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BEOWULF, BYRHTNOTH, AND THE JUDGMENT OF GOD: TRIAL BY COMBAT IN ANGLO-SAXON ENGLAND

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WHEN Beowulf is finally admitted into the presence of Hrothgar, the king of the Danes, he announces his intention of ridding Denmark of the terror of Grendel. He states he means to settle the affair singlehanded ("wið Grendel sceal/wið þām aglācan āna gehegan/ðing wið þyrse" [lines 424-426]) and asks permission to do so. He says he will fight with his bare hands inasmuch as Grendel does not care about weapons;¹ and in the coming struggle, he will rely on the judgment of God as to whom death carries off ("ðær gelyfan sceal/Dryhtnes dōme sē þe hine dēað nimeð" [lines 440-441]).²

In his reply, Hrothgar accepts Beowulf's offer and speaks kindly of the young man. He laments over the disgrace which Grendel has brought to Danish pride. "God ēaþe mæg/þone dolsceaðan dæda getwæfan" (God can easily separate that evil-doer from his deeds [lines 478-479]). They all sit down, and the Unferth episode follows. Thereupon, they feast together, and Wealhtheow, Hrothgar's queen,

¹ Actually later (lines 801-805), we are told that no sword could harm Grendel, for he had cast a spell on all blades. This cannot be Beowulf's reason at this point.

² There is a problem of translation here. Literally the clause means: "he whom death carries off must trust (or believe) there in the judgment of God." On the surface, this sentence might mean that the matter must be left to the next world where God's judgment will be manifest. However, the opening adverb *ðær* clearly refers to the judgment of God in that place, the place of battle, and not in the future. It is not an anticipatory "there." Even more telling, however, is the impossibility of this general meaning fitting the context. Beowulf has just said that he will not use shield and sword against Grendel who scorns such weapons, but rather he will "ymb feorh sacan, / lað wið lāþam" (lines 439-440). The only point of this renunciation is to set things even and to appeal to God's judgment in the matter. Admittedly *gelyfan* with the noun subject clause is somewhat ambiguous, but I cannot see in context how the sentence can be merely a pious wish that God will settle the matter in the next world. The problem is to be settled by battle *in this world*. Beowulf wishes to leave the judgment to God and deliberately evens the conditions of battle. The man who dies will believe (or trust) in the judgment of God because God has seen to it that he, the guilty one, has been defeated. Professor Else von Schaubert in the glossary to her edition of Heyne-Schückings *Beowulf* paraphrases these lines (III, p. 143) as follows: "Bēowulf will den Ausgang des Kampfes zwischen sich und Grendel als Gottesurteil gelten lassen, indem er sich als Kämpfer für Hrōðgār stellt." Without my axe to grind, she takes them exactly as I do. The reference to the Last Judgement in lines 977-979 is irrelevant to the meaning of lines 440-441.

makes her appearance. Beowulf receives a cup from her hands. The Danes leave the hall. The word goes around that God has set a guardian of the hall against Grendel. "Hūru Geata lēod georne truwode/mōdgan mægnes Metodes hyldo" (Indeed the man of the Geats [Beowulf] keenly trusted in his [God's?] valiant might, in the grace of the Lord [lines 669–670]).³ As Beowulf lies down, the poet foreshadows the conclusion of the fight by telling us that "God gave them, the Geats, the fortune (*gewiofu*, line 697) of victory, help and support so that they all overcame by the power of one man, by the might of himself [God?], their enemy.⁴ It is well known that mighty God rules mankind in every contingency (lines 696–702)."

After the fight is over and Hrothgar appears on the scene to see the arm of Grendel under the gables of Heorot, he gives thanks to God: "Nū scealc hafað/purh Drihtnes miht dæd gefremede" (Now through the power of the Lord, a warrior has performed a deed [lines 939–940]). Beowulf in his reply says, *inter alia*, that God prevented him from holding Grendel from escaping, but the criminal will be judged by God ("Metod," line 979) at the Great Judgment. Later at the banquet, Hrothgar attributes the victory to the wisdom of God and the courage of Beowulf. God, the poet says, rules over everything, then as now (lines 1056–58).

The whole episode is presented strongly in terms of God's power. Fundamentally it is His victory, although He acts through his chosen instrument, Beowulf. More than the Christian commonplace of God's omnipotence seems, however, to be implied in the description of the action. A much more technical notion, that of the *judicium Dei*, the judgment of God, as it was known, appears to lie behind the episode. This term is used by those who participated in or discussed trial by combat to refer to an organized attempt to call upon God to decide the justice of a claim or an action, and very often in the early Middle Ages to decide the truth of an accusation of treason. The language of the description and above all the barehanded approach of Beowulf so that equality will reign between the combatants argue for such an interpretation. Even the phrase *judicium Dei* (*Dryhtnes dom*) is used, and the power of God is continually stressed.

