

Her anda neylar: An intriguing criterion for abortion in Old Frisian law¹

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The corpus of Old Frisian law contains many articles on involuntary abortion.² An analysis of these articles indicates that Old Frisian law was regularly revised, updated and clarified, and that most of the provisions must be regarded as supplements to or expansions of the Twenty-third Landlaw. One of the most intriguing features of Old Frisian law is the fact that it has its own, typically Frisian criterion to distinguish between early term and late term abortion: the 'hair and nails' stage. This criterion was discreetly replaced by a more Christian criterion in the early or mid fourteenth century, when a medical text, that is, an emended version of the embryology in Vindicianus's *Gynaecia*, was incorporated into Old Frisian law. This paper will discuss the Old Frisian Landlaw on abortion (§1), the short (§2) and long laws on abortion (§3) and the Old Frisian translation of Vindicianus's embryology (§4).³ The variants, expansions, additions and revisions, the use of criteria to determine the stage of fetal growth, and the important role allocated to female witnesses in the court procedure indicate that involuntary abortion, especially as a result of (domestic) violence, was an important issue in medieval Frisia.

1. THE TWENTY-THIRD OLD FRISIAN LONDRIUCHT ON ABORTION

The core texts of Old Frisian law, the Seventeen Statutes and the Twenty-four Landlaws, contain the oldest Frisian law on abortion, that is, the Twenty-third Landlaw. The landlaws probably date back to the eleventh century - at least in part, and it is likely that they were based on older, orally transmitted Frisian law that might even date back to the ninth and tenth centuries; tradition has it that the Frisians received the landlaws from Charlemagne. The Frisian landlaws survive in two different, versions, a short version and a long one.⁴

1.1. The short versions of the Twenty-third Landlaw

The short version of the Twenty-third Landlaw is found in the Hunsingo manuscripts H1 and H2, and in the Fivelgo manuscript (F); the Hunsingo manuscripts contain the oldest manuscript attestations (c. 1300) of this version

H1-H2 (both c. 1300)	F (c. 1430-1440)
<p>H2-H1.III.23. Thet istet thriv en tuintegeste londriucht: Sa hwa sa ene frowa a bedde [= an berde] bifiucht binna there benena burch en lif ofnimth ieftha twa, ief hi thes ieth, sa scel hi thet lif tuielda ielde and liudwed mith tuelef merkum to ieldane and thriu pund tha frana, thet is en end tuintech scillenga, thes kenenges bonnes.⁵</p>	<p>F.IV.23. Thet thria an twintichgiste londriucht is: Sa hwas a ene frowa an berde bifiuchte, binna there benena burch en lif ofnimt ieftha twa, jef hi se ia schel, sa scol hi thet lif twielda ielda and hire liudwerdene mith xij merkum fella and tha liudum then frethe and thria pund tha frana. Jef hi biseke, sa vntswere hi xij on tha withum ief hi sikre him mith ix scherum ieftha mith ene bereskinza kampa binna thrim ethmelum.⁶</p>

The three attestations of the short version of the Twenty-third Landlaw do not beat around the bush: attacking a pregnant woman and causing her to miscarry is a serious crime which requires the payment of the wergeld, that is, the compensation for murder, or 'the price set upon a man's life'. Double the amount of wergeld must be paid for killing the unborn child plus a *liudwerdene* of twelve marks for breaking the peace, and a fine of three pounds must be paid to the *frana*, the king's representative.⁷ The Fivelgo manuscript adds a provision that allows the accused to prove his innocence by swearing an oath on relics with eleven others, walking over nine (red-hot) plowshares, or fighting a duel within three days.⁸

1.2. The long versions of the Twenty-third Landlaw

The oldest attestation of the long version of the Twenty-third Landlaw is found in the First Riustring Manuscript (R1); younger attestations are included in the First Emsingo Codex (E1), in Codex Unia (c. 1450), in Jus Municipale Frisonum (c. 1450), and in the incunable Druk (c. 1485).⁹

R1 (c. 1300)	E1 (c. 1400)
<p>R1.IV.23. This is thet thriu and twintegeste londriucht: Alther en wif se onefuchten and hiu se mith berne and nebbe nawet erges eden, blodelsa ne blodrunnanda deda ni dath ni dolch ni nena othera morthdeda, and hiu se sa fir onefuchten inur tha benena burch, thet thet bern and thi u berthe ofliue werthe, jef hi ie there dede, sa hach hi to fellande and to ieldande mith urielde and mith ielde tha berthe and tha morthdede: thet ield and thera lioda wed also hage, also tha liode louiat and thet urield bi twilif merkon and there wiue hiri liodwerdene mith twilif merkon to fellande. Ac ief hiu sterue, sa hach ma hia and tha berthe</p>	<p>E1.IV.23. Theth istet thriu and tuintegeste londriucht: Alder se en wif onefuchten and hiu se mith berde and hiu hire den nebbe blodelsa ni bloderennanda deda, dath ni dolch ni nena morthdeda, and hiu se sa fir vreuelat and onefuchten invr tha benena burch, thet thet bern and thi u berd eflieue [MS efte liue] vrden se, jef hi ge, sa ach hit te fellane mith ielde and mith vrgelde tha berth and tha grimma morthdeda: thet ield and liuda wed also hage, sa liude louiath, antet vrgeld scel wesa tuelef merck. Ac ief hiu eflieue werthe, sa ach ma <hia> te</p>

<p>mith siugun ieldon to ieldande, achta pund tha frana and achta enza and achta skillinga and achta panninga thet is hiri riuchta werthma.</p>	<p>ieldene mit soghen ieldem, and achta pund and achta enza and achta scillingar and achta pennengar thet is hire riuchta witma.</p>
<p>Ac ief hi biseke, sa sikure hine anda withon mith twilif monnon jeftha hi gunge tha niugun skero. Ac ief hi thera ordela nahwedder dwa nelle, sa wisere enes berskinzes campa, binna thrium etmelon to fiuchtande,</p>	<p>Ac ief hi beseke, sa sikerie hine mit tuelef monnem anda withem jefta hi gunghe tha niughen heta skere. Ac ief hi thira ordela nauder dua nella, sa wisiere him <enes> bereskinzes [MS kinnzes] kempa, binna thrim etmeldum te bifiuhtane,</p>
<p>ieftha ene sone alsaden bi asyga dome and bi lioda riuchte, thet hiu se nathelik and godilik.¹⁰</p>	<p>jefta ene sone alsadene bi asega dome and bi sceltata bonne, thiu se nethelic and godelic.¹¹</p>

The punishment for violent abortion in the long versions is not payment of double the amount of wergeld, but *alsa tha liode louiat*, as much 'as the people decide', a reference to customary law. However, there is no doubt that this crime was equated with homicide and that wergeld had to be paid for the dead child, as the word *morthdede*, 'murderous attack' indicates. The compensation due for the death of the mother is seven times her wergeld. The length of the articles in R1, E1, Jus and Druk varies, but basically they are the same, except for minor variations on the word level. For instance, Jus refers to the duel as a swordfight, whereas the other texts only mention a *bereskinzes campa*, 'bare-legged fighter'; moreover, Jus omits the option that allows the dispute to be settled by the *asega*, 'judge, lawspeaker'.¹² Druk adds an edifying clause at the end, which was probably originally a gloss: *Fan trowa ende fan wirde ward himelryck stift, ende af wirde wardet aeck forfold; also waerd dat aefte oen eerdrike*, 'The kingdom of heaven was founded on fidelity and truth and through truth it was also fulfilled. So too marriage should be on earth'.¹³

1.3. Conclusion

The main difference between the short and the long versions of the Twenty-third Landlaw is that the latter mentions the pregnant woman's role. It adds a provision stating that the pregnant woman herself must not be involved in the fight in any way, that is, she must not be guilty of violence, bloodshed, inflicting injuries, or homicide. It also awards compensation for the pregnant woman, if she dies as a result of the miscarriage. The compensation for killing the mother, seven times her wergeld, is again an indication of the gravity of the crime. These additional details in the long versions dispel any lingering doubts regarding the subject matter of the Twenty-third Landlaw: it is definitely about (domestic) violence towards women.

The Old Frisian short version is probably older than the long version. The concept 'long - short' is, however, a relative notion. The younger Low Saxon translations of the Twenty-third Landlaw also survive in a long and short version; both, however, are related to the older, Old Frisian short versions.¹⁴ Neither of the Low Saxon Ommeland versions mentions the fate or the role of the mother.

Cc - short version (third quarter 15th c.)	Lh - long version (1531)
<p>Dat xiiijste lant recht is We so eyn wyff de myt ener boorte geyt beuechtet vnde eyn <lyff> lit off twe aff nemet So sal he dat lit [read: lyff] myt twe bote boten vnde gelden Ende ock ouerwelt myt xij markum ende den rechteren iij pont.¹⁵</p>	<p>Dat xxiiij lantrecht is Soe we ene vrouwe de een kint draget ene boert beuechtet bynnen der bynnenborch een lyff aff nemet off twe off he dat lyen sal soe sall he dat lyff myt tweuolt gelt gelden ende der vrouwen oer lyndwerdene dat is myt xij markum to voruullen ende den luden den vrede ende iij pundt den frana.¹⁶</p>

The Twenty-third Old Frisian Landlaw on abortion punishes attacking a pregnant woman, and causing her to miscarry. This form of (domestic) violence is punished as murder; either double the wergeld must be paid, or the amount of wergeld prescribed by customary law. E1 even speaks of a *grimma mord deda*, 'a horrible murder'. The Twenty-third Landlaw does not distinguish between early term and late term abortion.

2. THE SHORT OLD FRISIAN LAWS ON ABORTION

The Old Frisian manuscripts contain many other laws on abortion besides the Twenty-third Landlaw. We find them in the lists of additions and exceptions to the Statutes and Landlaws (the so-called 'wends'), in the injury tariffs and in the sections on synodal law. Some of these laws are explicitly listed as supplements to the Twenty-third Landlaw, others must be regarded as such. The most innovative feature of the short laws is the introduction of the 'hair and nails' stage. The 'hair and nails' stage is the typically Old Frisian criterion to differentiate between early term and late term abortion. It is probably an archaic criterion that had been handed down by word of mouth as part of orally transmitted customary law for centuries.

2.1. *Secular law: supplements to the Twenty-third Landlaw*

All three early or mid fifteenth-century Emsingo manuscripts (E1, E2, E3) contain addenda to the Twenty-third Landlaw entitled *Thet istet tredde morth*, 'that is the third murder'; like the landlaws these laws are concerned with domestic violence.¹⁷

E1 (c. 1400)	E2 (c. 1450)	E3 (c. 1450)
<p>E1.VIII.37. Theth istet tredde morth: huersa hijr en frouwe morth clagat and thet frouwa biskawiath, thet <hit> sa fer ne kemen se, thet hit nebbe her nither neylar, sa skel ma</p>	<p>E2.V.3. Thet istet tredde morth: hwersa hir en frouwe morth clagat and thet frouwa biskawiath, thet hit sa fir nawit ekemen se, thet hit nebbe nauder her ther nene neijlar, sa</p>	<p>E3.II.3. Thet is thet thredde morth: sa huersar en frowe morth clagath, anda thet frouwe biskawiath, thet thiu frucht sa fir kemen se, thet hit hebbe her anda neylar, sa</p>

thes morthes mit niughen friudem vngunga mith allera Fresena riuchte. ¹⁸	sa skel ma thes morthes mith niugin friudem vngunga mith alra Fresane riuchte. ¹⁹	schel ma thet morth mith morth felle, jeftha mith niugen friudem vngunga mith oller Fresana riucht. ²⁰
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If a pregnant woman files a complaint of violent murder, Old Frisian law allows the person accused of having caused the woman to miscarry, to clear himself by swearing to his innocence together with nine oath-helpers. The woman's accusation must be corroborated by other women, *frouwa*, who have examined the fetus, and declared publicly whether it had 'hair or nails' or not. The crime is called *morth*, 'murder' and article E3.II.3 states that, if the fetus did have 'hair and nails' according to the female witnesses, *schel ma thet morth mith morth felle*, 'the murder must be avenged with murder', meaning that the appropriate sum of wergeld must be paid.

E3.II.3 is followed by four articles on the same subject (E3.II.4 - E3.II.7). E3.II.4 supplements E3.II.3, and argues that the latter is not applicable, if the fetus did not have 'hair or nails' yet.

E3.II.4. Js hit sa fir nawt kemen, sa skel ma thet riucht wrsia.

E3.II.5. Thisse farscriwene seke is wer, alsa fir sa thet wiff er ne hebbe den blodelsa ne bloedrennande detha, dath ne dolch.

E3.II.6. Heth hiu then mon erste onfuchten, sa schel ma thet riucht wrsia, sa is thi u dethe enfald.

E3.II.7. Hversar en wiff annen mon onfucht anda hine sla blaw ieftha blodich, anda hi hine biwerth anda hir deth dath ieftha dolch, sa heth hiu hire froulike bota wrleren anda is thi u bota lic aien like dethem.²¹

The other three articles echo the long version of the Twenty-third Landlaw. E3.II.5 contains the provision on the pregnant woman's involvement in the fight. Articles E3.II.6 - E3.II.7 supplement E3.II.5, and indicate the compensation due if the pregnant woman instigated or provoked the fight.²² Like the Twenty-third Landlaw, these articles suggest domestic violence.

There are two more short laws on involuntary abortion in the same section as E1.VIII.37; the first (E1.VIII.11) is labeled *tredda wend*, that is, 'third exception', and the second (E1.VIII.12) supplements it.²³

E1 (c. 1400)	
E1.VIII.11. Thi tredda wend istet: huuersa tuene keddar fiuchtat and ther en frouue tohlape <and hiu> alsa fir onghefuchten werthe, thet hiu binnen dei and binna nachta en morth to monnem brenze, sa ne mei ma thes morthes nanene withe biada and ach ma thet morth mith morth to ieldane, theth is mith tuam ieldum, ief hit hebbe bethe her and neilar. ²⁴	E1.VIII.12. Uuerth thi u frouue thes liwes belesed, sa skel ma hia ac ielda mit tuam ieldum, ac bi allera Fresena riuchte, and tha liudem hira frethe tuiuald to fellane and tha frana sin bon. ²⁵

E1.VIII.11 describes a situation that is related to, but essentially different from the one discussed above. Here a pregnant woman, who has accidentally become involved in a fight between two *keddān*, 'gangs', is so severely injured that she suffers a miscarriage within twenty-four hours of the encounter. This article does not explicitly stipulate the testimony of female witnesses, but it is probably implied, because there is an article which requires corroboration by female witnesses in the same section (E1.VIII.37). Both the fact that 'the murder must be compensated with murder' (*ach ma thet morth mith morthē to ieldane*), if the dead child had 'hair and nails', and the fact that the guilty party is not allowed to swear an exculpatory oath on the relics (*sa ne mei ma thes morthes nanene withe biada*) imply that this is a serious crime, especially serious, if the fetus had 'hair and nails'.²⁶ The compensation due for the murder of a more fully developed fetus is the same amount as is stipulated in the Twenty-third Landlaw (short version), double the amount of its wergeld. E1.VIII.12 deals with the death of the mother-to-be, and corresponds to the second part of the long version of the Twenty-third Landlaw.²⁷

We find the same articles in R1 and F; here they are neatly grouped together in the injury tariffs. Articles R1.XIV.9a-9c are in the general injury tariff, and F.XII.7-9 are in the Fivelgo injury tariff.

R1 (c. 1300)	F (c. 1430-1440)
R1.XIV.9a. Hwersa en wif en morth clagath and thet othere wif mith werde foribrangat, thet hit nawet sa fir ekimin ne se, thet hit hebbe her and nila, sa mot hi thes mith twilif hondon anda withon vntswera.	F.XII.7. (F.XI.7) fon mord. Hwersa en frowe mord clagat and hit frowan bischawiat, thet hit nis sa fir ekemen, thet hit hebbe her ende neilan, sa memma thes xij vnsuera.
R1.XIV.9b. Hwersa en wif morth clagat and hit also fir ekimin is, thet hit ac hebbe her and neilar, sa skil ma thes mith niugun skeron untgunga.	F.XII.8. (F.XI.8) Jtem. Hwersa en frowe en mord clagat, thet hit sa fir ekemen is, thet hit hebbe her ende neilan, sa scel ma thes mith ix fiurum vntgunga.
R1.XIV.9c. Sa hwersa twene kedda fiuchtat and ther en wif tohlapt and hui sa fir onefuchten werth, thet hui morth to monnon brange binna di and binna nachte, sa ne mi ma umbe thet morth nena witha biada. ²⁸	F.XII.9. (F.XI.9) Jtem fon mord. Hwersa twene keddan fiuchtat and ther en frowe tohlape and hio then ther also fir onfuchten werth, thet hio en mord to monnum brengeth binna dey ende nacht, sa ne mey ma thes mordis nene withe biada. ²⁹

R1. XIV.9a and F.XII.7 allow the person who caused a woman to miscarry a fetus without 'hair and nails' to swear an oath of innocence on the relics with eleven others. R1.XIV.9b and F.XII.8 state that, if the aborted fetus had already developed 'hair and nails' according to the woman (R1) or women (F) who were summoned as witnesses, exculpation was only permitted by walking over nine (red hot) plowshares.³⁰ The last article (R1.XIV.9c, F.XII.9) discusses the gang

fight, and forbids swearing an exculpatory oath on the holy relics, if the miscarriage took place within twenty-four hours after the pregnant woman accidentally became mixed up in a fight between two *keddan*.³¹

The three short laws on abortion in the sections on secular law add information, which supplements and revises the Twenty-third Landlaw. These laws were meant to be read together with the Twenty-third Landlaw, because essential information, such as the amounts of compensation to be paid, must be gleaned from the landlaws.³²

MSS	23rd landlaw	three short secular laws			
	version	hair & nails (-)	hair & nails (+)	keddan	female witness(es)
H1 (c. 1300)	short version				
H2 (c. 1300)	short version				
R1 (c. 1300)	long version	R1.XIV.9a	R1.XIV.9b	R1.XIV.9c	R1.XIV.9a
E1 (c. 1400)	long version	E1.VIII.37		E1.VIII.11 (+ hair & nails)	E1.VIII.37, E1.VIII.11
E2 (c. 1450)		E2.V.3			E2.V.3
E3 (c. 1450)	E3.II.5-7 [≈ long version]	E3.II.4	E3.II.3		E3.II.3
F (c. 1430-40)	short version	F.XII.7	F.XII.8	F.XII.9	F.XII.7
Jus (c. 1430)	long version				
Druk (c. 1485)	long version				

As the table above indicates, not all the Old Frisian legal manuscripts contain versions of both the landlaws and the short laws. This would, however, not have been a problem, because the landlaws were well known in medieval Frisia, and there were probably enough manuscripts available.

The supplements to the Twenty-third Landlaw add a law that introduces the possibility of accidental abortion, if a pregnant woman gets involved in a fight between two *keddan* or 'gangs'. This law may have been introduced on the analogy of Exodus 21: 22-23, which punishes causing a miscarriage under similar circumstances. I will return to this later (§5). In the short secular laws women are given an active role in legal proceedings. Not only are they permitted to act as plaintiff, but an important role is also assigned to the female witnesses who must decide whether the stillborn child had 'hair and nails' yet, or not. The introduction of the 'hair and nails' stage as a criterion to define the difference between early term and late term abortion is unique.

2.2. Synodal law on abortion

Laws on abortion and domestic violence were also included in the sections on *sinth riucht*, or 'synodal law'.³³ In Old Frisian church law the crime of abortion is not simply called *mord*, but it is classified as an *onbinaemd*, *oennaemd*, or [*vne*]binomat *mord*, which means 'murder of a person without a name' or 'murder of someone whose identity cannot be established, a John Doe'.³⁴

F.VIII.9 and J.IX.6 are concerned with involuntary abortion, as indicated by the phrase *oennaemd moerd dat hijt anda wiue deen hadde* (J.IX.6), 'murder of a nameless one that he did to the woman (wife)'.

