either drew upon native tradition, borrowed regulations from other regions, or innovated when need arose in particular cases. The primary data for this study are drawn from the terse formulations assessing fines for inflicting injury contained in the territorial laws. To flesh out these skeletal legal stipulations, I have incorporated anthropological evidence from gravesites; literary evidence from histories, lawsuits, hagiographies, sagas, and poems; visual evidence from illustrations and sculptures; and the occasional modern parallel from our own contempor-

1 This study concentrates on the group of laws referred to by legal scholars as 'barbarian' – that is, the laws of the peoples speaking a Germanic dialect who recorded their territorial laws for central, western, and southern Europe in the sixth to ninth centuries. I have excluded discussions of Irish and Scandinavian laws, except where evidence from these territories may help explicate ambiguities in the barbarian laws. The reasons for these exclusions are specific to the two regions: Ireland recorded its laws in a non-Germanic vernacular, and the regions of Scandinavia committed their laws to writing several centuries after the period under consideration in this analysis.

ary life. This study draws upon the remaining fragments and traces left to us in a wide range of physical and literary evidence to depict a picture of how early medieval society understood the anatomical consequences of wounds to the human body, the varieties of practices available to heal such injuries, and the legal process of obtaining compensation for temporary or permanent incapacitation.

Why are these injury tariffs relevant to us today? Recently a Louisiana State University student, riding her bicycle to school, was hit by a car and lost her left arm. This presented a problem not uncommon to insurance companies and personal injury lawyers: namely, what is the value of the left arm? Is it worth less than the right arm? Is it worth more or less if she is left-handed? Is it worse to lose an arm than a leg? An eye? The sense of smell, with concomitant loss of taste? Furthermore, to what extent should cosmetic damage be valued? What is the value of any particular body part in both physiological and psychological terms? How does an injury affect the ability of the wounded to provide for the family?

Such problems are directly addressed within the Germanic personal injury tariffs, which are the focus of this study. But the investigation extends to detailed examination of the rulings on assault elsewhere in the laws. These examinations raise many other issues which we continue to struggle with today. For example:

- To what extent should damages be awarded according to the profession of the victim?
- Should all rapes require equal restitution? What if the woman is pregnant? Married? Underage?
- What is lost when oral transmission is converted to writing? To what extent does inherited wisdom continue to be transmitted from master to apprentice?

These questions – individual, personal, physiological, and societal – plagued our ancestors, and continue to plague us today. These are among the questions this study addresses.

Although the specific cases raised in this investigation are contained within narrow geographical and chronological parameters, they present wide-ranging implications. First, I would like to think that this examination will help lay to rest the use of the adjective ‘medieval’ often employed in modern prose to represent ‘uninformed.’ The following chapters demonstrate that the Germanic peoples possessed knowledge of functional anatomy far beyond the average perceptions of my own contemporaries.