Neither the battle with Grendel's mother nor with the dragon is put so unequivocally in terms of God's power and judgment. In these two cases, Beowulf is directly concerned. His men have been killed, and he is carrying out the sacred duty of revenge. In the first combat, however, he is coming from the outside and justice may not be on his side. His legal and possibly moral position may not be firm; he needs above all to appeal to God.

Does this episode in fact testify in at least spirit to a judicial duel? I think we can make a strong case for it. The term *judicium Dei*, the attempt to equalize the conditions of combat, the numerous references before and after the battle to God's power, all argue strongly for such an interpretation. The notion of God's direct intervention in human affairs was widespread in the early Middle Ages,

³ *mōdgan mægnes* probably refers to God and is parallel in sense as well as form to *Metodes hyldo*.

⁴ *selfe* may refer back either to Beowulf or less likely to the subject of the sentence, God. In any case, the sentence clearly makes God the decisive power even though operating through Beowulf.

much more than modern men realize. But this conception alone will not account for the method used in describing Beowulf's first fight. Moreover, as we have already noted, this combat differs from the description of the other two by its numerous references to God. It is not, it should be noted, strictly speaking a judicial duel because Grendel does not actively participate in the preparations for the fight. But we can explain Beowulf's actions only on the assumption of the circumstances of a judicial duel in his mind as conceived by the *Beowulf* author. The actions of the hero and the remarks of the poet become meaningful in terms of such a legal means of decision.

Let us look at the *Battle of Maldon* where we receive a similar impression. Byrhtnoth invites the Danes to cross the ford "for his ofermodē" (line 89) so that the way is opened up for battle. "God āna wat/hwa þære wælstowe wealdan mote" (lines 94-95). God alone knows who will control the place of battle, that is, who will win. Byrhtnoth is inviting the enemy to an even contest in order to leave the judgment to God.

The phrase which has caused most trouble here is *ofermōd* which may have either a neutral or a pejorative sense. Blake⁵ takes this word to mean something like "because of an excess of heroic feeling" or "because of courage." It is true that *ofermōd* may translate the Latin *superbia*, but it need not always mean "pride." It is possible that the word retains the ambiguity of its elements and of its German cognate *Übermut* — "high spirits" or "pride" — and that here it has something nearer the former meaning. Its base *mōd* has this ambiguity, in OE, meaning *spirit, mood, courage* as well as *pride*, and the preposition *ofer* need not turn it completely into a pejorative. Byrhtnoth's action may be an example of "ofer" "mōd" because the result is disastrous or because it is excessively lively, not because of the motive of its utterance. Blake proceeds to say that it hardly seems likely that a "proud" man would appeal to God to decide the outcome of a battle. "Byrhtnoth's action may have been foolish in military terms, but he did not do it because he necessarily thought he was going to win; he did not suffer from over-confidence."⁶ To leave one's fate in the hands of God does not seem the normal conduct of the proud man.

On the other hand, the poet himself does seem to criticize Byrhtnoth, for he says that Byrhtnoth gave up *landes tō fela*, "too much land." This criticism does not necessarily imply that *ofermōd* means "pride." It may simply be a comment on Byrhtnoth's strategy. As we shall see, putting the case into God's hands does not necessarily imply in the early Middle Ages piety and religious faith, but might rather be regarded as a tempting of God — a forcing of Him to render judgment when He is not ready to do so. Let us leave this ambiguity for later discussion.

Very recently, Cecily Clark has attacked Blake for his Christian interpretation of *Maldon*.⁷ Her method of approach is to show how much less Christian Byrht-

⁵ "The Battle of Maldon," *Neophilologus*, XLIV (1965), 338 ff.

⁶ *Ibid.*, p. 338.

⁷ "Byrhtnoth and Roland: A Contrast," *Neophilologus*, LI (1967), 288-293. See also the recent important article by George Clark, "The *Battle of Maldon*: A Heroic Poem," *SPECULUM*, XLIII (1968),

noth is as compared to Roland, although she admits that the fervor of the Crusades had not yet arisen when *Maldon* was written. She also finds a selfishness in the final prayer of Byrhtnoth in lines 172–81, which would be very un-martyr-like. What is at stake, she argues, was not faith but land, gold, and martial honor. “The contrast with *Roland* makes it clear, however, that what the *Maldon* poet was choosing to stress was not Byrhtnoth’s Christianity nor his own.” It is, Miss Clark admits, rather surprising that such a religious man in real life should not be religiously treated in *Maldon*. But such it is.