F (c. 1430-1440)	Jus (c. 1450)
F.VIII.9 (F.VIII.8). <i>Jef ma anne mon wreith vmbe ene vnebinomat mord, thet hit in sina wife iefta in tha othera wif den hebbe, sa mot hi thes xiisum vntswera, ief hi vnschildich is.</i> ³⁵	J.IX.6. <i>Fan moerd. Jef ma anne man wroeght om oennaemd moerd, dat hijt anda wiue deen hadde, soe moet hijs toluasum oenswerra, ief hi onschuldich is.</i> ³⁶

We find the same article in Druk and in the corpus of Low Saxon *sinth riucht* printed by Schotanus.³⁷

Druk (c. 1485)	Low Saxon version (MS 15th-16th c.?)
D.XI.6. <i>Iefma een man wroghet om een onbinaemd moerd, deer hi deen hadde oenda wiue, ende hi des bisecka wil, so moet hi toluasum onriuchta ief hi schieltich [onschildich] is.</i> ³⁸	LXXXI. <i>Wroegen om ein moordt. Item off enich man wroget wordt um een [on?] benaemde moerd dat an een wyff gescheen ys soe moet hy dat untrichtenn twalversum off hy des onschuldich is.</i> ³⁹

The child the woman was carrying is referred to as *onbinaemd*, 'without a name' or 'nameless'. The term *onbinaemd mord* denotes abortion in this context, because abortion by definition concerns killing a child who has not yet been given a name. Name-giving occurred either soon after birth or when the child was baptized. Because these laws are part of Old Frisian *sinth riucht*, use of the term *onbinaemd* might very well be a reference to the fact that the child had died before it could have been baptized.⁴⁰

The version in F.VIII.8 speaks of 'his woman or wife' instead of 'the woman', and it contains a small, but interesting expansion of the phrase *thet hit in sina wife (...) den hebbe*, 'that he did to his wife'. This addition, *iefta in tha othera wife*, 'or to the other woman', gives us a glimpse of a domestic quarrel with jealousy, violence, and other complications arising from extramarital affairs. F.VIII.9 is the only Old Frisian law on abortion that mentions 'the other woman'.⁴¹ In the Low Saxon version the word 'woman' is preceded by an indefinite article (*an een wyff*), instead of a definite article (*anda wiue, oenda wiue*). This suggests that there may be other situations, besides domestic violence, in which a woman might suffer a miscarriage, such as the *keddan* situation described in §2.1; perhaps this law can also be interpreted as an indirect reference to the prosecution of abortionists. In all four attestations of this law the accused is allowed to swear to his innocence with eleven oath-

helpers, as in secular law on abortion, and although the pregnant woman does not explicitly feature as the plaintiff, she is named as the victim.⁴²

A comparable use of the term *onbinaemd mord* to denote unborn and therefore unbaptized children is found in the injury tariffs of Druk and Jus.⁴³ Here the term is used in connection with injuries to the male reproductive organs. The three versions of this law in Jus (J.XXIII.117; J.XXVIII.239; J.XXIX.123) employ the word *vnnameda (onnameda)*; the version in Druk has *onbinaemd*. Note that all these articles are found in sections of secular law.

Jus (c. 1450)	Druk (c. 1485)
J.XXVIII.239. Hweer so en man wr sine machte scetten werth, truch sine machte, truch thet fel, thio bote is ij ensa, hit en sie thet hi ferra spreka vvolla; so mei hi hadde thre sinekerff. Thio aersta hath thio stiapsine. Thio ander hath thio wieldsine. Thio thredde thio fruchtsine. Ther moth hi fan bitigia thria vnnameda morth, tha ach ma allerlick to betane also dyore soe en manslachta iefta xij-sum to onswerne. ⁴⁴	D.XIV.47. Fanda pint. (213) Hua so oderem syn tillinga binimt, dio bote is v½ merc. (214) Hueer so en man truch syn machta schetten wirt truch dat fel, dio boet is ii einsa, hit ne se dat hi fora spreka wil; so mei hi habba tria siinkerf: dio aerste haet dio staepsyn, dio oer dio wieldsyn ende dio tredde dio fruchtsyn. Deer moet hi fan bitigia tria onbinaemd moerd, da aegh ma allerlyc to beten so diore so en manslachta iefta toluasum onsuara. ⁴⁵

This law awards compensation for injuries to the male genital organs that result in permanent infertility. The guilty party is required to swear an exculpatory oath with eleven others; otherwise the penalty for murder (*manslachta*) must be paid. *Thria vnnameda morth* must be compensated, that is, the lives of three children the victim might have sired.⁴⁶ E3 contains two articles on the same subject which do not use the term *vnebinomat morth*; they compensate the lives of nine children *ther hi tia machte*, 'that he might have fathered'.⁴⁷

The third context in which we find the term *onbinaemd mord* is *mordbrand* or 'arson'. We find versions of the law on *mordbrand* in the sections of synodal law in Jus (J.IX.41-42) and Druk (D.XI.35).⁴⁸ In this law the term *onbinaemd moerd* refers to the death of an unidentified victim of arson, a John Doe; again a person whose name is unknown.

F.VI.1, with its parallels in Jus, Druk and Schotanus's Low Saxon *Zeedtrecht*, is usually regarded as a condemnation of involuntary abortion, which it is not.

F (c. 1430-1440)	Jus (c. 1450)
.VI.1. Thit is thet sinthriucht. Hwersa ma anne mon biclagat vmbe en vnebinomat mord, sa is hi niar xijsum to vntswerane than hi age to deyane sineth iefta en ontuich. Berst him thera etha, sa schel hi beta thet bon met thrim merkum and	J.IX.49. Fan onnomada [MS nomada] moerd. Hweer soe en man biclageth wert om en onnaemd moerd, soe is hi nyaer toluasum ti onswerrane soe hi aeghe toe daiane senith ende ordil ende enich oentioegh. Brect him dera

<p>thene liudfrethe, alsa thet riucht is, and thet mord alsa diure sa anne monslachta.⁴⁹</p>	<p>ladena, soe schel hi dae ban beta mey trem merkum ende dijn lioddfrede, alst riocht is, ende dat moerd al ewen diore als ene manslachta.⁵⁰</p>
<p>Druk (c. 1485)</p>	<p>Low Saxon version (MS 15th-16th c.?)</p>
<p>D.XI.40. Hweersoma een man biclaget om een onnaemd moerd so is hi nier toluasum to onswarane dan hi aegh toe daiane sind iesta ordel. iesta enigh oentiugh brect him dere ladene. soe schil hi beta dae ban mit trim merken ende dine liod ferd als hit riucht is ende dat moerd also dyore soe een manslachta.⁵¹</p>	<p>LVIII. Anticht van moordt. Dith is Zeendrecht: Waerso een man byclaget wordt um een [on?] bynaemde moordt soo is hy nare twaelversum tho untswerrenn dan hy oicht tho doenn Zeendrecht. End is 't zake dat hem ontbreket van dessen voerges. xij. edenn so sal hy denn ban boetenn mijt drie marckenn end den luiden vrede also dat recht ys ende dat moordt sall hy beterenn also hoghe als een manslachte.⁵²</p>

Compared to the three laws on *onbinaemd mord* discussed above, this law is couched in general terms; it provides information on judicial procedure in a case of *onbinaemd mord*, and it describes the compensations due, if the person accused of *onbinaemd mord* fails to come up with eleven oath-swearers. There is no mention of a pregnant woman or any other woman, and the text does not give us any reason to suppose that this article is concerned with a specific case of *onbinaemd moerd*, such as abortion. Besides, why would Old Frisian synodal law include two articles on the same subject? This law must therefore be interpreted as a general provision that describes the legal procedures, oaths, and the fine due for the murder of a nameless person, or a person whose identity cannot be established, and whose family can therefore not file a claim for compensation.⁵³ This general law on *onbinaemd moerd*, which spells out the procedures, in a sense supplements the synodal laws on abortion and *mordbrand*, because it deals with specific cases of *onbinaemd moerd*.⁵⁴

Although some scholars believe that Old Frisian synodal law contains three articles on abortion, and translate the term *onbinaemd mord* as 'abortion' regardless of the context, Old Frisian synodal law - in my opinion - contains only one law on abortion.⁵⁵ At least three, nearly identical versions of this law have come down to us (J.IX.6, F.VIII.9, D.XI.6). As in the secular Old Frisian laws on abortion the setting is domestic violence. The Old Frisian legal term *onbinaemd mord*, that is, 'the murder of an unidentified, nameless, or unnamed person', is used to denote a special case of the crime of *onbinaemd mord* in the law on abortion. The term *onbinaemd mord* is only used with reference to abortion in Old Frisian synodal law; in the secular laws abortion is simply called *mord* or *manslachta*. Although the term *onbinaemd mord* is also found in secular law, that is, in the articles on causing male infertility in Jus and Druk, the term seems to otherwise be restricted to synodal law. This is in itself not surprising, in view of its implicit reference to the Christian ceremony of baptism. Aside from the terminology used and the indirect reference to baptism, there is little difference between the secular Old Frisian landlaw and Old Frisian *sinth*

riucht as regards abortion; both consider abortion to be murder, and punish it accordingly.

2.3. Conclusion

The short secular laws on abortion (§2.1) supplement and amend the Old Frisian landlaw on abortion (§1); Old Frisian synodal law on the other hand echoes the Twenty-third Landlaw. Secular law and synodal law both give the accused the opportunity to exonerate himself with the help of oath-helpers. The short secular laws add an article on accidental abortion and *keddan* or 'gangs'. They also introduce an interesting provision on female witnesses, and the typically Frisian criterion to distinguish between early term and late term abortion, the 'hair and nails' stage. The Twenty-third Landlaw and Old Frisian *sinth riucht* both condemn involuntary abortion, and demand the compensation for murder without differentiating between early and late abortion. The 'hair and nails' criterion that was introduced in the short secular laws on abortion mitigates the Twenty-third Landlaw's impact, and consequently secular law and synodal law contradict each other (cf. §5).

3. THE LONG OLD FRISIAN LAWS ON ABORTION

Old Frisian secular law also contains a long laws on involuntary abortion. Like the short laws discussed in §2.1, these texts must be regarded as supplements to the Twenty-third Landlaw. The long laws indicate that an explanation of the difference between early term and late term abortion and further elucidation of the 'hair and nails' criterion was apparently considered necessary. If we try to envisage the practical application of the 'hair and nails' criterion on the basis of the short laws (§2.1), we can imagine the parties involved contesting the testimony of the witnesses, and arguing that the fetus did seem to have 'hair and nails' or that it didn't, and that it was or was not an early term abortion. Further clarification of the 'hair and nails' stage would therefore be in order. The long laws on abortion mention the nine months' period of gestation, and explicitly link the fines due for causing an abortion to a specific month of pregnancy.

3.1. *The long law in the Emsingo and Brokmer manuscripts*

The three versions of the long law on abortion from the neighboring districts of Brokmerland and Emsingo list the fines due for each of the nine months of pregnancy, but they provide no further details or description of any of the stages of pregnancy, not even the 'hair and nails' stage. The nine months' period is subdivided into four groups: three two-month periods plus the last trimester (2-2-2-3). The fines due for causing a woman to abort ranges from no fine at all in the first two months of pregnancy to the full wergeld, if the fetus is killed in the third trimester. For interfering with a three or four months' pregnancy the compensation is 15 or 18 shillings, and for the fifth and sixth months half the wergeld must be paid.⁵⁶

B1 (c. 1285) - B2 (1345)	E3 (c. 1450)
B1-B2.214 (209). Fonre bernis berde. (1) (2) Andere bernis berde tuene monathar nen ield, there moder hiris liwes en hageste merc te bote;	E3.I.193. (1) (2) Hversa en frouwe clagath, thet hiu hire frucht wleren hebbe fon enre kase, sa send tha twene erste monath to nene ield seth, men hiu schel hebbe to bote en hageste merc.
(3) (4) anda letera tuam monathum there bernis berde achtene skillingar te ielde;	E3.I.194. (3) (4) Tha leiter twene ayder fiftene scillingar.
(5) (6) anda fifta and anda sexta monathe en half ield;	E3.I.195. (5) (6) Thi fifte anda thi sexta monath ayder en half liff.
(7) (8) (9) anda sogenda en hel ield,	E3.I.196. (7) (8) (9) Anda tha thrim elk en ful ield.
and alrec thera monatha en hageste merc, [B2 thet send sex merc];	E3.I.197. Anda hir for alrac monath to bote en hageste merc.
thi(t) te biweriande mittha prestere and mith tuam triuwe wiwen, hut andere berde sken se; thus keme skel wesa binna thrim etmeldem efter there case; stent hit thervr, sa [B1: skelma] vndvngc ma mith fiuwer and tuintich ethum; falt hit to dadele, sa skelma tha moder and thet bern mith fulle ielde ielda and enne frethe te reszande. ⁵⁷	Anda alrac to biwerien mitha prester anda mith tuam wiwem, hu hit anda ther berd esken se. Anda thi u keme thi u skel sken weisa tria etmelde efter ther kase. ⁵⁸

Awarding the full wergeld means that causing an abortion in the last trimester of pregnancy was regarded as murder. The compensation of injuries to the mother as a result of the *kase* or 'fight' with 'one highest mark' for each month of her pregnancy indicates that these laws, too, are concerned with involuntary abortion; what kind of fight, domestic or otherwise, is not specified. The Brokmer manuscripts B1 and B2 add a clause stating that, if mother and child are both killed, the 'murder' or *dad(d)ele*, must be compensated with the full wergeld; this text seems to be a concise summary of part of the long version of the Twenty-third Landlaw.

As in the short, secular laws on abortion, women were appointed as witnesses, and instructed to inspect the dead fetus and determine how far along the woman was at the time of the miscarriage. The long law demands corroboration of the miscarriage by two female witnesses and a priest within three days of the miscarriage. B1 and B2 add a paragraph that allows exculpation by swearing twenty-four oaths, if the period of three days is exceeded. The addition of the testimony of a priest is new in comparison with the short laws (§2.1), and it seems to suggest that the priest's authority was required to sanction or give cre-

dence to the women's testimony. It certainly indicates that the church's influence extended to secular law in medieval Frisia.

E3.I.193-197 are found in the Emsingo injury tariff and they are almost immediately followed by the Old Frisian embryological text which will be discussed in §4. The versions in the two Brokmer manuscripts are part of a group of articles we would expect to find in the injury tariffs, or in sections on criminal law. The context of all three versions is concerned with violence against women and indicates that causing a woman to miscarry was considered a serious crime.⁵⁹

A condensed version of this long law on abortion is found in many of the Low Saxon Ommeland manuscripts as part of a cluster of articles called 'St. Augustinus c.a. (cum annexis)'.⁶⁰

MS Assen 14 (c. 1450-1475)
2. van geld des des onboren Kindes
(1) Die boert des Kindes inde eerste maent by eenre marck.
(2) (3) Alzo de twe ander de daer naeste sint.
(4) Indie veerde maend wynt een thrimen geld myt eden to rechtene daer efter.
(5) Jn de vijfte maend is dat kint een twedeel geld.
(6) (7) (8) (9) Jn de seste maend mach dat komen to enen vullen gelde. ⁶¹

The Low Saxon version in MS Assen 14 does not mention any kind of violence and it omits the witnesses. Note that the Low Saxon text has also simplified and changed the fines due. Whereas the Old Frisian versions state that no fine is due for causing an abortion in the first two months, the Low Saxon translation demands one mark for each of the first three months. The *vullen gelde*, 'full wergeld' to be paid as of the sixth month shows us that in the Ommeland district abortion was regarded as murder from the sixth month onwards, instead of from the seventh month onwards as in the Old Frisian versions.⁶²

The laws on abortion examined so far still do not supply practical guidelines for determining how old the fetus was at the time of the miscarriage nor do they answer the question: 'at what point in time did the fetus develop hair and nails?' By differentiating the fines due according to a month-by-month list of the stages of pregnancy, the long law on abortion represents a first attempt to define the point in time when causing a miscarriage should be punished as murder. The burden of proof, that is, the determination of the stage of development of the dead fetus, was placed in the hands of female witnesses and a priest. However, one can still imagine the accused responding to the charges, arguing about the month in which the pregnancy was terminated and trying to discredit the witnesses by stating that the women were prejudiced one way or the other. This would, of course, complicate the administration of justice instead of simplifying it. What the long law lacks is a concrete description of the various stages of fetal growth, or, at the very least, an indication of the month in which the fetus is supposed to have developed 'hair and nails'. The revised long law in the

Hunsingo and Fivelgo manuscripts is a first attempt to fill this lacuna, because two of the months have been provided with information on fetal growth.

3.2. *The revised long law in the Hunsingo and Fivelgo manuscripts*

The revised version of the long law in the Fivelgo and Hunsingo manuscripts also provides a month-by-month list of the compensation due for involuntary abortion. However, it represents an important revision of Old Frisian abortion law, because embryological information has been added and linked to two specific months of pregnancy. With this information even an outsider would now be able to determine how far along the woman was at the time of the miscarriage.⁶³ The nine months' pregnancy was divided into four periods (3-1-1-4), and the 'hair and nails' stage we encountered in the short laws on abortion (§2.1) was now explicitly assigned to the fifth month.⁶⁴

H1-H2 (both c. 1300)	F (c. 1430-1440)
H2-H1.IX.19a. Thiu bernwendene anda forma monathe den, thet ield bi tuelif merkum ieftha bi tuelef ethem.	F.XII.2 [F.XI.2a]. Thio berdwendene an tha forma monathe den, thet jeld bi xii merkum ieftha bi xii ethum.
H2-H1.IX.19b. (1) (2) (3) Thera thria monda alrec thet ield bi tuelef merkum, thet riucht bi tuelef ethen.	F.XII.2 [F.XI.2b]. (1) (2) (3) And alle thre naste monade alsa.
H2-H1.IX.19c. (4) Thi fiarda monat, thet ield algader en thrimen lif ieftha mit fiwertege ethem te vnriuchtane.	F.XII.2 [F.XI.2c]. (4) Thi fiarda monade den, en thrimen ield jefta mith fiortega ethum to riuchtane.
H2-H1.IX.19d. (5) Anda fifta monathe, sat lifheftich is, neil and fax het, sa ist en tuede lif. ⁶⁵	F.XII.2 [F.XI.2d]. (5) Jn tha fifta monada, sa hit lifheftich is, neylan ende her heth, sa ist en twede lif.
H2-H1.IX.19e. (6) (7) (8) (9) Onta sexta and on tha sogenda monde, sa meit ful kuma, thet mit ene fulla ielde te ieldane.	F.XII.2 [F.XI.2e]. (6) (7) (8) (9) An tha sexta ande sogenda monada, sa meit ful kuma, to ene fulla ield to ieldane.
H2-H1.IX.19f. Thira tian monda alrec mith tuelef merkum te ieldane; thruch tha morthcase, ther binna there benena burch eden is, thrimine further te betane; ief ma biseka welle, mith niugen skeren te skeriane thruch tha morthcase. ⁶⁶	F.XII.2 [F.XI.2f]. Thruch tha morthkase, ther den is binna tha benetha burch, thrimen further to betane. Jef ma biseka welle, mith niogen skere to sikriane thruch tha morthcase. ⁶⁷

The fine for causing a miscarriage, now called *bernwendene* or *berdwendene*, is twelve marks in the first trimester.⁶⁸ If the accused denies the charges, he is allowed to swear twelve exculpatory oaths with the help of eleven oath helpers. The penalty for killing a fetus of four months is one-third of its wergeld or forty oaths; in the fifth month two-thirds of the wergeld must be paid. For the remaining four months the full wergeld is due; exculpation is possible, but only by walking over nine red-hot plowshares - a reference to the ordeal in the landlaw on abortion (§1). Full wergeld means that abortion was regarded as murder from the sixth month onwards; compared to the long law on

abortion discussed in §3.1, the period in which abortion was considered to be murder was extended by one month.

As in §3.1, the word (*morth*)*kase* indicates involuntary abortion as a result of a fight; the injuries to the woman are referred to as injuries to the *benena burch* or *benetha burch*, 'womb' or 'uterus' - again a reference to the Twenty-third Landlaw. In order to determine the amount of compensation to be paid for injuring a pregnant woman, the amount already due must be increased by one-third (*thrimine further te betane*). The Hunsingo manuscripts add an extra fine of twelve marks for each month of pregnancy: *Thira tian monda alrec mith tuelef merkum te ieldane*, 'For each of the ten months a twelve marks' fine must be paid' (H2-H1.IX.19f). The amount to be paid suggests that this fine was probably for breaking the peace (called *liudwerdene* in the Twenty-third Landlaw).

All three versions of the revised long law are found in the injury tariffs, and they are all preceded by an article on harming an infant *andere bobbaburg*; in the Fivelgo manuscript the three short laws on abortion (F.XII.7-9) are found in the same section. The context of all three versions consists of articles on the payment of compensation for serious injuries or murder, especially with respect to women and children.