I am not denying ambiguities in the poet’s attitude toward Byrhtnoth, as I have already pointed out, but I am not convinced by Miss Clark’s arguments. The *Maldon* poet is well aware of the religious dimension of his hero’s life. To treat him as a religious martyr may not have been his only purpose, but it is certainly there. Many saints were selfish. Byrhtnoth’s dying speech demands entrance into heaven such as only a martyr could ask for. The poem, it is quite clear, is not a passion tale, but it does emphasize the hero’s faith as well as his prowess. There is no reason why Byrhtnoth should be as religious a figure as Roland, but this does not make him a pure pagan. It is not very convincing to argue that *Maldon* is not basically Christian because *Roland* is more so. Byrhtnoth does call upon God to support him; and although he may be tempting Him, he is not thereby a pagan fighter. There were Christian fighters and even Christian soldiers too.

These examples of at least the spirit of the *judicium Dei* if not its actual ritual in *Beowulf* and *Maldon* raise extremely interesting questions of social and legal history as well as of literary interpretation. It is therefore necessary to turn to the history of trial by battle before we can discuss these questions and the significance of these actions in their literary contexts.

Trial by combat is a variety of the general legal proceeding of ordeal which seems to have been confined to the Germanic peoples. Ordeal is a formal test or a test employed under some fixed conditions to determine the will of God, the gods, the dead or fate, in a matter of some importance, often involving innocence or guilt, for human beings. It is most usually associated with determining the guilt of a person or truth of a claim in order that justice be done, but not always or necessarily. The guilt ordeals are the most dramatic but not the only ones. We may divide ordeals into three types according to their aims: (1) neutral, as when arrows are shot to determine which road to take (Ezekiel xxi 21), as when priests are chosen by lot in Rome, as when the choice of animals to be sacrificed in the Temple is determined (Mishna Tamid 4.3–5.1), as when settlers want to know where to build their camp (e.g., Icelanders in the *Eyrbyggiasaga*), or as to who is to rule (e.g., Livy 28, 21ff); (2) truth of a property or ownership claim;⁸ (3) guilt

52–71, which supports a neutral interpretation of *ofermōd* and *landes tō fela*. Clark, however, minimizes or does not see the religious dimension of Byrhtnoth.

⁸ E.g., the dispute between the monks of Abingdon and the officials of Oxfordshire in the reign of King Edmund as to the proprietorship of certain meadows on the north bank of the Thames. It was settled by the peregrinations of a shield bearing a sheaf of wheat and a lighted taper, blessed by monks, in the Thames and its tributaries. This incident is reported in the Chronicle of Abington, R.S.I., p.

or innocence when a charge is preferred against someone. This last may be subdivided into *unilateral* ordeals when fire, water swallowing, lots, etc. are used on a suspected violator and *multilateral*, when battle decides the issue.

Inasmuch as the notion behind ordeals is extremely widespread and is related to the basic piety of the religious attitude, it is very important that some kind of formal element be insisted upon as a defining criterion. Otherwise any submission to the will of God may be taken as an ordeal. The ordeal must have an element of organization, even if minimal, in it; it is not the same as a miracle but it is a called-for miracle. It institutionalizes in some way the miracle. Because it attempts to control the uncontrollable, to systematize the gratuitous, the notion itself as we shall see is highly ambiguous and was opposed almost as much as it was favored by theologians and thinkers even before considerations of common-sense predominated in judicial matters.

The ordeal is found all over the world, in various forms and manifestations. Trial by combat, however, seems to be peculiarly Germanic, yet not Anglo-Saxon. The evidence for early trial by combat is all Continental. The sagas provide later evidence for the *hólmganga* in Norway and Iceland before the eleventh century when it was abolished. This form of judicial combat, originally on an island, has been called an ordeal by some scholars and has been denied that appellation by others.⁹ Its early banning is a surprise, for in the extirpation of paganism, Scandinavia has not been noted for its zealotry. Yet apparently it was frequently used as a kind of legal robbery. In western Europe and Norman England, a court decided the fate of the defeated. In Iceland, the antagonists determined the penalty in advance. Curiously enough, at about the time that trial by combat came with the Normans into England (for we have only evidence of other forms of the ordeal before 1066 in England), it was banned in the North. In any case, there seems to be enough of a ceremony connected with *hólmganga* to bring it under my rather broad definition. It is not clear, however, that the gods are being called upon. Jones indicates that it had its own regulations, including some restrictions on weapons, although apparently the weapons of the two opponents need not be exactly the same.¹⁰ The available evidence from the sagas indicates a great variability in the forms of this special combat.¹¹

89 (see H. Munro Chadwick, *The Origin of the English Nation*, Cambridge Archaeological and Ethnological Series [Cambridge, Eng., 1907], p. 278).

⁹ See Gwyn Jones, "Some Characteristics of the Icelandic '*Hólmganga*,'" *JEGP*, xxxii (1933), 203-224 and Marlene Ciklamini, "The Old Icelandic Duel," *Scandinavian Studies*, xxxv (1963), 175-194. Jones, p. 204 and Ciklamini, pp. 181 and 187 tend to differ or to be uncertain on this point. See also Jan de Vries, *Altgermanische Religionsgeschichte* (Berlin, 1956), I, 430 where he refers to the *Bjarnarsaga* 4, *Kormakssaga* 10 and *Njalssaga* 102; and the article "Gudsdom" in *Kulturhistorisk leksikon for nordisk middelalder* by Stig Iuul. I am indebted to Professor Lars C. Lönnroth for the references in the preceding sentence. Other types of ordeal are found in Old Norse literature (e.g., *Guthrúnarkviða* 111, 2). Single combats and combats by champions are of course frequently found in Northern literature. Notable is the battle of Offa at the river Eider against two Saxon champions related in Saxo Grammaticus IV wherein other such combats are also reported. These are, however, not trials by combat.

¹⁰ *Op. cit.*, pp. 207 ff.

¹¹ In some mediaeval non-Icelandic romances, *hólmganga* episodes are found. Such for instance is

The Continental evidence is usually unambiguous and begins with Tacitus, who in his *Germania X* refers to the Germanic use of single combat for divinatory purposes. This reference, although not absolutely clear-cut, does provide some evidence for trial by combat among pagan Germanic tribes. Cassiodorus in two letters written in the name of Theodoric (*Variar.* III 23 and 24)¹² urged the Germanic tribes to abandon the judicial duel. Early Germanic law offers further evidence. Although the oldest and only purely pagan collection, Salic Law, does not refer to trial by combat but to ordeal,¹³ the Burgundian code of King Gondebald (501)¹⁴ the Riparian,¹⁵ Bavarian,¹⁶ and Alemannic¹⁷ law codes do provide for such a manner of deciding guilt or truth. They all appeal to the judgment of God. God must decide when no other method is available. The later codes such as the Frisian,¹⁸ Saxon, and Thuringian also offer evidence for such a practice. The Ostrogothic and Visigothic laws do not, but the Lombard code especially supports the multilateral ordeal in cases of suspected adultery.¹⁹ The Anglo-Saxon

Morolt's battle with Tristan on an island in Gottfried's *Tristan* and the battles on islands with giants in *Torrent of Portynagle* (ed., E. Adam, EETS, es. 51 [1887]), lines 1250 ff. and *Guy of Warwick* (ed., J. Zupitza, EETS, es. 25, 26, 49, 59 [1875-91]), lines 9940 ff. For these last two references I am indebted to my colleague Professor Charles Dunn. For some trials by combat in Middle English romances, see Ojars Krätins, "Treason in Middle English Metrical Romances," *PQ*, XLV (1966), 678 ff.

¹² *PL* 69: 588.

¹³ Apparently Novella 93, a later addition to the Salic laws, does do so. Boiling water is the only unilateral ordeal allowed in Salic law as such. Most scholars do not accept the theory that the Salic laws are a ninth-century forgery. For the ordeal and trial by combat (as well as oaths) in Frankish Law, see J. Declareuil, "Les preuves judiciaires dans le droit franc, du V^e au VIII^e siècle," *Nouvelle revue historique de droit français et étranger*, xxii (1898), 220-268; 457-488; 747-762; xxiii (1899), 79-109; 188-212; 313-354.

¹⁴ In his edict of 501, *Lex Burg.* tit. VIII §2 (in *MGH. Leges* in 4^o I, tome II, part 1, p. 49).

¹⁵ Tit. XXXII.

¹⁶ "Si autem usus fuerit testis, et ille alter negaverit, tunc Dei accipiant iudicium et exeant in campos et cui Deus dederit victoriam illi credite," *Lex Bajuvariorum*, primus tit. II §1 (Pertz, *MGH*, in fol *Leges* III); and "duo campiones pugnent et sortiant de illis cui Deus fortiorum dederit," *ibid.*, VIII §2 etc.

¹⁷ "Testificent Deum creatorem ut cui sit iusticia illi donnet Deus victoriam," *Lex Alam.* tit. LXXXI B.