By adding embryological details to the laws on abortion and by pinpointing the 'hair and nails' stage to the fifth month, Frisian lawmakers were apparently trying to resolve ambiguities concerning the 'hair and nails' stage. The addition of *sa hit lifheftich is* to the fifth month, and of *sa meit ful kuma* to the provision on the last four months is further evidence that the Frisians were trying to define (and perhaps even redefine) the difference between early term and late term abortion. *Sa meit ful kuma* was linked to the stage of fetal growth in which the full *wergeld* is demanded, so that magistrates and other court officials were now provided with an exact definition of 'when' abortion was considered murder. It is, however, hard to decide exactly what stages of fetal development were meant by *lifheftich* and *sa meit ful kuma*. It is evident that the phrase *sa hit lifheftich is* is supposed to be an explanation of the 'hair and nails' stage, but, because the word *lifheftich* means both 'alive' and 'having a body', we are stuck with a serious interpretation problem.⁶⁹

The description of a fetus that did not survive the interruption of a six to nine months' pregnancy - *sa meit ful kuma*, 'when it can be carried to full term' - seems to be clear at first sight; it denotes viability.⁷⁰ But if we take into account that a six-months' old fetus would never have survived birth in the pre-incubator era, and that it could therefore never have been considered viable, we are left wondering *why* these laws state that 'the fetus could have been carried to term' from the sixth month onwards. Obviously, something must have been observed that was so significant that it proved that the child could have reached full-term, if no violence had been done to the mother. This can, I think, only be the fact that the aborted fetus was born alive. Losing a baby who was alive at birth, and whose birth was induced involuntarily, would have a bigger impact than the birth of a dead fetus. *Sa meit ful kuma* would then be an indication of the *potential* viability of the fetus, not of its viability in the month in which the miscarriage occurred. The fact that the fetus *could* have been carried to term

would then be a very plausible reason for demanding the compensation for murder, the full wergeld.

If the phrase *sa meit ful kuma* refers to a live birth, *lifheftich* can hardly have the meaning 'alive', or so it seems. *Lifheftich* must by process of elimination mean 'having the outward features of a human being', or 'having a (human) body', that is, 'formed'. As the text of the fifth month indicates, *lifheftich* is an explanation of the 'hair and nails' stage. A fetus that has developed 'hair and nails' could also be considered 'formed', because having 'hair and nails' indicates that even the smallest details of bodily formation, including its outer extremities, would to all intents and purposes be 'finished'. Thus *lifheftich* could be a synonym of 'formed', the Aristotelian criterion used to denote the difference between early term and late term abortion. The dichotomy 'formed - unformed' is used as a discriminating criterion in many of the Old Germanic laws. Many synonyms are used for the concept 'formed' in medieval abortion law; 'alive' and 'formed', for instance, can be used interchangeably.⁷¹ Which brings us back to *lifheftich* with the meaning 'alive'.

The meaning of *lifheftich* can also be examined from another angle, namely, the reason embryological information was added. This was done, as we saw above, in order to make it easier to determine how far the woman's pregnancy had progressed at the time of the abortion, and to clarify the traditional Frisian criterion for early and late abortion. The compensation demanded, the full wergeld as of the sixth month, clearly indicates that the dividing line was between the fifth and the sixth month, that is, *after* the fetus had developed 'hair and nails'. If we now look at the word *lifheftich* again as a description of the state of fetal growth *at the end of* the fifth month and interpret *sa meit ful kuma* as a description of *the beginning of* the sixth month, both denote the same stage of fetal development, that is, the stage in which the fetus is alive and can be brought to term. The embryological information provided in the revised version of the long law on abortion is an explanation of the 'hair and nails' stage, and does not fundamentally change Old Frisian abortion law; the 'hair and nails' stage is still the discriminating criterion between early and late abortion. Whether *lifheftich* means 'formed' or 'alive' or both is still hard to say, and the fact that it explains the 'hair and nails' stage does not make matters easier either, because 'having hair and nails' can just as easily be interpreted as 'formed' or 'alive' or both. Finally, we must not rule out the possibility that the scribe deliberately chose the ambiguous word *lifheftich*.

The Low Saxon translation of this law in *Codex Hummercensis* avoids the ambiguous word *lifheftich*, and translates *so et lyff heft*, 'when it has a body' (9.d); *sa meit ful kuma* was rendered by *so mach hijt vullencomen*, 'when it can be brought to term' (9.e).

Codex Hummercensis (MS Groningen UB, PEIP 12, c. 1479)
Van onborene kinder broke
9.a. De boerd t mysdaen in de eerste maent, dat gheldt by twaelff marken jofte by twalf eeden.
9.b. Dere dryere maende aller elck <dat ghelt> by xij marken dat recht by xij eeden.
9.c. De veerde maent dat ghelt al gader eyn thrimene lijff jofte myt veertich eeden to onswerene ende to ontgaene.
9.d. An de vyfte maende, so et lyff heft ende dat hijt naghelen ende har [MS dar] heft, soe ist eyn tweedel lyff.
9.e. An de seste maende ende in de souende ende in de achtene maend, so mach hijt vullencomen, dat hijt myt ene vullen ghelde ghelde.
9.f. Dese ix maende aller elck myt twaelff marcken to gheldene.
Doer de moerd kaze der bynnen eenre naturlick borch ghedaen is, thrimene vordere ende meer to boetene. Joffman byseken wylle, myt neghen fiurum to sekriane idest ontsuldighen doer de moert kase. ⁷²

The most important change to the long law on abortion effectuated in the revised long law is that the 'hair and nails' stage, the Old Frisian criterion to differentiate between early and late term abortion, was now pinpointed to the fifth month. A rather ambiguous explanation of this criterion, the word *lifheftich*, was added and abortion was now regarded as murder during the last four months of pregnancy, because the fetus would then have 'hair and nails', was 'formed', 'alive', and potentially viable (*sa meit ful kuma*). These revisions do not yet change or redefine the traditional Old Frisian abortion criterion, but they do herald a change in Old Frisian abortion law, because concepts such as 'alive' and 'formed' are also associated with Christian views on abortion.

3.3. Conclusion

The repeated references to the Twenty-third Landlaw in both of the long laws on abortion suggests that these, too, started out as supplements to this landlaw. However, the long laws on abortion constitute a new development in Old Frisian abortion law, because they provide a list of the fines due for each month of pregnancy. In the revised long law details on fetal growth were added to the fifth and sixth months of pregnancy (§3.2). The traditional 'hair and nails' criterion to distinguish between early and late abortion was now explicitly linked to the fifth month. Abortion was considered murder from the sixth month onwards, instead of only in the last three months of pregnancy, as in the older long law (§3.1).

The violence that caused the miscarriage is referred to as a (*morth*)case, 'a fight' or 'brawl', in all six versions of the long laws. Domestic violence is not specifically mentioned and compared to the other Old Frisian laws on abortion, the scope of the long laws was broadened to include any kind of violence done to a pregnant woman that resulted in involuntary abortion.⁷³

By adding embryological details to the month-by-month list of compensations due for abortion, the revised long law on abortion integrates medical and legal knowledge - which in itself is innovative. After this first step had been taken to use medical knowledge in abortion law, it should not really come as a surprise that soon afterwards a Frisian scholar decided to add a complete embryological text to Old Frisian abortion law, so that the fines for abortion could be even more accurately determined.

4. AN OLD FRISIAN EMBRYOLOGY

The Old Frisian legal manuscripts contain a month-by-month description of the stages of development of the fetus, which is based on chapter 20 of the *Gynaecia*, a Latin text attributed to North African physician Vindicianus (late fourth century AD).⁷⁴ I have included a list of the core elements of the Latin Vindicianus text in appendix 2.⁷⁵

4.1. *The Old Frisian and Low Saxon Vindicianus texts*

The Old Frisian embryology describes each stage of fetal growth in detail, not just the two stages mentioned in the long laws on abortion discussed in §3.2. It does not contain fines, nor does it mention abortion or the fight that ultimately caused the woman to miscarry; it merely furnishes anatomical details regarding the development of the fetus. At first sight this medical text seems to be slightly out of place in a collection of Old Frisian legal texts. We will see below that it must have been added intentionally to supplement to the Old Frisian abortion laws.

The complete text of the Old Frisian embryology survives only in the Emsingo manuscripts, E1 and E3. There is also a tiny fragment of the Vindicianus text in the Fivelgo manuscript.

E1 (c. 1400)	E3 (c. 1450)
E1.V.19. Augustinus seith ande queth, thet thet kind andere modere bilethad werthe niughen monat.	E3.I.199. Avgustinus thi seith anda queth, tethet kind inna sinre moder liue lidze niogen monath.
E1.V.19. (1) Anda tha cresta monde si somnath thet blod efter there vndfengnese;	E3.I.199. (1) Anda tha erste monath sa somnath thet bloed efther ther vntfangnisse.
E1.V.19. (2) anda othere monathe sa werth thi likkoma bilethad;	E3.I.199. (2) Anda tha othere monathe sa werth thi licma bilethad [MS bi legad].
E1.V.19. (3) anda thredda monathe sa warthath tha sina ifestnad anta eddra, and werth thi berd betein;	E3.I.199. (3) Anda tha thredda monatha sa wirdath tha sina festnad anda eddera.
E1.V.19. (4) anda fiarda monathe sa werth theth kind ghebilethath;	E3.I.199. (4) Anda fiarda sa werth thet kind bildad.
E1.V.19. (5) anda tha fifa monathe sa vntfeth hit tha sele and upriucht thene likoma and vntfeth thene om;	E3.I.199. (5) Anda fife sa vntfeth hit tha sele anda vpriucht then licoma anda vnfeth then om.

E1.V.19. (6) anda tha sexta monathe sa wexted merch and thiu het;	E3.I.199. (6) Anda sexta sa waxthet merch anda thiu hede.
E1.V.19. (7) anda soghenda monathe vntfeth hit tha thermer;	E3.I.199. (7) Anda sogenda sa vntfeth hit tha thermar.
E1.V.19. (8) anda achtende monathe sa wextet heer and tha neylar;	E3.I.199. (8) Anda tha achtenda sa waxtet her anda neilar.
E1.V.19. (9) anda niughenda monathe sa werthath se sceth and werth theth kint ghebern. ⁷⁶	E3.I.199. (9) Anda niogende monath sa wert thet kind ebern. ⁷⁷

The Fivelgo Vindicianus fragment opens the injury tariff and consists of a single line that was prefixed to the *bobbaburg* article (F.XII.1); the manuscript is evidently corrupt here, for this line does not belong to the *bobbaburg* article.⁷⁸ The fragment, *Augustinus thi helga biscop seit*, 'Augustine, the holy bishop says', matches the opening line of the Vindicianus text in the Emsingo manuscripts, and must be a remnant of the opening line of a version of the Vindicianus text.⁷⁹

Augustinus, thi helga biscop,	seit	Alsa (...)	F.XII.1
Augustinus	seith ande queth,	thet thet (...)	E1.V.19
Avgustinus	thi seith anda queth,	tethet (...)	E3.I.199

Reasons for including only this one line may range from an eye-skip or some other distraction, careless editing, or even intentional reediting, to a defective exemplar. As Sjölin argued in his edition of the Fivelgo manuscript F is a copy, and its archetype (F*) was compiled from a number of different exemplars.⁸⁰ The complete Vindicianus text must have been in one of the exemplars used to compile F* or in F*. Perhaps the scribe of F* or F got distracted and forgot to copy the rest of the text, because the third text in this section, a version of the revised long law (F.XII.2), also includes information on the development of the fetus. What is important is the fact that the Vindicianus text was known in the scriptorium where the Fivelgo manuscript, its exemplar, or its exemplar's ancestor was copied, and that the Vindicianus fragment is found in the vicinity of a law on abortion.

The Old Frisian laws were translated into Low Saxon in the early or mid fifteenth century; these translations survive in dozens of Ommeland and East Frisian manuscripts.⁸¹ In the Ommeland manuscripts the Vindicianus text usually heads a more or less fixed cluster of texts that deals with homicide and injuries, called 'St. Augustinus c.a.'; it is always immediately followed by four laws on abortion: the long law (§3.1) and the three short secular laws (§2.1).⁸² The Old Frisian counterparts of these articles are usually found scattered throughout the legal manuscripts. The intentional grouping together of the Vindicianus text plus four laws on abortion in the Ommeland manuscripts strongly suggests that the Old Frisian embryology was meant to supplement these abortion laws and that the Low Saxon translators were aware of this.⁸³

In the oldest known Low Saxon manuscript, the fifteenth-century Ommeland manuscript Assen 14, we find the following version of the Vindicianus text in 'St. Augustinus c.a.'.⁸⁴ The so-called *Penningschuldbok und Bußtaxen* in Hannover MS XXII 1424 contains a Low Saxon version of the Vindicianus text from the East Frisian area, which is followed by the long law on abortion, but not by the three short laws on abortion.⁸⁵

MS Assen 14 (c. 1450-1475)	Hannover, MS XXII 1424 (2nd half fifteenth century)
1. SVnte augustinus de hillighi biscop seghet ons dat kint in synre moder liue weerde bynnen negen maenden	§ 49. AVgustinus secht dattet kint licht negen maente in sins moders licham.
(1) Jn de eerste maent nemet dat bloet na der ontfanctnisse	(1) Int eerste maent so vergaddert sick dat bloet na der ontfangenisse.
(2) Jn de ander wort dat lichaem ghebeeldet	(2) In der ander maent so waert dat licham ghebeldet.
(3) Jn de darde wort dat sene vast vnde gheadert	(3) In de derde maent so worden de senen vnde aderen beuestighet.
(4) Jn de veerde wort dat kint al vul gheschapen	(4) In de vierde maent wordt kynt gheordineert waer id sal wesen een soen ofte dochter.
(5) Jnde vijfte maent vntfaet dat kint de zeile vnde richtet vp den lichaem vnde onfaet den geest	(5) In de vijfte maent so ontfanghet dat kynt die siele vnde vprichtet den licham vnde ontfanget den adem.
(6) Jnde seste maend wasset dat march vnde de huet	(6) In de seste maent so wort de huet vnde dat marck.
(7) Jn de souende ontfaet hijt de darmen	(7) In de souende maent so worden die darmen.
(8) Jnde achtende wasset dat haer ⁸⁶	(8) In die achtende maent so worden die naghelen vnde dat herte.
(9) Jn de neghende maend wort dat kint eschet vnde gheboeren. ⁸⁷	(9) In de negende maent wort dat kynt gheboeren. ⁸⁸

A comparison of these four vernacular versions of the Vindicianus text reveals one clause in the oldest extant text (E1) that is not attested in either E3 or the two Low Saxon versions quoted above: *and werth thiū berd betein*, 'and [now] the embryo becomes implanted' (third month).⁸⁹ This phrase is not in the extant Latin versions of chapter 20 of Vindicianus's *Gynaecia*, so it must be a gloss or an interpolation that was later incorporated into the Vindicianus text (cf. appendix 2).⁹⁰ The phrase *sa werthath se sceth*, 'they (mother and child) are separated' (ninth month), is found in E1 and MS Assen 14 (*wort dat kint eschet*), but not in E3 or in Hannover MS XXII 1424. Since this phrase does not occur in any of the Latin texts either, it must have originally been either a gloss, an interpolation or a very free translation of the Latin text (cf. appendix 2). Vindicianus's embryology deals with concepts that have to do with the 'beginnings of life', such as formation, ensoulment, movement and vivification. These concepts are not always easy to understand in our day and age, and they were apparently not unambiguous in medieval Frisia or the Low Saxon areas either. In many laws and texts on abortion these concepts are employed as synonyms to mark the difference between early term and late term abortion. In

Vindicianus's embryology formation, movement and vivification are different stages of fetal growth. As we will see below, the Old Frisian author expanded Vindicianus's text, added and linked stages, and inserted explanations. In the Old Frisian embryology formation of the body of the fetus in the fourth month starts an extended process of vivification. The formed fetus is not regarded as 'alive' until after the fifth month, that is, after ensoulment, movement and vivification have taken place.

If we compare the various versions of the second and fourth months of fetal development, we see that the subtle choice of words in these stages marks a fundamental change in the development of the fetus between the second and fourth months. In all four versions of the Vindicianus embryology the embryo-fetus is denoted as 'a body' in the second month and as 'a child' in the fourth month.⁹¹

	OLD FRISIAN			
stage	E1	E3	Assen 14	Hannover XXII 1424
2nd month	<i>werth thi likoma bilethad</i> 'the body becomes formed'	<i>werth thi licma bi legad</i> (= <i>bilethad</i>) 'the body becomes formed'	<i>wort dat lichaem ghebeeldet</i> 'the body becomes formed'	<i>waert dat licham ghebeldet.</i> 'the body becomes formed'
3rd month	implantation ⁹²			
4th month	<i>werth thet kint ghebilethath</i> 'the child becomes formed'	<i>werth thet kind bildad</i> 'the child becomes formed'	<i>wort dat kint al vul gheschapen</i> ⁹³ 'the child becomes completely formed - shaped'	<i>wordt kynt gheordi- neert waer id sal wesen een soen ofte dochter.</i> 'it is determined what the child will be, a son or a daughter'
			LOW SAXON	

This variation of the subject is important. By the end of the fourth month the fetus has apparently evolved from a clump of flesh, a body (*likoma*, *licma*, *lichaem*, *licham*) or embryo into a human form, a fetus or child (*kint*, *kind*, *kynt*). In the course of the fourth month, after implantation (third month), when the fetus has become a 'child', bodily formation, denoted by the opposition 'body'- 'child', is complete.

The verb also varies in months two and four, except in E1, where we find the same verb (Ofr. *bilethia*, *bildia*, 'to form') in both stages.⁹⁴ E3 has *bildia*, 'to form' in stage four and a cognate *biledza*, 'to form, determine', in stage two. The Low Saxon scribe of Assen 14 (or his predecessor) seems to have observed that using practically the same verb in two such important stages of fetal development obscures the meaning of the text, and he remedied this by using *ghebeeldet*, 'formed, moulded', in the second month, and *vul gheschapen*, 'completely formed or shaped, completed' in the fourth month. Hannover XXII 1424 also has *ghebeldet* in stage two; for stage four, however, the scribe chose to explain the difference between an embryo and a fetus with the words *wordt kynt gheordineert waer id sal wesen een soen ofte dochter*, 'it is [then] determined what the child will be, a son or a daughter'. Defining 'formation' in terms of sex differentiation is significant. The Low Saxon scribe may have been inspired by other, older Germanic laws on abortion, but he may have also been

influenced by the Latin text of the following stage, which has *facit caracterem patri aut matri*, 'it assumes the characteristics of its mother or father' (cf. appendix 2).⁹⁵ The latter assumption implies that the Latin Vindicianus text was available to the Low Saxon scribe of the Hannover manuscript. The nominal and verbal variation in stages two and four explains the difference between a two-month old embryo and a four-month old fetus.

Ensoulement and vivification are both situated in the fifth month. After 'receiving the soul' (*sa vntfeth hit tha sele*), the fetus 'receives the breath [of life]' (*vntfeth thene om*), which means that it starts to breathe and is now alive. Ensoulement is apparently considered a prerequisite for 'aliveness'. The Hannover manuscript translates the Old Frisian description of vivification literally: *ontfanget den adem*, 'receives the breath', whereas the scribe of MS Assen 14 describes the process of vivification or 'becoming alive' using the word *geest*, a word with a broader meaning, which often renders both Latin *anima* and *animus*.⁹⁶ Again it seems as if the Low Saxon scribe - this time the scribe of Assen 14 - was able to check his Low Saxon text against the Latin original, which here reads *tribuit animam*.

Between ensoulement and vivification the fetus *upriucht thene likoma*, 'straightens its body'. This is a free, and very original rendering of the Latin *motum facit*, which denotes the beginning of 'movement'. This remarkable phrase suggests that the Old Frisian translator was aware of the 'curled up' position of the fetus in the womb and that he considered 'movement' to be the trigger for 'vivification'.⁹⁷ The Old Frisian author not only added the stage 'ensoulement' and provided us with a new interpretation of the onset of fetal movement, but, by consecutively linking ensoulement, movement and vivification, he also determined the order of these three stages of fetal development.