¹⁸ See Sydney Fairbanks, *The Old West Frisian "Skeltana riucht,"* with an Introduction, Translation and Notes (Cambridge, 1939). The Frisians called the judicial duel *mara strid* (greater strife) as opposed to the *lessa strid* of hot water. The *Skeltana riucht* is of the eleventh century. However, the *Lex Frisionum* (*MGH* in fol *Leges* III, p. 666 [XI, 2, 3]) in Latin of the eighth century gives similar evidence for ordeals of various sorts. In the *Lex*, the ordeal is called the *iudicium Dei*. See W. J. Buma, *Het Godsordeel in de Oud-Friese Literatuur . . .* (Groningen, 1949).

¹⁹ The source for my statements about Saxon, Thuringian, Ostrogothic, Visigothic, and Lombard laws is C. de Smedt, "Les origines du duel judiciaire," *Études religieuses, philosophiques, historiques et littéraires*, LXIII (1894), 343-346. The use of the ordeal to determine adulterous behaviour (which is a kind of treason) may have been encouraged by the famous "bitter water" ordeal of Numbers v 11 ff. even though the form of the ordeal is much different. This is the only ordeal commanded in the Bible. See also H. af Trolle, *Om Ordalierna hos de germanska folken* (Stockholm, 1915) which I have not been able to examine. On the *iudicium Dei*, among the Lombards, see J. M. Wallace-Hadrill, *The Barbarian West* (London, 1950), p. 60 where a quotation from Liutprand (713-735) testifies to the antiquity of trial by combat and to Christian suspicions of it.

laws, as we have noted, do not refer to this combat, although they do offer much material on ordeal. There are references to the judicial duel in the Carolingian Capitularies²⁰ and in Ermold Nigellus's poem on Louis the Pious (III, 543-614).

None of these early law codes and references specifies exactly that the weapons shall be equal.²¹ Bavarian law does, however, emphasize the gravity of hitting one's opponent before the signal is given. In general, it seems to be assumed that only swords, axes, and shields will be used. The earliest reference specifically to equality of weapons that I can find is in the vernacular Frisian laws (*Skeltana riucht XXXI*) of the eleventh century, where it is stated that the swords must be of equal length and examined by magistrate and lawsayer each evening and morning during the three days of combat.²² It seems clear to me that some equality of weapons must have been assumed from the beginning in spite of the lack of special reference to it before the eleventh century. A legal proceeding to determine guilt or innocence must have insisted upon at least a rough equality in weapons. Otherwise it would not make much sense. I assume that this was taken for granted to such an extent that the brief abstract of laws written down in early times, for that is all these early codes are, felt that such an obvious point need not be particularly noted.

Trial by combat and ordeals in general were methods used to get at the truth when oaths or compurgation would not elicit an unambiguous answer. An accusation could not be dismissed as today for lack of evidence, but some decision had to be arrived at. The accuser too was liable to punishment if he could not make his charges stick. The matter had to be decided one way or another. Ordeals of any type had one great advantage — decisiveness. At the same time, in a providential view of the universe, one could claim (although as we have seen and shall see, not always unchallenged) that the outcome was God's will. It has been argued that the religious ceremonies in connection with most ordeal procedures were methods used to defeat the devil and that a kind of exorcistic and apotropaic element is present in all ordeal ceremonies.²³ Trial by combat was undoubtedly a forward

²⁰ E.g., the capitulary of 809 in *Capitularia regnum francorum*, ed., A. Boretius (Hannover, 1883) I, p. 150 §20. The words, "let doubtful cases be determined by the judgment of God. The judges may decide that which they clearly know, but that which they cannot know shall be reserved for divine judgment" quoted in Henry C. Lea, *Superstition and Force, Essays on the Wager of Law — The Wager of Battle — The Ordeal — Torture*, 3rd edition revised (Philadelphia, 1878), p. 218 are ambiguous but may refer to the ordeal as other Carolingian capitularies clearly do.

²¹ There were some Icelandic restrictions mainly about shields. See above p. 549. Carolingian capitularies apparently tried to make club and shield the proper multilateral ordeal weapons.

²² See Fairbanks, *op. cit.*, pp. 92-94.

²³ Prayers for ordeals may be found in *PL* 87: 929 ff. See the religious ceremonies alluded to in F. L. Attenborough, *The Laws of the Earliest English Kings*, ed. and trans. (Cambridge, England, 1922) pp. 138-141, 170-173 and A. J. Robertson, *The Laws of the Kings of England from Edmund to Henry I*, ed. and trans. (Cambridge, England, 1925), pp. 166-167; 84-85; 236-237. See also the Ritual for battle (which incidentally alludes to David and Goliath [see below p. 553]), in F. Liebermann, *Die Gesetze der Angelsachsen* (Halle a. S., 1903-1916) 1, 755; and the Latin Ordeal ritual probably dating from the time of the crusades (as the translator not very helpfully tells us) and preserved only in Armenian. It is translated in F. C. Conybeare, *Rituale Armenorum* . . . (Oxford, 1905), p. 295-297. There is a slight exorcistic element in it. I owe this reference to Professor Henry A. Kelly.

On the ordeal as exorcism, see Hans Fehr, "Gottesurteil und Folter, Eine Studie zur Dämonologie

step in the development of trial procedures as it put under some kind of order a method which was no doubt frequently used at random — the use of force to settle disputes. The oracle, usually though not always, attempted to determine the truth of the future; the ordeal that of the past.²⁴ It is easy to understand why trial by combat persisted as long as it did. It favored the strong, and it could claim divine sanction.

Not without protest, however. The Bavarian and Alemannic laws in their innocence — an innocence shared by many — claimed that the result of a trial by combat was a judgment of God. It was, however, this very point which was at issue in the first argument raised against trial by combat in 867 when Pope Nicholas I in writing to Charles the Bald attacked the whole system by saying it tempted God (i.e., forced Him to render judgment when perhaps He was not ready to do so). The Pope pointed out that the battle of David and Goliath so often used for justification of the practice was not trial by combat but the struggle of two champions.²⁵ Agobard of Lyons (ca 840) in the same century²⁶ and Yves of Chartres (ca 1115) later were other notable enemies of the judicial duel. The burden of their charge was, "Ye shall not tempt the Lord your God" (Deut. vi 16), a quotation which suggests, of course, the temptation of Jesus by Satan (Matthew iv 1-11).²⁷ Agobard also argued that the *judicium Dei* made secrecy impossible for

des Mittelalters und der neueren Zeit," *Festgabe für Rudolf Stammeler zum 70. Geburtstag am 19. Februar 1926*, ed., Edgar Tatarin-Tarnheyden (Berlin and Leipzig, 1926), pp. 231-254 and criticism of his thesis by Max Pappenheim, "Über die Anfänge des germanischen Gottesurteils," *Zeitschrift Savigny-Stiftung für Rechtsgeschichte, Germanistische Abt.*, XLVIII (1928), 136 ff.

²⁴ Jakob Grimm in *Deutsche Mythologie* 4th ed. (Berlin, 1875 ff.) II, 927, characterizes the ordeal as a backward prophecy. An oracle is sometimes, though not characteristically consulted about the past. The guilt ordeal never attempts to pierce the future but is always concerned with the unknown truth of the past.

²⁵ See the text in PL 119: 1142-46. In the eighth century, on the other hand, all the ecclesiastical synods favored ordeals. At a council in Frankfurt in 792, a serf was purged by ordeal before the Bishop of Verdun. See E. Vacandard, "L'église et les ordalies," *Études critiques et d'histoire religieuse* (Paris, 1905), 193 (an earlier version in *Revue des questions historiques*, Jan. 1893).

²⁶ PL 104: 305 ff. There is some earlier evidence of dissatisfaction with the judicial duel. See S. Grelewski, *La réaction contre les ordalies en France depuis le IX^e siècle jusqu'au . . . Yves Evêque de Chartres*, Thèse, Université de Strasbourg . . . (Rennes, 1924), p. 6.

²⁷ Note the following title (taken from Raymond of Pennaforte's Decretals) under which the subject is discussed: *Duella et aliae purgationes vulgares prohibita sunt quia per eas multoties condemnatus absolvendus et Deus tentari videtur* (referred to in Vacandard, *op. cit.*, p. 214). For a standard theological discussion of tempting God, see Aquinas, *ST. II-II, Q. 97, a. 1 and 2*. On the early mediaeval debate on ordeals, see S. Grelewski, *op. cit.*: A. Esmein, *Les ordalies dans l'église gallicane au IX^e siècle, Hincmar de Reims et ses contemporains . . . École pratique des hautes Études, Sections des Sciences religieuses* (Paris, 1898); and C. de Smet, "Le duel judiciaire et l'église," *Études religieuses, philosophiques, historiques et littéraires*, LXIV (1895), 35-73.

Much of the work on this subject, like that on the Inquisition until very recent ecumenical times, is very tendentious on both sides. The anti-clerical school represented perhaps best by Patetta (see below, note 31) was most desirous of showing up the reactionary barbarous quality of the Church and stressed its support of the ordeal. The Catholics on the other hand were most desirous of painting as good a picture as they could. Both sides did not really see any justification whatever for the ordeal and either stressed the Church's acceptance of the procedure or contrariwise the voices in the Church raised against it. Hence all scholarship on the subject must be used with caution.

everything could then be known. The *judicium* also makes courts and judges unnecessary. We are really tempting God.