The Old Frisian embryology rearranged the stages of development of the fetus in the Latin text and added a fifth stage of fetal development that is not in the extant Latin texts.⁹⁸

VIVIFICATION - ALIVENESS			
Latin Vindicianus embryology	month	Old Frisian Vindicianus embryology	month
(a) <i>expressio corporis</i>	(2)	(a) formation of the body-embryo	(2)
(b) <i>formatus invenit partus</i>	(3)	implantation	(3)
(c) <i>tribuit animam</i>	(3)		
(d) <i>motum facit</i>	(4)	(b) formation of the child-fetus	(4)
<i>facit caracterem patri aut matri</i>	(5)	(c) ensoulement	(5)
		(d) movement	(5)
		(e) vivification	(5)

The addition of ensoulement points to conscious christianization. But why? The introductory line, *Augustinus seith ande queth*, that was inserted into Vindicianus's text by the Old Frisian author points us in the right direction.⁹⁹ In his *Commentary on Exodus* Augustine says that (voluntary) abortion of an 'unformed' fetus is not murder: "the law of homicide would not apply, for it could not be said that there was a living soul in that body".¹⁰⁰ Like Old Frisian law, Augustine distinguishes between early term and late term abortion. However,

Augustine postulates the Aristotelian criterion 'formed – unformed', whereas Old Frisian law uses the 'hair and nails' criterion.¹⁰¹

By adding ensoulment the Old Frisian author subtly incorporated Augustine's description of the *anima viva*, 'living soul', into Vindicianus's embryology. As the table above indicates, ensoulment and vivification occur after formation, that is, after the fetus has acquired the outward features of a human being, and is no longer an *informiter animatum*, 'a shapeless being'. With ensoulment the inner characteristics of a human being are infused into the fetus; this stage complements bodily 'formation'. Movement and vivification constitute the end of the process of 'becoming alive'. This means that the fetus is considered a complete human being at the end of the fifth month in the Old Frisian embryology, so that killing it would be regarded as murder from that moment onwards. The addition of the philosophical concept 'soul' constitutes a fundamental emendation of this medical text and cannot be a coincidence.

The second major emendation of Vindicianus's embryology provides proof that this text was meant to christianize Old Frisian abortion law. As we saw in §2.1 and §3.2 'hair and nails' was the traditional Old Frisian criterion to differentiate between early term and late term abortion (fifth month). In the extant Latin versions of Vindicianus's embryology the 'hair and nails' stage fluctuates between the third and fourth months of pregnancy. In the Old Frisian translation we suddenly find the 'hair and nails' stage in the eighth month, a month it is never associated with. If, as suggested above, this embryological text was translated in order to supplement and clarify Old Frisian abortion law, 'hair and nails' cannot be used as an abortion criterion anymore, because it is now situated at the end of the pregnancy - instead of at the end of the first trimester or at the beginning of the second trimester. This implies that the 'hair and nails' stage was deliberately relegated to the eighth month by the Old Frisian author.

The textual variants, the rendering of the various concepts, and the emendations and expansions indicate that these texts were not dead letters. They also illustrate how difficult it was - and still is - to fathom the major stages of fetal growth. The differences between the Old Frisian and the Low Saxon texts demonstrate that neither E1 nor E3 could have been the exemplar from which the Old Frisian Vindicianus text was translated into Low Saxon. On the other hand, it is also evident that, ultimately, all these texts must stem from the same, lost Old Frisian adaptation of the Latin text of chapter 20 of Vindicianus's *Gyn-aeicia*. The textual variation and emendation illustrated above also point to editorial activities that went further than copying and translating. Some of the minor changes to the Latin text were made in order to clarify the text for its intended audience. Twice, however, the Old Frisian author made a major textual emendation; together these changes constitute a thorough redefinition of the concept 'alive'. First, the insertion of 'ensoulment' in the fifth month drastically revised Vindicianus's embryology and made it more compatible with a Christian, Augustinian definition of 'the beginning of life', and secondly, the Old Frisian author effectively neutralized the ancient 'hair and nails' criterion for abortion by moving it to the eighth month. Note, however, that the Old Frisian author did not change the month in which the fetus is considered 'alive'.

The inclusion of this revised version of Vindicianus's embryology in manuscripts containing Old Frisian law must have been deliberate, and the main reason for doing so must have been to supplement, christianize and amend Old Frisian laws on abortion. Both of the major emendations of Vindicianus's embryology strongly suggest that the Old Frisian Vindicianus text was translated with the express intention of revising the Old Frisian abortion law and introducing a christianized version of the Aristotelian criterion for abortion 'formed - unformed'. As an added benefit, the Old Frisian embryology would facilitate the determination of the fines due for abortion, because it contains a description of each stage of pregnancy. But, does the Old Frisian embryology really supplement Old Frisian abortion law?

4.2. *Old Frisian embryology and Old Frisian abortion law*

The majority of the Old Frisian and Low Saxon versions of the Vindicianus text are found in the vicinity of laws on abortion; the context therefore also indicates that this embryology was associated with abortion law. Even the Vindicianus fragment in the Fivelgo manuscript is situated near an article on abortion, in this case the revised long law (§3.2).¹⁰² E1, the oldest manuscript, is the only Vindicianus text with no article on abortion in its immediate neighborhood.

If we compare the long law on abortion in E3 to the version of the Vindicianus text in the same manuscript, we see that the stages are not a complete match, but that there is some method in the madness.

E3.I.193-197 (§3.1)	E3.I.199 (§4.1)
(...)	(...)
(1) (2) (...) tha twene erste monath to nene ield seth, men hiu schel hebbe to bote en hageste merc.	(1) Anda tha erste monath sa somnath thet bloed efther ther vntfangnisse.
	(2) Anda tha othere monathe sa werth thi licma bilethad [MS bi legad].
(3) (4) Tha leiter twene ayder fiftene scillingar.	(3) Anda tha thredda monatha sa wirdath tha sina festnad anda eddera.
	(4) Anda fiarda sa werth thet kind bildad.
(5) (6) Thi fite anda thi sexta monath ayder en half liff.	(5) Anda fite sa vntfeth hit tha sele anda vpriucht then licoma anda vnfeth then om.
	(6) Anda sexta sa waxthet merch anda thiu hede.
(7) (8) (9) Anda tha thrim elk en ful ield.	(7) Anda sogenda sa vntfeth hit tha thermar.
	(8) Anda tha achtenda sa waxtet her anda neilar.
	(9) Anda niogende monath sa wert thet kind ebern.

If we interpret the Old Frisian Vindicianus text as a supplement to this abortion law the full wergeld, that is, the fine for murder, is due after the fifth month, when the fetus is a living human being. Unfortunately, articles E3.I.193-

197 only award half of the wergeld for months five and six. This discrepancy suggests that the long law on abortion is much older than the Old Frisian Vindicianus text and that the Old Frisian embryology was added to the corpus of legal texts in E3 at a later stage.¹⁰³

The revised long law (§ 3.2) does not occur together with the Vindicianus text. It awards the full wergeld as of the sixth month and in this respect it is compatible with the Vindicianus text; both state that the fetus becomes 'alive' in the fifth month.

H1-H2.IX.19a-e (§3.2)	E3.I.199 (§4.1)
(...)	(...)
H2-H1.IX.19d. (5) Anda fifta monathe, sat lif-heftech is, neil and fax het, sa ist en tuede lif.	(5) Anda fite sa vntfeth hit tha sele anda vp riucht then licoma anda vnfeth then om.
H2-H1.IX.19e. (6) (7) (8) (9) Onta sexta and on tha sogenda monde, sa meit ful kuma, thet mit ene fulla ielde te ieldane. (...)	(6) Anda sexta sa wax thet merch anda thiu hede.
(...)	(...)
	(8) Anda tha achtenda sa waxtet her an da neilar

There is, however, a significant difference. The revised long law (H1-H2.IX.19) uses the ancient 'hair and nails' criterion to indicate that the fetus is *lifheftich*, 'alive' or 'formed', and the Old Frisian embryology uses a Christian definition of 'alive'.¹⁰⁴ The Vindicianus text is obviously younger.

The text of the Low Saxon version of the long law on abortion (§ 3.1) has been adapted so that it runs parallel to the Old Frisian embryology - as we can see, if we compare the texts in MS Assen 14.

MS Assen 14 (§3.1)	MS Assen 14 (§4.1)
(...)	(...)
(1) Die boert des kindes inde eerste maent by eenre marck.	(1) Jn de eerste maent nemet dat bloet na der ontfanenisse
(2) (3) Alzo de twe ander de daer naeste sint.	(2) Jn de ander wort dat lichaem ghebeeldet
	(3) Jn de darde wort dat sene vast vnde gheadert
(4) Jndie veerde maend wynt een thrimen geld myt eden to rechtene daer efter.	(4) Jn de veerde wort dat kint al vul gheschapen
(5) Jn de vijfte maend is dat kint een twedeel geld.	(5) Jnde vijfte maent vntfaet dat kint de zeile vnde richtet vp den lichaem vnde onfaet den geest
(6) (7) (8) (9) Jn de seste maend mach dat komen to enen vullen gelde.	(6) Jnde seste maend wasset dat march vnde de huet
	(7) Jn de souende ontfaet hijt de darmen
	(8) Jnde achtende wasset dat haer
	(9) Jn de neghende maend wort dat kint eschet vnde gheboeren.

The full wergeld is now demanded for an abortion in the last four months of pregnancy. The Vindicianus text obviously supplements the long law on

abortion and the Low Saxon text therefore reflects an even younger development.

It seems strange to find a translation of part of a medical treatise in Old Frisian and Low Saxon legal manuscripts. The context of the majority of these vernacular Vindicianus texts, however, suggests that the text was indeed added as a supplement to older Old Frisian abortion law, perhaps initially, because it provides practical, medical information in the form of a month-by-month description of the development of the fetus. Perhaps the Old Frisian author chose this particular embryology because it mentions the age-old Frisian criterion for abortion, the 'hair and nails' stage. The fact that the Vindicianus text is part of the 'St. Augustinus c.a.' cluster in many of the Low Saxon manuscripts, where it is followed by four laws on abortion (cf. § 4.1), provides further evidence that it was intended as a supplement to the Old Frisian laws on abortion. Legal authorities could use the Vindicianus text as a checklist to determine the stage of development of the aborted fetus and the corresponding fine. The Old Frisian translation of Vindicianus's embryology must therefore be considered part of Old Frisian law on abortion.

4.3. *Date of translation*

The information provided in the preceding sections allows us to determine an approximate *terminus ante quem* for the Old Frisian Vindicianus translation.

The Low Saxon translations of Old Frisian abortion law show us that the link between the Vindicianus text and abortion law was strong. The Low Saxon Vindicianus text is always found near the long law on abortion, whether it is part of the 'St. Augustinus c.a.' group or not. The Old Frisian Vindicianus text must therefore have already been in the injury tariff, when it was translated into Low Saxon in the first half of the fifteenth century.¹⁰⁵ The incorporation of the Old Frisian embryology into the injury tariff must have taken place before its translation into Low Saxon.

In the mid fifteenth-century Old Frisian manuscripts E3 (c. 1450) and F (c. 1430-1440) the Vindicianus text is in the injury tariffs, and, as in the Low Saxon manuscripts, these texts are found near one of the long laws on abortion. The Fivelgo manuscript seems to be a case in point. It contains only a fragment of the Vindicianus text, which means that the complete text of the Old Frisian embryology must have already been in or near the injury tariffs of F* or the exemplars used to compile F*. Consequently, the Vindicianus translation must be much older than manuscript F*. If we postulate a number of intermediate stages between the original translation into Old Frisian, its insertion in the injury tariff, and manuscripts F**, F* and F, the date of translation must be well before the onset of the fifteenth century.¹⁰⁶

In the introduction to his edition of E1 (c. 1400), the oldest extant manuscript with a version of the Old Frisian embryology, Pieter Sipma deduces that E1* must be dated before 1276, which means that the Vindicianus text was translated into Old Frisian before or in the mid thirteenth century.¹⁰⁷ I am not sure Sipma's *terminus ante quem* is true for all the texts in E1, because it

implies a rather early date for the Old Frisian Vindicianus translation. However, Sipma's research does indicate that the Old Frisian translation must be much older than the 'Vorlagen' of E1.

The Vindicianus text in E1 reflects an early stage of its development, because E1 is the only manuscript *with* a Vindicianus text and *without* a version of the long law on abortion. Besides, E1.V.19 is not in the injury tariff, but part of a group of miscellaneous texts. This suggests that the Old Frisian embryology may originally have been a gloss or an interpolation; perhaps the translation was written down in the margin or in a blank space near an article on abortion. The Vindicianus text in E1 also contains at least one phrase - *and werth thiu berd betein* - which must also have started out as a gloss, because it is not in the Latin source text; this implies an extra stage or stages between the original gloss and its incorporation into the Vindicianus text. There must, therefore, have been a number of intermediate stages between the glossed version of the Old Frisian embryology, its integration into the corpus of legal texts, the addition and incorporation of the gloss *and werth thiu berd betein*, and the compilation of manuscript E1.¹⁰⁸ If we allow five or ten years for each stage, the Old Frisian translation must be dated in the mid fourteenth century, possibly earlier.

An exact *terminus post quem* for the Old Frisian Vindicianus text cannot be given, but we can more or less determine when its presumable Latin source text was written, because it is very likely that the Old Frisian translator found the Latin text of the Vindicianus embryology in the encyclopedia written by Vincentius of Beauvais (c. 1194-1264).¹⁰⁹ This means that, if we allow a number of years for this encyclopedia to reach medieval Frisia, the Latin source of the Old Frisian embryology would have been available in Frisia in the second half of the thirteenth century.

Based on the evidence given above my conservative guess is that Vindicianus's embryology was adapted and translated into Old Frisian in the first half of the fourteenth century, perhaps even in the first quarter.

4.4. *Augustinus seith ande queth: the relationship between Augustine and Vindicianus*

One more problem remains to be discussed, and that is the attribution of the Vindicianus text to Augustine in the first line of the Old Frisian translation.¹¹⁰ None of the extant Latin versions of chapter 20 of Vindicianus's *Gynaecia* contains a reference to Augustine of Hippo (354-430), nor do any of the other vernacular translations of Vindicianus's embryology mention the church father Augustine. Only the Old Frisian embryology and its Low Saxon translation accredit Augustine with its authorship. There must have been important reasons for the Old Frisian author to claim the authority of Augustine for this text on the development of the fetus. The first reason that springs to mind is the friendship between Augustine and Vindicianus, which was common knowledge in the Middle Ages.¹¹¹ A second reason could be that the Old Frisian author conceived the idea of Augustine's authorship while reading or copying a manuscript that (also) contained works by or references to Augustine. In the third place, we

must not forget that Augustine was regarded as a major authority during the entire medieval period, and that attributing a text to Augustine would be tantamount to authenticating it. The fourth reason has to do with Augustine's views on abortion and their influence throughout the medieval period.¹¹² I think that adding the phrase *Augustinus seith ande queth* was the Old Frisian author's way of explaining that he had adapted this embryological text so that it would conform to Augustine's views on abortion as expressed in his *Commentary on Exodus* (§4.1). As an 'abortion law' the Old Frisian embryology is compatible with Augustine's definition of early term and late term abortion which states that abortion of a formed fetus was homicide, and that abortion of an unformed fetus was not. Implicitly - and this tallies with the fate of the traditional 'hair and nails' criterion in the Old Frisian Vindicianus text (§4.1) - the Old Frisian author-translator was also admonishing the Frisians to accept a new christianized abortion criterion, which was based on Augustine's teachings. Ascribing the Vindicianus text to Augustine was a resourceful way of introducing a new criterion for abortion in medieval Frisia.

5. OLD FRISIAN ABORTION LAW: CONCLUSION

The paucity of extant Old Frisian manuscripts - especially in comparison with the huge number of Low Saxon manuscripts - makes it difficult to determine the chronology of the various Old Frisian laws on abortion, and unfortunately, the Old Frisian legal manuscripts are relatively young, even though they contain laws that are probably centuries older. The oldest manuscripts date from the late thirteenth century, and the youngest from the late sixteenth century. Because the Old Frisian legal manuscripts are compilations, the laws on abortion are scattered throughout the manuscripts, often without any apparent regard for chronology. I have discussed the Old Frisian laws on abortion in their presumable chronological order and based this chronology on the textual evidence afforded by the texts themselves. This evidence indicates that Old Frisian abortion law consists of a long sequence of supplements and revisions to the Twenty-third Landlaw, which were devised in the course of at least two or three centuries. The Twenty-third Landlaw is first supplemented by three short secular laws on abortion. Later two long laws were devised and in due course the Old Frisian embryology was added as a supplement to the long laws.

The oldest law on abortion, the Twenty-third Landlaw, goes back to at least the eleventh century; it punishes causing an involuntary abortion as murder with twice the wergeld or whatever was customary (§1).¹¹³ Two versions of the Twenty-third Landlaw have come down to us, a short version and a long version that describes a situation of (domestic) violence in which the pregnant woman herself may also have taken part. The latter version also awards compensation, if the woman dies as a result of the miscarriage. The landlaws on abortion remind us of biblical law on abortion, especially the Hebrew version of Exodus 21: 22-23. The setting, however, is slightly different; Exodus 21: 22-23 speaks of 'men fighting'.

Exodus 21: 22–23 (Hebrew version). And if men strive together, and hurt a woman with child, so that her fruit depart [from her], and yet no mischief follow; he shall be surely fined, according as the woman's husband shall lay upon him; and he shall pay as the judges determine. But if any mischief follow, then thou shalt give life for life [eye for eye] (...) ¹¹⁴

The three short, secular laws on abortion, usually called 'wends', contain additions and exceptions to the Old Frisian Landlaws and Statutes (§2.1). In the younger manuscripts R1 and F they are grouped together in the injury tariffs. One of the short laws is on *keddan*, 'gangs', so that Old Frisian law now includes accidental abortion and an implicit reference to the biblical law on abortion. The other two short, secular laws on abortion introduce the 'hair and nails' stage, the typically Old Frisian criterion to differentiate between early term and late-term abortion; in the short, secular laws only late term abortion is regarded as murder. Here, again, there is a parallel in biblical law, because the Septuagint version of Exodus 21: 22-23 also differentiates the punishment for abortion; the biblical law uses the criterion 'formed - unformed'.

Exodus 21: 22–23 (Septuagint version). If two men fight and they strike a woman who is pregnant, and her child comes out while not fully formed, he will be forced to pay a fine; (...)
 But if it is fully formed, he will give life [psychē] for life, eye for eye (...) ¹¹⁵

The introduction of the 'hair and nails' criterion constitutes a fundamental change in written Old Frisian abortion law. This criterion for abortion is not attested in any other legal system that I know of. The 'hair and nails' criterion is probably a remnant of ancient, orally transmitted laws on abortion, now reintroduced into Old Frisian law through the 'wends' (§2.1) - as usage of the archaic word *fax*, 'hair', in H2 and H1 (§3.2) suggests. Thus the earliest Old Frisian abortion laws reflect two different standpoints, one, which punishes abortion as murder regardless of the stage of development of the fetus, and another, which only punishes late-term abortion as murder.

The short, secular laws on abortion are also especially interesting, because of the active role women are allowed to play in judicial proceedings. The woman who suffered an abortion can initiate legal proceedings against the man (or men) who caused the miscarriage herself (*huersa hijr en frouwe morth clagat*), and the punishment due is determined on the evidence of female witnesses, who must inspect the dead fetus, and decide whether it had 'hair and nails' or not. Women were apparently acknowledged as being experienced in managing birth, and therefore considered suitable and knowledgeable witnesses in abortion cases. ¹¹⁶

The long laws on abortion (§3.1 - §3.2) are usually found in the injury tariffs. They reflect a new stage of further differentiation of the fines due for abortion. As such they are not out of place in Old Frisian law which traditionally focuses on compensating wounds and provides fines for even the most insignificant wounds. The oldest long law on abortion contains a month-by-month list of fines (§3.1) and stipulates that besides the female witnesses a priest must also be present at the post-mortem. The revised long law (§3.2) is probably the result of a need for more practical guidelines. It adds descriptions of two stages of fetal

growth to the list of fines, thus making it easier for the witnesses to determine in what month the miscarriage took place. In the revised long law we again come across the 'hair and nails' stage, which is now pinpointed to the fifth month of pregnancy, the month in which the fetus becomes 'alive' or 'formed' (*lifheftich*). Causing an abortion is regarded as murder after the fifth month in the revised long law. The full wergeld is demanded, because a fetus with 'hair and nails' is considered potentially viable (*sa meit ful kuma*), meaning that it was born alive, and could have been brought to term, if no violence had occurred.