This division of opinion is also reflected in modern scholarly disputes over the origin of the duel — between those who see it as Christian in origin and those who do not. The first group emphasize the pious and providential view of the universe revealed in such a calling upon God. The second do not see its Christianity but rather the element of force in it.²⁸ The evidence also is scanty and indecisive for the early days. The present tendency to regard it as pagan in spite of the lack of clear-cut evidence seems sound to me.

The Christian supporters of ordeal in the Middle Ages believed that God would sustain the righteous and put down the wicked if requested under the proper circumstances. Innocent III in 1203 went so far as to argue that even if the defeated combatant in a judicial duel were innocent of the special offense charged, nevertheless he must suffer because of other sins and he is guilty in God's sight.²⁹

A classic defense of the ordeal may be seen in Dante's *De monarchia* (II, 9, 10) which is perhaps worth a brief examination. It is a defense of the ordeal as a last resort. Dante argues that God must support justice. Both combatants should be motivated by a desire for justice. It has been urged, Dante says, referring to Aquinas's *Summa* II, II, Q. 95, art. 8, that the ordeal makes no allowance for difference in strength, but God can make the weaker win as in the case of David and Goliath.³⁰ The Romans secured their empire by a duel when Aeneas defeated Turnus. Surprisingly, Dante does not deal with the "temptation" objection.

Whereas the unilateral ordeal is spread all over the globe,³¹ trial by combat

²⁸ For a recent discussion of this question, with reference to its earlier history, see Hermann Nottarp, *Gottesurteilstudien*, Bamberger Abhandlungen und Forschungen, II (Munich, 1956), 44 ff. Nottarp argues for a pagan origin of the ordeal in all of its forms. When Christianity came to the Germans, he points out, ordeals had been extinguished in the Roman and Christian worlds. The fact that ordeal practice varied among the older Germanic tribes also argues against Christian origin. The "bitter water" test of Numbers v 11 ff. was not used by the Germanic peoples as it probably would have been if the Germanic ordeal were of Christian origin. It must be pointed out, however, that this ordeal had been officially abolished in Judaism by Rabbi Jochanan ben Zakkai in the first century of our era, probably because it was no longer practiced in any case. I do not know of any Christian uses of this Biblical test for infidelity. Maimonides discusses the legal aspects of the ordeal in Judaism in his *Mishneh Torah*, Laws of Sotah 3. On ordeals in old Israel see Alfons Schulz, "Die Ordalien in Alt-Israel," *Festschrift Georg von Hertling zum siebenzigsten Geburtstage am 31 Aug. 1913, dargebracht von der Görres-Gesellschaft . . .* (Kempten and Munich, 1913), 28-35.

The strong supporter of a Christian origin was the great nineteenth-century historian of German law, Karl von Amira. He, however, could only see the piety of the ordeal, not its forcing of God. See his *Grundriss des germanischen Rechts*, 3rd ed. *Grundriss der germanischen Philologie* ed., Hermann Paul 5 (Strassburg, 1913) §§89, 90, 91 (pp. 269-80). On the other hand, Friedrich Majer, *Geschichte der Ordalien . . . in Deutschland, Ein Bruchstück aus der Geschichte und den Alterthümern der deutschen Gerichtsverfassung* (Jena, 1795) argues, pp. 14-22, for a pagan origin of the ordeal.

²⁹ Referred to in F. Carl Riedel, *Crime and Punishment in the Old French Romances*, Columbia University Studies in English and Comparative Literature 135 (New York, 1935), p. 34.

³⁰ On David and Goliath, see above, p. 552 and the reference in the English Ritual for battle in Liebermann (note 23 above) I, 755. Cf. the combat of Corbis and Orsua before Scipio for Spain in Livy, xxviii 21, and the Offa battle (note 9 above).

³¹ See Federico Patetta, *Le ordalie, Studio di storia del diritto e scienza del diritto comparato* (Turin,

seems, as I have said above, to be a peculiarly Germanic custom.³² Battles for the possession of property and for victory, or the use of champions as in the David and Goliath story are common, but a battle under certain fixed conditions to determine the truth of a claim or the innocence or guilt of a particular person, trial by combat proper, is by no means a universal phenomenon.

Yet in spite of its widespread use among Germanic peoples, trial by combat is surprisingly not found in any clear-cut fashion in England before the Norman Conquest. After 1066 it is discussed and rules of its execution laid down in the laws of William and his successors.³³ But before that time, there is practically nothing to go on. As John Selden three centuries ago wrote, "I think it not easy to prove this custom in England before the Norman Conquest" (*Duello* 6). Let us look briefly at the English evidence for the judicial duel before William such as it is and then at the parallel evidence for unilateral ordeal before returning to *Beowulf* and *The Battle of Maldon*.