The addition of a translation of Vindicianus's embryology represents the final stage of Old Frisian abortion law (§4). Most of the Old Frisian and Low Saxon Vindicianus texts are also found in the injury tariffs and/or near other abortion laws. The Old Frisian embryology describes each of the nine months of pregnancy, and, if used as a supplement to the long laws, the fines due for abortion could now be even more minutely determined. Vindicianus's embryology was probably translated into Old Frisian in the early or mid fourteenth century, and it not only constitutes a major emendation of Old Frisian abortion law, but the Old Frisian author-translator also significantly emended and christianized Vindicianus's *Gynaecia* by adding 'ensoulment' and by moving the 'hair and nails' stage to the eighth month. The Old Frisian embryology presents us with a sophisticated, christianized interpretation of the Aristotelian concept 'formed', which was probably inspired on Augustine's *Commentary on Exodus*. It describes an extended process of vivification which includes formation, ensoulment, movement and vivification, and which takes place during the fourth and fifth months of pregnancy. The Old Frisian embryology considers the fetus to be a 'living human being' after the fifth month of pregnancy. If interpreted as a supplement to the long laws, the criterion for late term abortion would now be a christianized definition of 'aliveness', instead of the ancient 'hair and nails' criterion. The 'hair and nails stage' was effectively 'kalt gestellt', when the author of the Old Frisian embryology relegated it to the eighth month of pregnancy, where it could not be used as an abortion criterion anymore. This last remarkable emendation of Vindicianus's embryology proves that the Old Frisian author intentionally changed the Old Frisian abortion criterion, and that this text was intended as a supplement to Old Frisian abortion law. The Low Saxon translations of the Old Frisian Vindicianus text provide supportive evidence that the Old Frisian embryology must be considered part of Old Frisian abortion law, because the Low Saxon embryology is always found near laws on abortion, especially in the Ommeland manuscripts, where the Vindicianus text precedes four laws on abortion in the 'St. Augustinus c.a.' cluster.

If we read the Old Frisian embryology in conjunction with the long laws, we see that abortion is punished as murder after the fifth month, when the fetus is 'formed' and 'alive', that is, when it is a 'living human being'. The table below shows the evolution of Old Frisian secular abortion law from a simple law on abortion into a complex system of fines, and it illustrates the chronology of Old Frisian abortion law. It also demonstrates that the traditional Old Frisian criterion to distinguish between early term and late term abortion, the 'hair and nails' stage, was ultimately ousted in favor of a more Christian definition of the

beginning of life, without changing the month which marks the difference between early term and late term abortion.

I	II		III	IV	V	
landlaws	short laws		long law	revised long law	Vindicianus	
§ 1	§2.1	mo.	§3.1	§3.2	§ 4.1 (El.V.19)	
no criteria 2x wergeld	- hair and nails for fines, see: I	(1)	no compensation	12 marks	(...) si [se] sommath thet blod (...)	
		(2)	no compensation	12 marks	(...) sa werth thi likkoma bilethad.	
		(3)	18 shillings	12 marks	(...) sa warthath tha sina ifestnad anta eeldra [eddra] and werth thiu berd betein;	
		(4)	18 shillings	½ wergeld	(...) sa werth theth kint ghebilethath;	
		(5)	½ wergeld	½ wergeld <i>sat lifheftch is neil and fax het</i>	(...) sa vntfeth hit tha sele and upriucht thene likoma and vntfeth thene om;	
			<i>abortion</i>	=	<i>murder after the fifth month</i>	
		+ hair and nails wergeld, see: I	(6)	½ (full) wergeld ¹¹⁷	full wergeld <i>sa meit ful kuma</i>	(...) sa wexted merch and thiu het;
			(7)	full wergeld	full wergeld	(...) vntfeth hit tha thermer;
			(8)	full wergeld	full wergeld	(...) sa wextet heer and tha neylar;
			(9)	full wergeld	full wergeld	(...) sa werthath se sceth and werth theth kint ghebern.

There is also a law on abortion in Old Frisian church law. Old Frisian *sinth riucht* or synodal law is reputed to be almost as old as the Statutes and Landlaws and contains one law on abortion (§2.2).¹¹⁸ Violent abortion is treated as a special case of *onbinaemd mord*, 'murder of a nameless or unbaptized person', and, like the secular Twenty-third Landlaw, synodal law considers abortion to be murder without differentiating between early and late abortion. The Catholic church had its own laws and its own judicial system, but church and state were not really separated. We find oath swearing and oath helpers in synodal law (cf. El.VIII.11 in §2.2), we find priests engaged as witnesses (§3.1) and oath swearing on relics (§2.2) in secular law, and in §4 we saw that Christian elements were incorporated into the Old Frisian translation of Vindicianus's embryology.

The Old Frisian laws on abortion are primarily concerned with involuntary abortion and (domestic) violence, sometimes explicitly and usually implicitly. The subject of voluntary abortion is not dealt with in the articles discussed above, not even by implication. The question is: does this mean that voluntary

abortion was condoned in medieval Frisia? In all probability voluntary abortion was implicitly included in these laws. In the first place, because voluntary abortion, too, was 'violent' in the sense that the methods and poisonous mixtures used were dangerous to a woman's health. In Codex Aysma, an early sixteenth-century Old Frisian legal manuscript, abortion is mentioned twice in what seems to be a list of subject matter or chapter headings in the *Excerpta Legum*. The corresponding articles were never filled in, but the headings suggest that voluntary abortion was also condemned. Both texts are preceded by a chapter heading on poisoning, which is significant, because poison is the subject under which the herbal concoctions employed as abortifacients should - with good reason - be classified.

576. (...) Jtem. Dar orim fenyn ioeft om en daed ief om oers quade secken.

Jtem. Dar met wolla en daeden frucht vort brenct ief deer reed ief konst to deth.

(...)

577. (...) Jtem. Dier orum fenijn ieft om den daed,

Jtem. Dier mit wolla een daden frucht foerd bringht iefta dier reed iefte const toe deth (...).¹¹⁹

In the second place, the attribution of the Old Frisian embryology to Augustine and the emendation of the Latin Vindicianus text, which was based on Augustine's *Commentary on Exodus*, also suggest that Old Frisian abortion law included both voluntary and involuntary abortion.

The Old Frisian Vindicianus translation is more than an innovative revision of Vindicianus's Latin embryology. It betrays a scholarly setting with scholars who were learned in medicine, theology, law and philosophy. The Old Frisian author was acquainted with Augustine's views on abortion; he must have also had access to philosophical studies on the 'soul' and 'ensoulment' and studied these works in order to be able to expand Vindicianus's text with Augustinian notions. At least two of the Low Saxon translations suggest that there were scriptoria in medieval Frisia east of the river Lauwers with libraries where the translator could consult the Latin Vindicianus text. This implies that medieval Frisian libraries housed copies of medical treatises, the works of patristic authors, books on philosophy, encyclopedic works, copies of Roman law, canon law and older Old Germanic law.¹²⁰

Besides being a unique criterion for abortion, the situation of the 'hair and nails' stage in the fifth month of pregnancy also constitutes an accurate observation of the actual stage development of the fetus, because, according to modern embryological research, the hair and nails of the fetus develop in the fourth and fifth months. The fetus is then a little over twenty-five centimeters and its hair and nails would be visible to the naked eye - and to the female witnesses mentioned above (§2.1 and §3.1). This leads us to the fascinating conclusion that, even without modern technical equipment such as the electron microscope, the medieval Frisian women apparently knew exactly how to determine how old an aborted fetus was.¹²¹

Old Frisian abortion law developed from a simple landlaw, which punished violent abortion as murder, into a sophisticated collection of laws on abortion, which meticulously supplied fines for each month of pregnancy. In the Old

Frisian manuscripts that have come down to us abortion law must be gleaned from the various manuscripts. None of the manuscripts contains a complete set of articles, although some manuscripts, notably E1, E3, R1 and F, offer a reasonably representative overview of Old Frisian abortion law (cf. appendix 1). No other medieval legal system has such extensive laws on abortion. This implies that domestic violence and abortion were not uncommon in medieval Frisia. Like abortion law the world over, Old Frisian abortion law, reflects the universal dilemma concerning abortion. On the one hand it voices a radical opposition to abortion, punishing it under any circumstances, and on the other hand it is also lenient, considering only late term abortion to be murder. The articles discussed in this paper represent many centuries of abortion law in Frisia, and it stands to reason that every so often the radical laws would prevail over the more lenient laws, and vice versa.

Old Frisian law has presented us with a remarkable set of laws on abortion. Traditional Old Frisian abortion law distinguishes two stages of fetal growth, 'with hair and nails' and 'without hair and nails', and younger Old Frisian law adds an embryological text to the long law on abortion in order to be able to provide fines for each of the nine months of fetal development. Whether the discriminating criterion used is the traditional 'hair and nails' stage or a christianized definition of 'aliveness', abortion is considered to be murder after the fifth month of pregnancy. Old Frisian abortion law is remarkable in its inclusion of an embryological text, but the traditional Old Frisian 'hair and nails' stage is a unique criterion for distinguishing between early and late abortion that has no parallel in any other abortion law known to me.

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APPENDIX 2 The core elements of the Latin version of Vindicianus's embryology¹²²

First month	core elements	textual components
1aa	iactus	iactus, -um, iactatur
1ab	seminis	seminis, siminis
1ac	in utero materno	in utero materno, -um
1ba	generat	generat, -atum, -are, -atur
1bb	umbillicum	umbillicum, -o, -s
1c	et facit	et facit, facti
1da	congregationem	congregationem, -tionis, -tio
1db	sanguinis	sanguinis, -nes, -em, sanguis
Second month		
2aa	expressio	es-, expressionem, -sio, sione
2ab	corporis	corporis
Third month		
3aa	formatus	firmitus, formatum, formatus
3ab	invenitur	invenitur, invenit
3ac	partus	partus, corpus, infans conceptus, pecus
	et	
3ba	tribuit	tribuit, accipit, tribuetur, tribuitur
3bb	animam	hanimam, enim, animam, anima
Fourth month		
4aa	unguis	unguis, unguis, unguis
4ab	accipiat	accipit, accipiet
4ac	capillos	capillus, capillos
4ad	ducit	dicit, educit, ducit
	et	
4ba	motum	mutum, motum
4bb	facit	facit
4bc	infantem	infantem, infans, in utero (materno)
4ca	mulier	mulier, mater, mulieribus, pregnantes
4cb	nausiatur	nausiatur, nausi(a)e fiunt, nausciatur
Fifth month		
5aa	facit	facit, fiet illi,
5ab	characterem	characterem, -is, -e, -es, cataracta
5ac	patri aut matri	patri aut matri, patris (eius) aut matris
Sixth month		
6aa	facit	facit, adducit, adicit
6ab	nervos	nervorum, nervi, nervos
6ac	confirmationem	confirmationem, consum(m)ationem, confirmationem, confirmantur
Seventh month		
7aa	medullam	medulla, -am, -e, -as
7ab	consolidat	consoldat, confirmat, confortat, consolidantur, consolidatur, consolidavit
Eighth month		
8aa	ossa	ossa (eius)
8ab	dura facit	dura (facit), confirmat, indurescunt, indurescant, durantur, facit
Ninth / tenth month		
9aa	maturam	maturitatem, maturum, maturatur, maturatum, matura
9ab	evoluit	euoluit, movit, volvitur, erit, movet,
9ac	infantem	infantem, -um, pecus, infans, corpus
9ba	perfecta	perfecta, peractis, perfectum, effectus, peractum
9bb	naturae	naturis, -ae, -a, -am
	et	
9ca	de tenebris	de (et, a) tenebris
9cb	ad lucem	ad lucem, in luce
9cc	adducit	convolvit, (ad)ducit, exi(e)t, volvitur

ANNOTATIONS

- ¹ This article is dedicated to the memory of Marijke VAN DER BIJL. I would like to thank Louise CILLIERS, Han NIJDAM, Tom JOHNSTON, Anne POPKEMA, and Johanneke SYTSEMA for sharing their work and insights with me. Wilken ENGELBRECHT helped me with my interpretations of medieval Latin, and Johanneke SYTSEMA, Han NIJDAM, Rolf BREMMER and my 'promotores' commented on an earlier version of this paper. Special thanks are due to the Koninklijke Bibliotheek in The Hague and to Oebele VRIES for sending me photocopies of almost unavailable books and articles, and to the Niedersächsische Landesbibliothek in Hannover for helping with the identification of one of the Low Saxon manuscripts in Conrad BORCHLING (Hrsg.), *Die niederdeutschen Rechtsquellen Ostfrieslands*. Aurich: Verlag von A.H.F. DUNKMAN, 1908 (Quellen zur Geschichte Ostfrieslands, 1). The Law Library of the University of Utrecht, as always, allowed me to borrow reference material, dictionaries, and other books not on loan, and patiently extended the loan periods again and again.
- ² In this paper the word 'fetus' is usually used to denote both the embryonic and fetal stages of development.
- ³ The Old Frisian translation of Vindicianus's embryology will be discussed in detail in my "The Old Frisian translation of Vindicianus's embryology: sources and analogues", forthcoming.
- ⁴ On the Old Frisian Landlaws, cf. Nikolaas E. ALGRA, *De tekstfilatie van de 17 keuren en de 24 landrechten: een voorbereidend onderzoek*. Grins: Frysk Ynstitút RUG, 1966 (Estrikken, 39), Nikolaas E. ALGRA, *Zeventien keuren en vierentwintig landrechten*. 2e dr. Doorn: Graal, 1994, and Nikolaas E. ALGRA, *Oudfries Recht 800-1256*. Ljouwert: Fryske Akademy, 2000. On the Old Frisian manuscripts, cf. Pieter GERBENZON, *Apparaat voor de studie van Oudfries recht*. 2 delen. Groningen: RUG, Frysk Institút, 1981.
- The following dictionaries were used: Karl VON RICHTHOFEN, *Altfriesisches Wörterbuch*. Göttingen: Dieterich, 1840 (rpr. Aalen: Scientia, 1961) [VON RICHTHOFEN 1840b]; Willem Lodewijk VAN HELTEN, *Zur Lexicologie des Altwestfriesischen*. Amsterdam: Johannes MÜLLER, 1896 (Verhandelingen der KNAW te Amsterdam, afd. Letterkunde, nieuwe reeks, dl. 1, nr. 5); Willem Lodewijk VAN HELTEN, *Zur Lexicologie des Altostfriesischen*. Amsterdam: Johannes Müller, 1907 (Verhandelingen der KNAW te Amsterdam, afd. Letterkunde, nieuwe reeks, dl. IX); Ferdinand HOLTHAUSEN, *Altfriesisches Wörterbuch*. 2. verb. Aufl. von Dietrich HOFMANN. Heidelberg: Carl WINTER - Universitätsverlag, 1985 (1. Aufl. 1925); A. NAUTA, *Oudfriesche woordenlijst met de vertaling in het Nederlandsch en vergelijking met nieuwfriesche woorden*. Haarlem: H.D. Tjeenk WILLINK & Zoon, 1926; *Deutsches Rechtswörterbuch: Wörterbuch der älteren deutschen Rechtssprache*. Hrsg. von der Preussischen Akademie der Wissenschaften, bearb. von Richard SCHRÖDER e.a. Bd. 1 (1914) ff.; the DRW is also available on the internet: <http://www.rwzuser.uni-heidelberg.de/~cd2/drw/frameset.htm>.
- ⁵ Wybren Jan BUMA & Wilhelm EBEL (Hrsg.), *Das Hunsingoer Recht*. Göttingen: Vandenhoeck & Ruprecht, 1969 (Altfriesische Rechtsquellen, Texte und Übersetzungen, 4), pp. 42-43, who translate: "H2-H1.III.23. Das ist das dreiundzwanzigste Landrecht: Wenn jemand eine Frau im Bett [read: a pregnant woman] angreift (und ihr) im Leibe eine Frucht oder zwei abtreibt, so soll er, wenn er das gesteht, die Leibesfrucht mit doppeltem Wergeld büßen und eine Volksbrüche zu zwölf Mark und dem Frana drei Pfund, das sind einundzwanzig Schillinge, für den Königsbann zahlen." See also: Jelle HOEKSTRA (ed.), *De eerste en de tweede Hunsinger Codex*. Den Haag: Martinus Nijhoff, 1950 (Oudfries taal- en rechtsbronnen, 6), p. 55 (H2) and p. 139 (H1). The versions in H1 and H2 are nearly the same; both editions are based primarily on the Second Hunsingo Codex (H2). The numbers of the sections in Hoekstra and Buma-Ebel do not always correspond, where they differ, the article numbers refer to BUMA-EBEL.
- A bedde*, which is found in both Hunsingo manuscripts, is, in my opinion, a scribal error for *an berde*, 'with child'; 'in bed' makes no sense in this context (cf. F.IV.23).
- ⁶ Wybren Jan BUMA & Wilhelm EBEL (Hrsg.), *Das Fivelgoer Recht*. Göttingen: Vandenhoeck & Ruprecht, 1972 (Altfriesische Rechtsquellen, Texte und Übersetzungen, 5), pp. 52-53. See also: Bo SJÖLIN (Hrsg.), *Die 'Fivelgoer' Handschrift*. 2 Bde. Den Haag: Martinus Nijhoff, 1970-1975 (Oudfries taal- en rechtsbronnen, 12), Bd.1, p. 258. Sjölin translates: "F.IV.23. Das dreiundzwanzigste Landrecht ist: Wenn jemand eine schwangere Frau angreift (und) in ihrem Leibe ein Leben tötet oder zwei und er sich dessen schuldig erklärt, soll er ihr doppeltes

Wergeld und (die Buße für) die Tötung ihrer Leibesfrucht mit zwölf Mark entrichten, und dem Volke das Friedensgeld und dem Frana drei Pfund. Wenn er leugnet, soll er sich mit einem Zwölfereid auf die Reliquien freischwören oder sich mit neun Pflugscharen oder mit einem Kämpfen mit bloßen Schenkeln innerhalb von dreimal vierundzwanzig Stunden reinigen" (p. 259). The article numbers in these editions differ. The references are to Sjölin; article numbers between parentheses will refer to the Buma-Ebel edition.

7 On compensations, wergeld, fines, money systems, the value of money, etc., cf. Dirk Jan HENSTRA, *The Evolution of the Money Standard in Medieval Frisia; a Treatise on the History of the Systems of Money of Account in the Former Frisia (c. 600 - c. 1500)*. s.l: s.n., 2000 (Proefschrift, Rijksuniversiteit Groningen); on the Twenty-third Landlaw, cf. p. 378.

8 The twelve oaths in the text refer to the total number of oaths, and include the accused's oath.
9 Codex Roorda - which does not contain a version of the landlaws - and Codex Unia, which survives only in a copy made by Franciscus Junius, were unavailable to me. Oebele Vries kindly provided me with a copy of K. Fokkema's unpublished edition of 'Druk'.

10 Wybren Jan BUMA & Wilhelm EBEL (Hrsg.), *Das Rürstringer Recht*. Göttingen: Muster-Schmidt-Verlag, 1963 (Altfriesische Rechtsquellen, Texte und Übersetzungen, 1), pp. 56-57, who translate "R1.IV.23. Dies ist dat dreiundzwanzigste Landrecht: Wenn eine verheiratete Frau, die ein Kind unter dem Herzen trägt, angegriffen wird, und sie nichts Böses getan hat, weder Blutrunst noch blutende Verletzungen, noch Totschlag, noch Verwundung, noch sonst irgendwelche Übeltaten, und sie derart am Leibe angegriffen wird, daß die unzeitig geborene Leibesfrucht stirbt, so soll er [*der Beklagte*], wenn er die Tat gesteht, die Leibesfrucht und die Mordtat mit Zuschlagswergeld und mit Wergeld büßen und bezahlen: das Wergeld [*der getöteten Leibesfrucht*] und die Brüche an das Volk (seien) so hoch, wie das Volk sie bestimmt, und der Wergeldzuschlag (stelle sich auf) zwölf Mark, und der Frau ist ihr kleines Wergeld von zwölf Mark zu entrichten. Und wenn sie stirbt, so soll man sie und die Leibesfrucht mit siebenfachem Wergeld entgelten, acht Pfund und acht Unzen und acht Schillinge und acht Pfennige, das ist ihr rechter Wert. Und wenn er [*der Beklagte*] es leugnet, so reinige er sich mit zwölf Männern auf die Reliquien von der Anklage oder er gehe über die neun (glühenden) Pflugscharen. Wenn er aber keines von diesen Gottesurteilen bestehen will, so sehe er sich nach einem barschenklichen Zweikämpfer um, der innerhalb dreier Tage den Kampf austragen soll, oder er schließe durch Urteil des Asega und nach dem Volksrecht in solcher Weise eine Sühne ab, daß sie billig und gerecht ist."

11 Cf. Wybren Jan BUMA & Wilhelm EBEL (Hrsg.), *Das Emsiger Recht*. Göttingen: Vandenhoeck & Ruprecht, 1967 (Altfriesische Rechtsquellen, Texte und Übersetzungen, 3), pp. 42-43, who translate: "E1.IV.23. Das ist das dreiundzwanzigste Landrecht: Wenn eine Frau, die ein Kind erwartet, angegriffen worden ist, und sie ihrerseits weder Blutrunst noch blutende Verletzungen, noch Totschlag, noch Verwundung, noch irgendwelche (anderen) Übeltaten begangen hat, und sie derart im Leibe mißhandelt und angegriffen ist, daß die unzeitig geborene Leibesfrucht stirbt, so soll er [*der Beklagte*], wenn er (es) gesteht, die Leibesfrucht und die gräßliche Freveltat mit Wergeld und Wergeldzuschlag büßen: das Wergeld [*der getöteten Leibesfrucht*] und die Brüche an das Volk (seien) so hoch, wie das Volk (sie) bestimmt, und der Wergeldzuschlag soll zwölf Mark betragen. Und wenn sie [*die Frau*] stirbt, so hat man sie mit siebenfachem Wergeld zu entgelten, und acht Pfund und acht Unzen und acht Schillinge und acht Pfennige, das ist ihr rechtes Wittum. Und wenn er [*der Beklagte*] (es) leugnet, so reinige er sich mit zwölf Männern auf die Reliquien von der Anklage oder er gehe über die neun glühenden Pflugscharen. Wenn er sich aber keinem dieser Gottesurteile unterziehen will, so sehe er sich nach einem barschenklichen Zweikämpfer um, der in dreimal vierundzwanzig Stunden den Kampf austragen soll, oder (er schließe) nach dem Urteil des Asega und unter dem Bann des Skeltata in solcher Weise eine Sühne (ab), daß sie billig und gerecht ist." See also: Pieter SIPMA (ed.), *De eerste Emsinger Codex*. Den Haag: Martinus Nijhoff, 1943 (Oudfriesche taal- en rechtsbronnen, 4), pp. 70-71.

12 *J.VIII.23. Dat xxiiij landt riocht is: Hweer soe en wyf is oenfochten ende hio mey eenre berde is ende hioe eer deen nabbe dulg ner daed ner daedlike bloedreesna ner bloederennanda deda ende hio alsoe fjir wrewelad se inor dae benena burch, dat dio berde bilewen se, ief hijs iecht, soe aegh hit toe betane mey ielde ende mey wrielde, als dae lioeda lowath, ende dat wrielde bi toulif merkum ende hir liues bote bi sauwen ieldem iesta achte pund ende achte enze ende achte panningen. Ief hi aec bisecke, soe sikrie hi him mey toulif manna withedum iesta hi gunghe niogen scara. Ief hi dera ordela nen dwaen nelle, soe wise hi him ene swirdkempa ende*

dat schel ma binna trem etmelum bifiochta, cf. Wybren Jan BUMA & Wilhelm EBEL mit Martina TRAGTER-SCHUBERT (Hrsg.), *Westerlauwersches Recht I. Jus municipale Frisonum*. 2 Bde. Göttingen: Vandenhoeck & Ruprecht, 1977 (Altfriesische Rechtsquellen, Texte und Übersetzungen, 6.1 - 6.2), Bd.1, pp. 166-167.

The manuscript of *Jus Municipale Frisonum* is dated c. 1530, and is a copy of a mid fifteenth-century (c.1450) manuscript.

- ¹³ *D.VIII.23. Dat xxxiiste landriucht is: aldeer een wif se onfuchten, ende hio mit eenre berthe se ende hio ne hab dulgh ner daed ner daedlika deda ner daedlika bloedresen ner bloeddrinnenda deda, ende hio so fiir wreueled se in oer da binnena burch dat dio berthe daed se ief hi se iechte so aegh hise toe ielden mit ield ende mit wrield dat ield als vise liloed lowiad. ende dat wrield bi xii merkm ende her liues bote mit saun ieldum ielta viii pond viii ynsa: ende viii penningen ief hi aeck bisecka vil soe sikerie hi hem mit xii wyt eden iefta hi gongh niogen scheren ief hi disse ordel nenthera dwaen wil so biwissie hi him enis berschinses kempa dat schilma binna trim etmelum bifiochta iefta een soen dwaen als vise liloed quaed. deer godlic ende nadelic ende eerlick se ende riuchtelick. Fan trowa ende fan wirde ward himelriick stift ende af wirde wardet aeck forfold Also waerd dat aefte oen eerdrike. Cf. K. FOKKEMA, [unpublished edition of] *Druk; Freeska Landriucht*, [1972], pp. 69-70.*

See also: Petrus WIERDSMA & Petrus BRANTSMA, *Oude Friesche Wetten, met eene Nederduitsche vert. en helderende aant. voorz.* Campen en Leeuwarden, J.A. de Chalmot en J. Seydel, [1783-1788], pp. 178-182; Christianus SCHOTANUS, *Beschryvinge van de heerlyckheydt van Frieslandt tusschen 't Flie en de Lauwers*. Leeuwarden: De Tille, 1978 (rpr. of Franeker, 1664), p. 67; Karl VON RICHTHOFEN, *Friesische Rechtsquellen*. Berlin: Nicolai, 1840 (rpr. Aalen: Scientia, 1960), pp. 75, 77 [VON RICHTHOFEN 1840a].

In their edition of *Druk Wierdsma and Brantsma* also indicate that this passage was added to the original text: "Dit is zichtbaarlijk een bijvoegsel (...)" p. 181, note 23; they translate: "Door trouwe en waarheid wierd het Hemelrijk gesticht, en van waarheid wierd het ook vervuld. Dus is 't gelegen met het Huwelijk op Aarden" (pp. 181-182). This gloss seems to be an implicit reference to adultery, and possibly also to domestic violence.

- ¹⁴ Cf. Johanneke SYTSEMA, *De 17 keuren en de 24 landrechten in de Ommelander rechtshandschriften*. Amsterdam: VU Uitgeverij, 1998 (Proefschrift VU Amsterdam), passim. Many Old Frisian laws on abortion were translated into Low Saxon in the fourteenth and fifteenth centuries, when the language spoken in the eastern part of Frisia was slowly switching from Old Frisian to the Low Saxon.

- ¹⁵ SYTSEMA 1998, pp. 286-287. The manuscript with code Cc denotes MS Groningen, Rijksarchief, Coll. Fransema Hs. in octavo 4 (XVI) in Sytsema's study. Sytsema translates: "Het drieëntwintigste landrecht is: wie een zwangere vrouw aanvalt en van één of twee ledematen berooft, dan zal hij dat lid met twee boetes boeten en betalen. En ook *ouerwelt* met twaalf marken en drie pond aan de rechters." In notes 415 and 418 and on p. 344 Sytsema indicates that we should read *lyff*, 'life' or 'body' (not *lit*, 'limb'). I think 'life' was intended as in the Old Frisian attestations, because taking a 'life' is compensated with 'a life', that is, the compensation due for murder.

- ¹⁶ SYTSEMA 1998, pp. 286-287. The manuscript code Lh denotes Leeuwarden, Provinsjale Biblioteek, Hs 1193 in Sytsema's dissertation; she translates: "Het drieëntwintigste landrecht is: wie een vrouw die een kind draagt, aanvalt (en) in haar lichaam een leven dooft of twee, en wanneer hij dat bekent, dan zal hij dat leven met tweevoudig weergeld vergelden en aan de vrouw haar *lyndwerdene* [Ofr. *liudwerdene*], dat is twaalf marken, voldoen en aan hebt volk het vredegeld en drie pond aan de frana."

- ¹⁷ All three articles are in sections containing supplements to the Statutes and/or Landlaws. E1.VIII.37 is in subsection 'VIII.f. Das sog. 25. Landrecht', which is part of a section labeled 'Vermischtes' by BUMA-EBEL 1967; E2.V.3 is the third and last article in *De duplico malo*, 'on malicious crimes', and E3.II.3-7 are in a section called 'Ergänzungen zu den Landrechten und den Bußtaxen.'

- ¹⁸ BUMA-EBEL 1967, pp. 94-95; "E1.VIII.37. Das ist der dritte Mord: Wenn hier eine Frau Mordklage (wegen Tötung ihrer Leibesfrucht) erhebt und (andere) Frauen nach Besichtigung erkennen, daß es [*das Kind*] nicht so sehr ausgebildet ist, daß es vielmehr weder Haare noch Nägel habe, so soll man sich von der Mordklage mit neun Verwandten reinigen nach dem Rechte aller Friesen." See also: SIPMA 1943, p. 94.

- ¹⁹ BUMA-EBEL 1967, pp. 136-137; "E2.V.3. Dies ist der dritte Mord: Wenn hier eine Frau Klage erhebt wegen der Tötung ihrer Leibesfrucht und (andere) Frauen nach Besichtigung feststel-

len, daß das Kind nicht so weit ausgebildet gewesen ist, daß es vielmehr weder Haare noch Nägel gehabt habe, so darf man sich mit neun Verwandten von der Mordklage reinigen, nach aller Friesen Recht." See also: K. FOKKEMA (ed.), *De tweede Emsinger Codex*. Den Haag: Martinus Nijhoff, 1953 (Oudfriese taal- en rechtsbronnen, 7), pp. 31-32.

20 BUMA-EBEL 1967, pp. 200-201; "E3.II.3. Dies ist der dritte Mord: Wenn eine Frau Klage erhebt wegen der Tötung ihrer Leibesfrucht, und (andere) Frauen nach Besichtigung feststellen, daß die Frucht so weit ausgebildet war, daß sie Haar und Nägel hatte, so soll man diesen Mord nach Mordes Recht entgelten, oder sich mit neun Verwandten von der Anklage reinigen, nach aller Friesen Recht." See also: K. FOKKEMA (ed.), *De derde Emsinger Codex*. Den Haag: Martinus Nijhoff, 1959 (Oudfriese taal- en rechtsbronnen, 10), p. 36.

21 BUMA-EBEL 1967, pp. 200-201; "E3.II.4. Ist sie nicht so weit ausgebildet gewesen, so soll man dieses Recht nicht anwenden. E3.II.5. Diese vorgenannte Sache gilt, sofern die Frau nicht zuvor eine Blutrunst oder blutende Verletzung, Totschlag oder Verwundung verübt hat. E3.II.6. Hat sie den Mann zuerst angegriffen, so soll man dieses Recht nicht anwenden; dann ist die Verletzung einfach (zu büßen). E3.II.7. Wenn eine Frau einen Mann angreift und ihn blau oder blutig schlägt, und er sich wehrt, und sie tötet oder verwundet, so hat sie ihre frauliche Buße verloren und ist die Buße bei gleichen Verletzungen (für beide) gleich." See also: FOKKEMA 1959, p. 36.

22 Note that manuscript E3 does not contain a version of the landlaws.

23 E1.VIII.11-12 are in subsection 'VIII.b. Zusätze zu der gemeinfriesischen 17. Küre'. Cf. Note 17.

24 BUMA-EBEL 1967, pp. 88-89; "E1.VIII.11. Dies ist die dritte Ausnahme: Wenn sich zwei Volkshaufen schlagen und da eine Frau hinzuläuft und sie so heftig angegriffen wird, daß sie innerhalb eines Tages und einer Nacht ein totes Kind zur Welt bringt, so darf man wegen dieser Tötung keine Unschuldseide auf die Reliquien anbieten und man soll den Mord mit Mord vergelten, das heißt mit zwei Wergeldern, wenn es [*das Kind*] sowohl Haar als Nägel (gehabt) hat." See also: SIPMA 1943, p. 90.

25 BUMA-EBEL 1967, pp. 88-89; "E1.VIII.12. Wird der Frau das Leben genommen, so soll man sie auch mit zweifachem Wergeld büßen, ebenfalls nach aller Friesen Recht, und dem Volke (soll man) sein Friedensgeld doppelt bezahlen und dem Frana seine Bannbuße." See also: SIPMA 1943, p. 90.

26 According to His *morth mith morth*, 'life for life' (E3.II.3, E1.VIII.11) is a remnant of older Frisian law which punished murder with the death penalty, cf. Rudolf His, *Das Strafrecht der Friesen im Mittelalter*. Leipzig: Dieterich'sche Verlagsbuchhandlung Theodor Weicher, 1901, p. 263; on abortion cf. pp. 108, 258, 263-264.

27 Note that the compensation due for the death of the pregnant woman in E1.VIII.12 is twice her wergeld, whereas it is seven times the wergeld in the Twenty-third Landlaw.

28 BUMA-EBEL 1963, pp. 100-101; "R1. XIV.9a. Wenn ein Weib Klage erhebt wegen der Tötung ihrer Leibesfrucht, und (ein) anderes Weib als Zeugin vorbringt, das Kind sei nicht so sehr ausgebildet gewesen, daß es Haare und Nägel gehabt habe, so darf er [der Beschuldigte] sich mit zwölf Eidshelfern auf die Reliquien von der Anklage freischwören. R1. XIV.9b. Wenn ein Weib Klage erhebt wegen der Tötung ihrer Leibesfrucht, und das Kind soweit ausgebildet war, daß es sogar schon Haare und Nägel hatte, so soll man sich durch (einen Gang über) neun (glühende) Pflugscharen vom Verdacht reinigen. R1. XIV.9c. Wenn sich zwei Volkshaufen schlagen und da ein Weib hinzuläuft und sie so heftig angegriffen wird, daß sie innerhalb eines Tages und einer Nacht ein totes Kind zur Welt bringt, so darf man sich wegen dieser Tötung nicht zum Unschuldseid auf die Reliquien erbielen."

29 BUMA-EBEL 1972, pp. 136-139; see also: SJÖLIN 1970-1975, Bd.1, pp. 330-332. "F.XII.7 (F.XI.7). Von Mord. Wenn eine Frau Klage erhebt wegen Mordes (: *Tötung ihrer Leibesfrucht*) und sie (: *die Leibesfrucht*) Frauen besichtigen (und bescheinigen), daß sie nicht so weit entwickelt sei, daß sie Haar und Nägel habe, so kann man sich von der Anklage mit einem Zwölfereid reinigen. F.XII.8 (F.XI.8). *Item*. Wenn eine Frau Klage erhebt wegen Mordes (: *Tötung ihrer Leibesfrucht*) (und es sich herausstellt), daß sie (: *die Leibesfrucht*) so weit entwickelt ist, daß sie Haar und Nägel hat, so soll man sich von der Anklage mit neun Pflugseisen reinigen. F.XII.9 (F.XI.9). *Item* von Mord. Wenn zwei bewaffnete [??] Haufen miteinander kämpfen und eine Frau da hinzuläuft und dann dermaßen zugerichtet wird, daß sie ein totes Kind zur Welt bringt innerhalb von Tag und Nacht, so kann man sich wegen dieser Tötung nicht zum Reliquieneid anbieten (SJÖLIN 1970-1975, Bd.1, pp. 331, 333)."

- ³⁰ We find the same ordeal in the Twenty-third Landlaw, cf. §1. Note that in RI.XIV.9a the woman, who lodges a complaint of violent abortion, has selected her own witness: *thet othere wijf mith werde foribrangat*, 'brings along another woman as proof.'
- ³¹ The fifteenth-century Low Saxon Ommeland translation of these three articles in MS Assen 14 (c. 1450-1475) is as follows: 3. *van doet dele enes vnboren kindes [w]Aer so ene vrouwe moerth claghet vnde dat vrouwen beschouwet hebben dat dat kint ofte boert so veer niet en is komen dattet hebbe haer vnde nagele so moet men des twaeluersum ontzveren* 4. *van enen doet dele enes vniboren kindes Hwaerso ene vrouwe morch [read: morth]claghet vnde dat so veer komen is ende de boert vnde kint heuet haer vnde naghelen so schalmen des myt negen fiurum vntgaen* 5. *van doet dele vnboren kindere Hwaerso twe kedden dat is dat daer twe lude kiuen vnde daer ene vrouwe to loepet vnde se alzo vere an ghevochten worde dat se ene moerch [read: moerth] to manne brenghet bynnen dach vnde nacht So en mach men des mordes van deer boert nene wichte [read: withe, 'relics'] off onschuld bede*, cf. Thomas Stanley Baker JOHNSTON, *Codex Hummercensis (Groningen, UB, PEIP 12); an Old Frisian Legal Manuscript in Low Saxon Guise*. Amsterdam: s.n., 1998 (Proefschrift VU Amsterdam), p. 518. On MS Assen, Rijksarchief, Coll. Ellents-Hofstede, Hs. 14, cf. SYTSEMA 1998, p. 24 and JOHNSTON 1998, p. 517. These articles are part of a more or less fixed cluster of articles called 'St Augustinus c.a.'; cf. note 82.
- ³² E1.VIII.11 on the *keddan*, 'gangs' is the only article that mentions the fine due.
- ³³ On 'synodal law', see: E.H. BARY & Henk D. MEIJERING, "Het Westerlauwers Zeendrecht volgens de inkunabel van het Fries Landrecht." *Meidielingen. Studzjerjochting Frysk oan de Frije Universiteit yn Amsterdam* 1 (1972), pp. 9-58, at pp. 12-14 and M.P. VAN BUIJTENEN, *De Grondslag van de Frieze Vrijheid*. Assen: Van Gorcum, 1953 (Proefschrift Groningen), pp. 149-182; bijlage VII. See also: Gerbenzon 1981, *passim*.
- ³⁴ Cf. VON RICHTHOFEN 1840b, pp. 1100, 1105 and Willem Lodewijk VAN HELTEN, "Zur Lexicologie und Grammatik des Altwestfriesischen." *Beiträge zur Geschichte der deutschen Sprache und Literatur* 19 (1894), pp. 345-440, at p. 365: "Mit *on(bij)naemd, unnaemd, o(e)naemd, onenaemd moerd* muss demnach ein mord gemeint sein, dessen opfer nicht namentlich angezeigt werden kann." See also: HIS 1901, p. 264; Chr. STAPELKAMP, "Nommel, njommel." *It Beaken* 16 (1954), pp. 22-27 at p. 25; Horst Haider MUNSKE, *Der germanische Rechtswortschatz im Bereich der Missetaten; philologische und sprachgeographische Untersuchungen. I. Die Terminologie der älteren westgermanischen Rechtsquellen*. Berlin: De Gruyter, 1973 (*Studia Linguistica Germanica*, 8.1), p. 124.
- ³⁵ BUMA-EBEL 1972, pp. 66-67; "F.VIII.8 [F.VIII.9]. Wenn man einen Mann rügt wegen der Tötung einer Leibesfrucht, die er an seiner Frau oder an einer anderen Frau verübt haben sollte, so darf er sich selbzwölft davon freischwören, wenn er unschuldig ist". See also: SJÖLIN 1970-1975, Bd.1, pp. 270-271. Sjölin translates: "ausgeführt haben soll" for "verübt haben sollte".
- ³⁶ BUMA-EBEL 1977, Bd.1, pp. 170-171; "J.IX.6. Von der Tötung. Wenn man einen Mann rügt wegen der Tötung einer Leibesfrucht, die er an seiner Frau verübt haben soll, so darf er sich selbzwölft davon freischwören, wenn er unschuldig ist."
- ³⁷ There may be a version of this article in *Codex Unia*, cf. GERBENZON 1981, p. 55 and note 9.
- ³⁸ FOKKEMA, *Unpublished edition of Druk*, p. 78. BARY-MEIJERING 1972, pp. 30-31, translate: "Indien men iemand wroegt (aanklaagt) vanwege een geval van abortus, dat hij bij de vrouw gepleegd zou hebben, en indien hij het wil ontkennen, dan moet hij zijn onschuld bewijzen met elf eedhelpers, indien hij onschuldig is". The text of 'Druk' was also published in SCHOTANUS 1664 (cf. p. 72) and in VON RICHTHOFEN 1840a (cf. p. 403, nr.5). Joosting reprints Von Richthofen's text, and includes the Latin text and glosses, cf. J.G.C. JOOSTING, *Bronnen voor de Geschiedenis der Kerkelijke rechtspraak in het Bisdom Utrecht in de Middeleeuwen. IV. Provinciale en synodale statuten. V. Seendrechten*. Den Haag: Martinus Nijhoff, 1914 (Werken der Vereeniging tot Uitgaaf der Bronnen van het Oud-Vaderlandsch Recht, 2e reeks, 16), pp. 333-391.
- ³⁹ SCHOTANUS 1664, p. 121. This Low Saxon translation from an Old Frisian original was printed in Christianus Schotanus's seventeenth-century collection of Old Frisian and Low Saxon law. The Low Saxon manuscript used by Schotanus has not yet been identified, cf. GERBENZON 1981, p. 55. The text is substantially the same as the three other versions.
- ⁴⁰ There are many articles in Old Frisian law that testify to the importance of baptism in Frisian society. The Christian ceremony of baptism probably absorbed the Old Frisian tradition of

name-giving at birth. See, for instance, F.XVII.33 (F.XVI.33), SJÖLIN 1970-1975, Bd.1, pp. 354-355; BUMA-EBEL, pp. 164-165.

⁴¹ JOOSTING 1914, pp. 343-353 prints a list of crimes prosecuted under synodal law in Zwolle between 1471-1548; adultery is the most frequently mentioned crime, along with fornication, bigamy, concubinage and divorce.

⁴² In F, Jus and Druk the subject of the first clause (denoting the plaintiff) is the impersonal pronoun *ma*, 'one'; the Low Saxon version uses the passive voice. In the laws on abortion in §2.1 the woman who suffered the miscarriage is explicitly named as the plaintiff.

⁴³ Like the aborted fetus, an 'unconceived' child would also be 'unnamed' and 'unbaptized'; the term was evidently borrowed from synodal law.

⁴⁴ BUMA-EBEL 1977, Bd. 2, pp. 520-521. "J.XXVIII.239. Wenn ein Mann in seine Geschlechtsteile (und) durch seine Geschlechtsteile (und) durch die Haut geschossen wird, ist die Buße zwei Unzen, es sei denn, daß er weiteren Anspruch erheben wolle; dann kann er (die Buße für) das Zerschneiden dreier Sehnen erhalten. Die erste (Sehne) heißt die 'Hochsehne'. Die zweite heißt der Rückennerv. Die dritte (heißt) der Zeugungsnerv. Deswegen darf er auf Tötung dreier Ungeborener klagen, die hat man ihm einzeln ebenso hoch wie einen Totschlag zu büßen, oder sonst soll man sich selbzwölft davon freischwören" (Die Busstaxen von Wonseradeel und den Fünf Delen). The other two articles in Jus (J.XXIII.117, J.XXIX.123) are nearly the same, cf. BUMA-EBEL 1977, Bd. 2, pp. 450-451 (Die Busstaxen von Ferwerderadeel und Dongeradeel) and pp. 554-555 (Busstaxen von Leeuwarderdeel).

⁴⁵ Han NIJDAM, "The Old West Frisian Composition Tariff *Bireknade Bota* (part 2)." *Us Wurk* 50 (2001), pp. 27-64 at p. 50; FOKKEMA, *Unpublished edition of Druk*, pp. 118-119. The article numbers between parentheses refer to Nijdam 2001. "D.XIV.47. Concerning the penis. 213. If a man's generative parts are amputated by another man, the compensation is five and a half marks. 214. If a man is shot through his genitals, through the skin, the compensation is two ounces, unless the plaintiff wants to pursue his claims further; in that case he may claim the cutting of three sinews: the first one is called the 'up-sinew', the second the 'wielding-sinew' and the third the 'fruit [fertility]-sinew'. He must also claim the killing of three unborn children, and each of these is to be compensated as a case of manslaughter, or the defendant must exonerate himself by swearing an oath, together with eleven oath helpers," NIJDAM 2001, p. 51. See also: Han NIJDAM, "Het Oudwestfriesse boeteregister *Bireknade Bota* (deel 1)." *Us Wurk* 49 (2000), pp. 81-113.

⁴⁶ The same fine is demanded in Æthelbert's Law (c. 600), see: Lisi OLIVER, *The Beginnings of English Law*. Toronto: University of Toronto Press, 2002 (Toronto Medieval Texts and Translations, 14), p. 99.

⁴⁷ E3.I.200. *Hversar en mon vndad werth ynna sine machte thet hi nawt tia ne muge niogen merc to bote for tha niogen bern, ther hi tia machte*, "Wenn ein Mann an seinen Geschlechtsteilen verwundet wird, so daß er nicht zeugen kann, (so gebühren ihm) neun Mark als Buße für die neun Kinder, die er zeugen könnte"; E3.I.201. *Heth hi ac bern etein sa nime ma thet tha berna anda retza ma tha vnberna*, "Hat er aber schon Kinder gezeugt, so nehme man das [ihren Anteil] den Geborenen und reiche (es) den Ungeborenen" (Buma-Ebel 1967, pp. 186-187). Note that these articles follow the Old Frisian Vindicianus text (§4) and the long law on abortion (§3.1) and that like the articles in Jus and Druk they are part of secular law.

⁴⁸ See: BUMA-EBEL 1977, Bd.1, pp. 190-191, FOKKEMA, *Unpublished edition of Druk*, p. 85, and BARY-MEIJERING 1972, p. 51. *Mordbrand* is translated as 'abortion' by BUMA-EBEL and BARY-MEIJERING. In this context the crime of *onbinaemd mord* should be translated as 'murder of an unidentified victim of arson'.

⁴⁹ BUMA-EBEL 1972, pp. 58-59. Sjölin translates: "F.VI.1. Dies ist das Sendrecht: Wenn man jemanden wegen Abtreibung [read: murder of a nameless person] verklagt, so ist er näher (berechtigt), sich selbzwölft davon freizuschwören als gezwungen, sich einem Sendgerichtsverfahren oder einer Beweiserbringung zu unterwerfen. Gebriecht es ihm an Eiden, so soll er die Brüche mit drei Mark entrichten und das Friedensgeld so, wie das Recht es vorschreibt und den Mord genau so teuer (büßen) wie einen Totschlag." cf. SJÖLIN 1970-1975, Bd.1, pp. 264-265.

⁵⁰ BUMA-EBEL 1977, Bd.1, pp. 192-193; "J.IX.49. Von der Tötung der Leibesfrucht [read: murder of a nameless person]. Wenn ein Mann der Tötung einer Leibesfrucht [read: murder of a nameless person] angeklagt wird, so ist er näher berechtigt, sich selbzwölft davon freizuschwören, als daß er sich einem Sendgerichtsverfahren und Gottesurteil oder irgend-

welcher Beweiserbringung zu unterwerfen hätte. Fehlen ihm die Unschuldseide, so soll er die Bannbuße zu drei Mark und das Friedensgeld des Volkes, wie es Rechtens ist, und die Tötung ebenso hoch wie einen Totschlag bezahen."

- 51 FOKKEMA, *Unpublished edition of Druk*, p. 87. BARY-MEIJERING 1972, pp. 52-53 translate: "Wanneer men iemand aanklaagt vanwege een geval van abortus [read: murder of a nameless person], dan kan hij met meer recht met elf anderen een onschuldseid afleggen dan hij een zeendrechtelijke procedure of een godsoordeel of het leveren van enig bewijs behoeft toe te laten. Ontbreekt het hem aan de onschuldseiden, dan moet hij een boete van drie mark betalen en het vredegeld zoals het rechtmatig is, en de abortus even duur als een geval van doodslag."
- 52 SCHOTANUS 1664, p. 115; cf. note 39.
- 53 The translations of this law by BARY-MEIJERING 1972, SJÖLIN 1970-1975, and BUMA-EBEL 1972, which render *onbinaemd mord* as 'een geval van abortus', 'Abtreibung', or 'Tötung einer Leibesfrucht' (cf. notes 49-51) must therefore be rejected. The translation given by WIERDSMA and BRANTSMA in their 18th-century edition of *Druk* is much more accurate: "D.VIII.20. Wanneer men iemand aanklaagt, om een ongenoemde moord, zoo is hij nader (om het) twaalfersom te ontzweeren, dan hij verplicht zij zeend, of proef, of eenig tegenbewijs te ondergaan. Ontbreekt hem die zuivering, zoo zal hij den ban boeten, met drie marken, en den volksvrede, naar het recht is, en den moord zoo hoog, als een manslag" (WIERDSMA & BRANTSMA 1783-1788, p. 252).
- 54 The translation of the term *onbinaemd moerd* in the law on *mordbrand* (J.IX.41-42, D.XI.35) by BUMA-EBEL 1977 and BARY-MEIJERING 1972 should likewise be emended; cf. note 48.
- 55 The three Old Frisian laws alluded to here are the general law on *onbinaemd moerd* (F.VI.1, J.IX.49, D.XI.40), the law on abortion (J.IX.6, F.VIII.9, D.XI.6) and the law on *mordbrand* (J.IX.41-42, D.XI.35); cf. notes 53-54.
- 56 Fifteen or eighteen shillings is the fine for a relatively serious injury, cf. for example B1-B2.211 and E3.III.175 ff. on sexual abuse and harassment.
- 57 Wybren Jan BUMA & Wilhelm EBEL (Hrsg.), *Das Brokmer Recht*. Göttingen: Vandenhoeck & Ruprecht, 1965 (Altfriesische Rechtsquellen, Texte und Übersetzungen, 3), pp. 112-113; "B1-B2.214 (209). Von der Schwangerschaft. Bei (Verletzungen während) der Schwangerschaft (ist für) die beiden ersten Monate kein Wergeld (zu zahlen), der Mutter (aber) für ihren (verletzten) Körper eine höchste Mark als Buße; in den nächsten zwei Monaten der Schwangerschaft (sind) achtzehn Schillinge als Wergeld (zu zahlen), in dem fünften und sechsten Monat ein halbes Wergeld, im siebenten ein volles Wergeld, und für jeden dieser Monate eine höchste Mark (als Buße für die Mutter), [das macht sechs Mark B2]; mit dem Priester und zwei glaubwürdigen Frauen (hat man) zu beweisen, wie es bei der Geburt gegangen ist; diese Klage soll innerhalb dreimal vierundzwanzig Stunden nach der Schlägerei erhoben sein; steht sie länger an, so entgehe man ihr mit vierundzwanzig Eiden; kommt es zu einen Totschlag, so soll man die Mutter und das Kind mit vollem Wergeld büßen und ein (einziges) Friedensgeld entrichten". See also: Wybren Jan BUMA (Hrsg.), *Die Brokmer Rechtshandschriften*. Den Haag: Martinus Nijhoff, 1949 (Oudfriese taal- en rechtsbronnen, 5), nr. 209, pp. 119-120.
- Manuscripts B1 and B2 are nearly identical; the text printed here is basically B2; the articles in B1 and B2 were numbered consecutively by the editors. The two Brokmer manuscripts are the only Old Frisian legal manuscripts that do not have separate sections on fines, criminal law, private law, synodal law etc. On the structure of the mss, cf. BUMA 1949, pp. 56*-65*, and BUMA-EBEL 1965, p. 12. The latter distinguish three groups of articles; the articles on abortion (B1-B2.214) are in the second group.
- 58 BUMA-EBEL 1967, pp. 184-187. "E3.I.193. Wenn eine Frau deswegen Klage erhebt, daß sie infolge einer Schlägerei ihre Leibesfrucht verloren hat, so ist für die beiden ersten Monate kein Wergeld zu zahlen, aber sie soll als Buße eine höchste Mark erhalten. E3.I.194. (Für) die nächsten zwei (Monate): je fünfzehn Schillinge. E3.I.195. (Für) den fünften und den sechsten Monat: je ein halbes Wergeld. E3.I.196. Und für die drei (letzten Monate): je ein volles Wergeld. E3.I.197. Und ihr [der Mutter] (gebührt) für jeden Monat eine höchste Mark als Buße. Und jeder (hat) mit dem Priester und mit zwei Frauen zu beweisen, wie es bei der Geburt gegangen ist. Und die Klage soll dreimal vierundzwanzig Stunden nach der Schlägerei erhoben sein." Fokkema 1959, p. 30.
- 59 Articles E3.I.176-192 are on sexual harassment and on injuring a woman's breasts or genitals. The long law on abortion is followed by a small article on robbing a woman of her golden jewelry, the article on the development of the fetus, which will be discussed below (§4), and

five articles on injuries to the male sexual organs, including an article on causing permanent infertility (E3.I.200), cf. §2.2. On the Emsingo injury tariffs, see also: Johann Gerhard SCHOMERUS, *Der Aufbau des Emsinger Bussregisters; eine traditions-geschichtliche Studie*. Grins: RUG, Frysk Ynstitút, 1964 (Estrikken, 36).

B1-B2.241 are preceded by a series of articles on injuries, and immediately preceded by an article on sexual harassment, which condemns yanking off a woman's bonnet and exposing her hair; the articles that follow are on causing permanent invalidity.

⁶⁰ On the 'St. Augustinus c.a.' group, see: note 82.

⁶¹ JOHNSTON 1998, p. 517. MS Assen 14 is also called 'Codex Sickinghe', see: Redmar ALMA, "Codex Sickinghe; het oudste Ommelander rechtshandschrift." *Us Wurk* 48 (1999), pp. 122-146.

⁶² The East Frisian version of this article in MS Hannover XXII 1424 (second half of the fifteenth century) is an almost literal translation of E3.I.193-197, but the fines and months have not yet been changed in this version: §50. *DAer eyn vrouwe klaget dat se so seer anghewachten sij dat se hoer vrucht verloren hebbe, so sijnt die twee eerste maent to ghenen gelde gheseth, mer se sal hebben toe boete een groet marck. De ander twe maende eyn itlick xv scillinge. De vijfte vnde die seste maent en itlick een halleff liuff. De ander dre en itlick een heel liuff. vnde hoer voer een itlicke maent een groet marck; vnde dat tho bewysen myt den prester vnde mit twen wituw, vnde de ankome sal gheschen wesen dree etmael na der kase* (Borchling 1908, p. 67). Note that the word *wif* has been replaced by the word *wita*, 'witness' (Borchling 1908, p. 67). The manuscript, Hannover, Niedersächsische Landesbibliothek, MS XXII 1424, was called 'B' by Borchling, cf. p. XVI and p. 249. Borchling omitted information on the date of this manuscript, which was kindly provided by the Niedersächsische Landesbibliothek in Hannover. This article is preceded by the Vindicianus text, which will be discussed below (§4.1).

⁶³ Although neither of the long laws in §3.2 mentions the female witnesses we encountered in §2.1 and §3.1, the testimony of witnesses is probably implied.

⁶⁴ The division of the pregnancy in §3.1 is slightly different (2-2-2-3). Note that the Hunsingo manuscripts even mention a tenth month of pregnancy (H2-H1.IX.19f).

⁶⁵ The word *fax* for 'hair' is an archaic Old Frisian word, as Han NIJDAM kindly pointed out to me. Use of this word may indicate that the 'hair and nails' criterion is older than the abortion laws discussed in this paper, and that it was part of orally transmitted law, which was later incorporated into written law - perhaps even at the request of women who noted that the Twenty-third Landlaw lacked this age-old criterion for abortion.

⁶⁶ BUMA-EBEL 1969, pp. 66-67 (H2-H1.IX.19a-f), who translate: "H2-H1.IX.19a. (Ist) die Schädigung der Leibesfrucht im ersten Monat (der Schwangerschaft) zugefügt, (so beträgt) das Wergeld zwölf Mark oder (man schwöre) zwölf Reinigungseide. H2-H1.IX.19b. (In) jedem der (ersten) drei Monate (beträgt) das Wergeld zwölf Mark (und erfordert) die Freischwörung zwölf Eide. H2-H1.IX.19c. Im vierten Monat (beträgt) die Totschlagsbuße insgesamt ein Drittel des Wergeldes oder man soll sich mit vierzig Eiden von der Anklage freischwören. H2-H1.IX.19d. Im fünften Monat, wenn es [*das Kind*] gestaltet ist (und) Nägel und Haare hat, beträgt es [*die Totschlagsbuße*] zweidrittel Wergeld. H2-H1.IX. 19e. Im sechsten und im siebenten Monat kann es ausgetragen werden, (dann hat man) das mit einem vollen Wergeld zu büßen. H2-H1.IX.19f. (Für) jeden der zehn Monate (sind) zwölf Mark Buße (an die Mutter) zu zahlen; wegen des mörderischen Angriffs, der auf den Mutterleib gemacht ist, (hat man) anderthalbmal so hoch zu büßen; wenn man leugnen will, (so hat man) wegen des mörderischen Angriffs einen Gang über neun (glühende) Pflugscharen zu gehen." See also: HOEKSTRA 1950, pp. 65-66 (H2.VII.142-149), pp. 149-150 (H1.XV.142-149).

⁶⁷ BUMA-EBEL 1972, pp. 134-137. "F.XII.2.[a] Die Beschädigung einer Leibesfrucht, im ersten Monat verübt, (erfordert) das Wergeld zu zwölf Mark oder zwölf Reinigungseide [2b] und für die drie folgenden Monate ebenfalls. [2c] (Wird sie) im vierten Monat verübt, (soll man) ein drittel Wergeld (entrichten) oder (man hat sich) mit vierzig Eiden freizuschwören. [2d] Im fünften Monat, wenn es lebend ist und Nägel und Haare hat, so soll man zweidrittel Wergeld entrichten. [2e] In den sechsten und siebenten Monaten kann es durchaus zum Entrichten eines vollen Wergeldes kommen; [2f] (und) wegen des Totschlages, der innerhalb der Gebärmutter verübt worden ist, ist die Buße anderthalbfach höher. Wenn man leugnen will, (hat man sich) mit neun Pflugeisen zu reinigen, wegen des Totschlages" (SJÖLIN 1970-1975, Bd.1, p. 331). See also: SJÖLIN 1970-1975, Bd.1, pp. 330.

- 68 This is the only article in which we find an Old Frisian term for 'miscarriage' or 'abortion'; in all the other articles it is simply called 'murder'.
- 69 Note that the translators were aware of the ambiguity of the word *lifheftich*; BUMA-EBEL opted for 'gestaltet' and Sjölin chose 'lebend'; cf. notes 66 and 67.
- 70 BUMA-EBEL translate *sa meit ful kuma* as 'kann es ausgetragen werden' (BUMA-EBEL 1972, p. 135). Sjölin omits this phrase in his translation: 'In den sechsten und siebenten Monaten kann es durchaus zum Entrichten eines vollen Wergeldes kommen'; on p. 59, however, Sjölin indicates that it must mean 'ausgewachsen werden'. Due to a printing error Von Richthofen interpreted this phrase as a reference to 'full wergeld' (VON RICHTHOFEN 1840b, p. 770), as VAN HELTEN, who translates 'volltragen werden', correctly observed (VAN HELTEN 1907, p. 148).
- 71 Eighth-century Bavarian law on abortion has *vivus* and *non vivus* in article 8.19, cf. Ernst VON SCHWIND (Hrsg.), *Lex Baiwariorum*. Hannover: Hahnsche Buchhandlung, 1926 (Monumenta Germaniae Historica, Legum sectio I, Legum Nationum Germanicarum, V.2), pp. 362-363. See also: Marianne ELSAKKERS, "Genre Hopping: Aristotelian criteria for abortion in Germania." In: K. E. OLSEN, A. HARBUS & T. HOFSTRA (eds.), *Germanic Texts and Latin Models; Medieval Reconstructions*. Leuven: Peeters, 2001 (Germania Latina IV), pp. 73-92, at p. 82.
- 72 JOHNSTON 1998, pp. 345-346. This article is part of the Humsterland Inheritance Law; on the manuscript, cf. JOHNSTON 1998, *passim*. Johnston translates: "On fines pertaining to unborn children. 9.a. If harm is done to the fetus in the first month of pregnancy, the wergeld (shall be) twelve marks or (one shall exonerate himself) by means of twelve oaths. 9.b. During each of the (initial) three months, the wergeld (shall be) twelve marks (or) the exoneraton of the accused (shall occur) by means of twelve oaths. 9.c. In the fourth month, the fine (shall amount to) a total of one-third of the (standard) wergeld or (the accused) must swear to his innocence and exonerate himself with forty oaths. 9.d. In the fifth month, if it (i.e. the fetus) has a body and it has nails and hair, the fine shall be two-thirds of the (standard) wergeld. 9.e. In the sixth month and in the seventh and in the eighth month, since it can live outside of the womb, he (i.e. the accused) shall compensate it with a full (standard) wergeld. 9.f. (Injury to the fetus occurring at any time during) each of these nine months must be compensated with twelve marks. Due to the fact that the murder was committed inside the womb, the perpetrator shall pay one third more (i.e. one and a half times the standard amount). If one (i.e. the accused) would contest the charge, he shall exculpate himself, that is prove his innocence, by means of (an ordeal involving) nine (red-hot) plowshares, in connection to the murder" (pp. 450-451). The translation of *so mach hijt vullencomen* as 'since it can live outside of the womb' overshoots the mark. Johnston argues that the Low Saxon scribe's choice of *so et lyff heft* to translate the word *lifheftich* proves that the Low Saxon scribe was misled by this ambiguous Old Frisian word (p. 202).
- 73 None of the long laws mention the fine due, if the mother dies as a result of the abortion.
- 74 Boyd H. HILL was the first to point out that Vindicianus's *Gynaecia* is the main source for the Old Frisian embryological texts, cf. Boyd H. HILL, "Frisian Law and the Foetus." *Janus* 50 (1961-1963), pp. 55-59. Hill also indicated that the Vindicianus text in E3.I.199 "elucidates a law standing directly before it on the preceding page" (E3.I.193-197), and that "the Frisians appear to have been using current medical science to determine the amount of wergild to be paid" (p. 57). Unfortunately, HILL interpreted H1-H2.IX.18 (*bobbaburg* article) and H1-H2.IX.19a-19.f (revised long law on abortion) as one large article on injuries to a minor child (translating *en ungerich kind andere bobbaburg* as 'a minor child in his father's house'). According to Hill this article was "curiously mixed with" the Vindicianus text, because of the embryological information it includes; the author added F.XII.1-2 as extra evidence of 'borrowing' from the Vindicianus text. See also: note 78.
- 75 The list of core elements in appendix 2 is based on the available editions of chapter 20 of Vindicianus's *Gynaecia*, cf. Ferdinand Paul EGERT, *Gynäkologische Fragmente aus dem frühen Mittelalter; nach einer Petersburger Handschrift aus dem VIII.-IX. Jahrhundert zum ersten Mal gedruckt*. Berlin: Emil Ebering, 1936 (rpr. Nendeln / Liechtenstein: Kraus reprint, 1977) (Abhandlungen zur Geschichte der Medizin und der Naturwissenschaften, 11), Fragment V, p. 49; Josef SCHIPPER, *Ein neuer Text der Gynaecia des Vindician aus einer Münchener Handschrift des 12. Jahrhunderts (Cod. lat. 4622, Blatt 40-45)*. Erlangen: JUNGE & SOHN, 1921, p. 18; Theodorus PRISCIANUS, *Theodori Prisciani Euporiston Libri III cum physicorum fragmento et additamentis pseudo-Theodoreis*. (Hrsg.) Valentin ROSE, Leipzig:

Teubner, 1894, pp. 452-455, 465; Max WELLMANN (Hrsg.), *Die Fragmente der Sikelischen Ärzte Akron, Philistion und des Diokles von Karystos*. Berlin: Weidmannsche Buchhandlung, 1901 (Fragmentsammlung der Griechischen Ärzte, 1), pp. 218-219; Louise CILLIERS, "Vindicianus's *Gynaecia*, Codex Monacensis Clm 4622 f. 40r-45r: Text, Translation and Commentary." *Journal of Medieval Latin*, forthcoming.

76 BUMA-EBEL 1967, pp. 48-51; "E1.V.19. Augustinus sagt und erklärt, daß das Kind neun Monate in der Mutter gebildet wird. Im ersten Monat sammelt sich das Blut an nach der Empfängnis; im zweiten Monat gewinnt der Körper Gestalt; im dritten Monat werden die Sehnen und die Adern befestigt und wird die Leibesfrucht weiter ausgestaltet; im vierten Monat wird das Kind (in seiner Wesensart) geformt; im fünften Monat empfängt es die Seele und richtet den Körper auf und bekommt den Atem; im sechsten Monat wachsen das Mark und die Haut; im siebenten Monat bekommt es die Därme; im achten Monat wachsen das Haar und die Nägel; im neunten Monat werden sie [*Mutter und Kind*] getrennt und wird das Kind geboren." See also: SIPMA 1943, pp. 73-74.

77 BUMA-EBEL 1967, pp. 186-187; "E3.I.199. Augustinus sagt und erklärt, daß das Kind neun Monate im Leibe seiner Mutter liegt. Im ersten Monat sammelt sich das Blut an nach der Empfängnis. Im zweiten Monat wird der Körper gebildet. Im dritten Monat werden die Sehnen und die Adern befestigt. Im vierten (Monat) wird das Kind (in seiner Wesensart) geformt. Im fünften (Monat) empfängt es die Seele und richtet den Körper auf und erhält den Atem. Im sechsten (Monat) wachsen das Mark und die Haut. Im siebenten (Monat) bekommt es die Därme. Im achten (Monat) wachsen das Haar und die Nägel. Im neunten Monat wird das Kind geboren." See also: FOKKEMA 1959, pp. 30-31.

78 Cf. SJÖLIN 1970-1975, Bd.1, pp. 330-331 and p. 400, note 142, who correctly notes that this line is out of place here. In the past the *bobbaburg* article has been regarded as an article on abortion. For a reinterpretation of the *bobbaburg* articles, cf. Marianne ELSAKKERS, "En kind andere *bobbaburg*, a reconsideration of the word *bobbaburg*." *Us Wurk* 52 (2003), pp. 105-119.

79 BUMA-EBEL 1972, pp. 134-135; SJÖLIN 1970-1975, Bd.1, pp. 330-331.

80 Cf. SJÖLIN 1970-1975, Bd.1, pp. 67-71: "die Texte sind aus mehreren anderen Handschriften verschiedenen Alters und verschiedener Herkunft zusammengestellt worden. Die Kompilation zeichnet sich im großen und ganzen durch planmäßige Anordnung und einsichtsvolle Redaktion des Stoffes aus (p. 67) ... Daß unsere Hs. ohnehin nicht mit dem Archetypus identisch sein kann, zeigen die vielen typischen Kopistenfehler ..." (p. 68).

81 SYTSEMA and JOHNSTON date the translation into Low Saxon to the second quarter of the fifteenth century, possibly earlier (JOHNSTON 1998, pp. 262-264 and SYTSEMA 1998, p. 361). The 'Ommelanden' is the area west of the river Ems surrounding the city of Groningen; East Frisia is situated east of the river Ems (SYTSEMA 1998, p. 7, JOHNSTON 1998, pp. 35-36). Sytsema estimates that there must be more than two hundred extant Low Saxon Ommeland manuscripts (SYTSEMA 1998, p. 3). Sytsema found at least twenty versions of 'St. Augustinus c.a.' in her corpus of Low Saxon Ommeland manuscripts (SYTSEMA 1998, pp. 24-43).

82 On the standard and expanded versions of the complete 'St. Augustinus c.a.' texts, cf. JOHNSTON 1998, pp. 507-517 and pp. 251 ff., especially pp. 259 ff. The cluster was named 'St. Augustinus, cum annexis' or 'St. Augustinus, c.a.' after the opening line of the Old Frisian and Low Saxon Vindicianus texts. Johnston's dissertation contains an edition of the 'Augustinus' texts in MS Assen 14 (JOHNSTON 1998, pp. 517-522).

83 Cf. BORCHLING 1908, p. LI: "§49. 50 Zwei Berechnungen der Lebensdauer des Embryos = E III 44. 43; sie gehören stofflich zu den Busstaxen und kommen auch sonst einzeln vor, vgl. F p. 100." Borchling is referring to the Vindicianus text (§49) and the long law on abortion (§50).

84 JOHNSTON 1998, p. 71 dates MS Assen 14 to the second quarter of the fifteenth century and SYTSEMA 1998, p. 24 dates it to the third quarter of the same century.

85 See §3.1.

86 The 'nails' seem to be missing in the eighth month of MS Assen 14. Tom Johnston (personal communication, July 2003) informed me that other Low Saxon Ommeland manuscripts do include both 'hair and nails', so that this omission may simply be attributed to a scribal error. He supplied me with quotes from three Low Saxon Ommeland manuscripts: (a) *In der achter maant soo wasset dat hair unde nagelen* (Leeuwarden, Provinsjale Biblioteek, Hs. 292, c. 1767; the manuscript is a copy of PEIP 22, 1546); (b) (...) *soe veer niet komen zij dattet*

- hebben haer vnde nagelen (...) (Leeuwarden, Provinsjale Biblioteek, Hs. 291, 16th century); (c) (...) dat de boert hebbe haer ende nagels (...) (Leeuwarden, Provinsjale Biblioteek, Hs. 1193, 1531). On the manuscripts, cf. SYTSEMA 1998, pp. 38-40. This omission in Assen 14 shows us that this manuscript could not have been the archetype of the Low Saxon translation.
- 87 JOHNSTON 1998, pp. 517-518.
- 88 BORCHLING 1908, p. 67. This version includes both 'hair and nails', albeit that 'hair' was transformed into *herte*, 'heart' by mistake.
- 89 The phrase *and werth thiū berd betein* refers to the fact that spontaneous abortions usually occur in the first three months and that the mother can safely assume that her child may be brought to term after the first trimester, when the implantation of the fetus is complete. *Betein* < Ofr. *bitiā*, which here means 'fix, determine'.
- 90 It is not in the Vindicianus embryology included in the so-called Trotula Ensemble or in the version in Vincent of Beauvais's encyclopedia either. Cf. Monica H. GREEN, *The Trotula: a Medical Compendium of Woman's Medicine*. Philadelphia: University of Pennsylvania Press, 2001, pp. 106-107 and VINCENTIUS BELLOVACENSIS, *Speculum Naturale*. Graz: Akademische Druck- und Verlagsanstalt, 1964 (rpr. of Duaci: Baltazar BELLERUS, 1624), pp. 2324 ff. (Liber 31.43 ff.). See also: note 109.
- 91 We find the same variation in the Latin, cf. appendix 2.
- 92 The Old Frisian Vindicianus text deviates from the Latin in month three (cf. appendix 2); the Latin text usually assigns formation to the third month. The Old Frisian text describes implantation by explaining that the sinews and veins are 'fastened' in this month; the gloss discussed above adds an extra explanation.
- 93 The Low Saxon version of the revised long law in Codex Hummercensis uses the same words (cf. §3.2).
- 94 We also find the verb *bilethia* in the introduction of E1.V.19: *andere modere bilethad werthe*, 'becomes formed in the mother'. The parallel passage in E3.I.199 uses the verb *lidza*, 'to lie' (*inna sinre moder liue lidze*, 'lies in its mother's body'), and the Low Saxon versions in MS Assen 14 and Hannover MS XXII 1424 have *in sinre moder liue weerde*, 'develops in its mother's body' and *licht negen maente in sins moders licham*, 'lies in its mother's body', respectively.
- 95 Seventh-century Alamannic law uses sex differentiation as the criterion to distinguish between early term and late term abortion, and as a synonym of 'formation', cf. Karl LEHMANN & Karl August ECKHARDT (Hrsg.), *Leges Alamannorum*. Hannover: Hahnsche Buchhandlung, 1966 (Monumenta Germaniae Historica, Legum sectio I, Legum Nationum Germanicarum, V.1), pp. 150-151; cf. also ELSAKKERS 2001, pp. 81-82.
- 96 The entry for 'geest' in the Middle Dutch dictionary gives a derivation from Latin *animus* and another from Latin *anima*, see: Eelco VERWIJS & Jacob VERDAM, *Middelnederlandsch Woordenboek op cd-rom*. Den Haag: SDU, 1998. Cf. the expression 'to give up the ghost', Dutch 'de geest geven' for 'dying'.
- Which word, *adem* or *geest* was in the original Low Saxon translation, can only be determined by comparing a significant sample of Low Saxon Vindicianus texts.
- Note that the Latin has *anima*, 'breath of life, vital principal', not *animus*, '(rational) soul'. The ambiguity of these words may have been one of the reasons for adding 'ensoulment' to the Vindicianus embryology. The English word 'animation' reflects the same ambiguity; it is sometimes used in the meaning 'ensoulment' and sometimes in the meaning 'vivification' ('aliveness', 'breathing').
- 97 The Old Frisian translation of *motum facit* and the medieval encyclopedias probably consulted by the Old Frisian author will be discussed in ELSAKKERS, forthcoming.
- 98 Cf. appendix 2.
- 99 This line is not in the Latin *Gynaecia* text, cf. §4.4 and appendix 2.
- 100 *Si ergo illud informe puerperium iam quidem fuerat, sed adhuc quodam modo informer animatum ... ideo lex noluit ad homicidium pertinere, quia nondum dici potest anima uiua in eo corpore quod sensu caret, si talis est in carne nondum formata, et ideo nondum sensibus praedita*, cf. *Quaestionum in Heptateuchum libri vii*, lib. II, *Quaestiones Exodi*, quaestio 80, in: Augustinus HIPPONENSIS, *Quaestionum in Heptateuchum libri vii*, ed. J. FRAIPONT. Turnhout: Brepols, 1958 (*Aurelii Augustini Opera* V, CCL 33), p. 111.
- G.R. Dunstan gives the following translation: "If what is brought forth is unformed, but at this stage some sort of living, shapeless thing, ... then the law of homicide would not apply, for it could not be said that there was a living soul in that body, for it lacks all sense, if it be such as

is not yet formed and therefore not yet endowed with its senses", cf. G.R. DUNSTAN, "The Human Embryo in the Western Moral Tradition." In: G.R. DUNSTAN and Mary J. SELLER (eds.), *The Status of the Human Embryo: Perspectives from Moral Tradition*. London: King Edward's Hospital Fund, 1988, pp. 39–57, at p. 45.

101 On the Aristotelian criterion for abortion, 'formed-unformed', cf. ELSAKKERS 2001, *passim*. This concept found its way into Christian thought through the Septuagint version of Exodus 21:22-23. It became widely accepted through the writings of Augustine and was eventually absorbed by practical Christianity.

102 The Old Frisian embryology is usually found near the long law on abortion (§3.1); the Low Saxon versions in MS Assen 14 and Hannover MS XXII 1424 are also accompanied by the long law on abortion. E1.V.19, the oldest Old Frisian Vindicianus text, is in a section of miscellaneous articles.

103 The oldest manuscript with a version of the long law on abortion, the Brokmer manuscript B1 (c. 1285) does not contain a version of the Vindicianus text.

104 The hesitation of the Fivelgo scribe, who copied a version of the revised long law on abortion, but only included one line of the Vindicianus text, is therefore understandable (cf. §3.2).

Cf. note 81.

106 On the Fivelgo manuscript, see also: §4.1.

107 SIPMA 1943, pp. 19-25, pp. 44-47.

108 After an extensive investigation of manuscript E1, its editor, Pieter SIPMA, concluded that E1 was probably copied from more than one exemplar, at least one of which must have been defective, cf. SIPMA 1943, pp. 15-20 at p. 20, pp. 44-47 at p. 44. An incomplete 'Vorlage' may also explain why there is no version of the long law on abortion in E1.

109 There is more evidence in the Old Frisian embryology that the encyclopedias written by Vincentius of BEAUVAIS and Bartholmaeus ANGLICUS (c. 1190-1250) were known and available in medieval Frisia; this will be discussed in Elsackers, *forthcoming*. See also: note 90.

110 In an article that proposes to show how well known Augustine was in medieval Frisia G. Bary mentions the three attestations of *Augustinus seith ande queth* in Old Frisian law. Unfortunately, the deductions and interpretations presented in this article are unreliable, cf. E.H. (Guus) BARY, "Augustinus en het ongeboren kind in het Oudfries," in: Gian ACKERMANS & Peter NISSEN (red.). *Kleine geschiedenissen: een bundel essays aangeboden Adelbert Davids*. Nijmegen: Katholieke Universiteit Nijmegen, Vakgroep Literair-Historische Theologie, 1995, pp. 46-52.

111 Augustine explicitly refers to his friend and contemporary the physician Vindicianus in his *Confessiones* (4.3.5; 7.6.8), a work that was widely read in the Middle Ages. Cf. Aurelius AUGUSTINUS, *Confessions of Saint Augustine*. transl. R.S. PINE-COFFIN. Harmondsworth: Penguin Books, 1961, pp. 73-74, p. 140.

112 Vincent of Beauvais's *Speculum Naturale* contains a remarkable reference, which may perhaps be added to the list of evidence that Vincent of Beauvais's encyclopedia was the source used by the Old Frisian author. In the *Speculum Naturale* Vindicianus's embryology (here attributed to Hippocrates) is immediately followed by an embryological text that is traditionally ascribed to Augustine (cf. *De Diversis Quaestionibus 83 Liber Unus, Quaestio 56*, in: Augustinus HIPONENSIS, *Opera Omnia*. Vol. 6. Ed. J.-P. Migne. Paris: Garnier, 1887 (Patrologia Latina, 40), p. 39, or the CD-Rom version: J.-P. MIGNE, *The Patrologia Latina Database*. Cambridge: Chadwyck-Healey Inc., 1993-..., vol. 40, p. 0039). The reference to Augustine in the *Speculum Naturale* (which heads Augustine's embryology and follows the Vindicianus embryology!) is not to 'Quaestio 56', but to "August. in lib. 80. quast.3". The reference to 'liber 80' may have reminded the Old Frisian author of 'quaestio 80', the text in which Augustine discusses abortion (cf. note 100). See also: notes 90 and 109.

113 The Lex Frisionum (c. 800) is probably much older; it does not contain any abortion law. There is, however, a provision on infanticide, which exempts a woman who kills her newborn baby from punishment, cf. Johannes MERKEL, Friedrich BLUHME, Karl VON RICHTHOFEN (Hrsg.), *Leges Alamannorum, Leges Baiuvariorum, Leges Burgundionum, Lex Frisionum*. Hannover: Hahn, 1863 (rpr. Stuttgart: Hiersemann, 1993) (Monumenta Germaniae Historica, Leges 3), pp. 631-711 at p. 663.

114 Cf. DUNSTAN 1988, p. 41.

115 Cf. John M. RIDDLE, *Eve's Herbs: a History of Contraception and Abortion in the West*. Cambridge, MA: Harvard University Press, 1997, p. 79.

- ¹¹⁶ Like the 'hair and nails' criterion, appointing women as witnesses in abortion cases may also be an archaic element in Old Frisian law that was reintroduced through the supplements to the landlaws, because the evidence of these female witnesses was linked to the archaic Frisian abortion criterion (cf. §2.1).
- ¹¹⁷ The oldest version of the long law on abortion demands half the wergeld in the fifth and sixth months; the younger Low Saxon translation (MS Assen 14) awards the full wergeld as of the sixth month. See: §3.1 and §4.2.
- ¹¹⁸ Cf. VAN BUIJTENEN 1953, pp. 168, 180; GERBENZON 1981, p.55: "11e (deels 9e) eeuw?"; SJÖLIN 1970-1975, Bd.1, p. 9, and BARY-MEIJERING 1972, p. 13.
- ¹¹⁹ Cf. Wybren Jan BUMA, Pieter GERBENZON & Martina TRAGTER-SCHUBERT (Hrsg.), *Codex Aysma; die altfriesische Texte*. Assen: Van Gorcum, 1993 (Fryske Akademy, 742), pp. 402, 406; they translate: "576. (...) Item. Wenn jemand einen anderen vergiftet, um ihn zu töten, oder mit anderen bösen Absichten. Item. Wenn jemand vorsätzlich eine tote Leibesfrucht zur Welt bringt oder dazu [zur Abtreibung] anstiftet oder diese vornimmt. (...)" (pp. 403, 407); 577 is practically the same as 576.
- ¹²⁰ See: Rolf H. BREMMER Jr., *Het culturele schrijfflandschap in Friesland in de 'lange' dertiende eeuw*. S.n.: s.l., 2003 (Oratie, Rijksuniversiteit Leiden 2002).
- ¹²¹ Lennart NILSSON, *Het grote wonder; de negen maanden voor de geboorte beschreven in foto's - praktische raadgevingen voor de aanstaande moeder*. 6e druk. Amsterdam: Uitgeverij Ploegsma, 1975 (translation from the Swedish edition *Ett barn blir till*. Stockholm: Bonnier, 1965); an English translation was published under the title *A child is born*. On the development of the fetus, see also: <http://www.standupgirl.com/inside/tour/body.html> or <http://health.yahoo.com/health/centers/pregnancy/222.html>.
- ¹²² See: note 75.