Inasmuch as the judicial duel, or something very like it, was as we have seen a feature of Scandinavian life well before the year 1000, it would not be surprising if this type of combat were present in the Danelaw.³⁴ Liebermann refers to a claim in *Olaf Trygvason's Saga ca 993* that the judicial duel was practiced in England,³⁵ yet the story of Olaf's beating Alfuin for the hand of Gyda which Snorri uses as evidence hardly seems a true trial by combat to determine guilt or innocence. Geoffrey of Monmouth (IX, ii) (after the Conquest of course) tells us how King Arthur fought Floilo in single combat for Paris on an island. Cnut and Edmund are reported by various historians almost to have had a duel in 1016. The events as reported by the Anglo-Saxon Chronicle, Simeon of Durham, William of Malmesbury, Henry of Huntingdon, Walter Map are not exactly the same.³⁶ All this is, as may easily be seen, rather vague and late. In fact, in spite of its *a priori* likelihood, there is no evidence at all, unless we wish to include the *Beowulf* allusion, for the existence of trial by combat before the time of William the Conqueror.

1890); Gustave Glotz, "L'ordalie," *Études sociales et juridiques sur l'antiquité grecque* (Paris, 1906), 69-97 (reprinted from *Revue historique* of January, 1906); and Henry C. Lea, *Superstition and Force* . . . 3rd ed. revised (Philadelphia, 1878). See also Nottarp (note 28 above).

³² See George Neilson, *Trial by Combat* (Glasgow, 1890) and Axel Vorberg, *Der Zweikampf in Frankreich* (Leipzig, 1899) (which I have not been able to see).

³³ See Melville Madison Bigelow, *History of Procedure in England from the Norman Conquest* . . . (London, 1880), 326-330 *et passim*; Theodore F. T. Plucknett, *A Concise History of the Common Law*, Fifth Edition (London & Boston, 1956), 116-118; Glanville II, 1 ff. (ed., G. D. G. Hall, pp. 22 ff.); and various references in Liebermann, *op. cit.* I, 430-431; 483-484 and II, 754-756. The Bretons seem to have picked up trial by battle from the Germanic Normans; see E. Jobbé-Duval, *Les idées primitives dans la Bretagne contemporaine*, Seconde étude, "Les ordalies" (Paris, 1911). (Reprinted from *Nouvelle revue historique de droit français et étranger 4^e série*, I [1911] 15 ff.)

³⁴ It is perhaps of some significance that the late OE or early ME word for trial by combat "orneste" may be a Norse borrowing. It is certainly cognate with ON *orrosta* and OHG *ernust* — both meaning "fight" or "duel." The *o* Germanic form is an ablaut variation of the root of the OE *eornest* (earnest) with which it is sometimes confused in the eleventh and twelfth centuries and even later.

³⁵ Liebermann II, 754-756.

³⁶ Reported *inter alia* in Neilson, *op. cit.*, pp. 19 ff. Neilson is an amateur historian; he frequently omits his references and is somewhat disorganized.

After that date, the evidence is plentiful. The Normans introduced it, and in civil cases champions could be employed. Originally a tenant was bound by his homage oaths to defend his lord's title. Soon, however, a group of professional champions appeared who would undertake to defend a client. This form of trial and its related "appeal of felony" persisted in English law if not in legal usage until 1819 (much longer than unilateral ordeal) when finally an attempt at their abolition succeeded.³⁷ In Thomas of Woodstock's *Ordonaunce* of ca 1390 rules are laid down for trial by combat, especially in the matter of treason. Interestingly enough from our point of view, one of the duties of the Constable and Marshall was to inspect weapons to see that they were in order and equal.³⁸

Evidence for the unilateral ordeal in England is plentiful from earliest times. It was closely associated with religious ceremonies until Pope Innocent III forbade the clergy from performing any religious ceremony in connection with this kind of ordeal at the Fourth Lateran Council in 1215. Innocent did not specifically condemn trial by combat. It did not customarily need performing clergy and was hence not so susceptible to easy prohibition. Henry III in 1219 tried to carry out the Church's order, which in effect banned the unilateral ordeal inasmuch as the religious association gave it its sanction. Plucknett associates its disappearance in England with the rise of trial by jury, which became compulsory in 1275.³⁹

There are various rituals and laws for ordeals from Anglo-Saxon times extant and available in Liebermann, most of them not earlier than the tenth century.⁴⁰ Even indirectly religious considerations prevail. For instance, I Canute 17 (Robertson, *Laws* pp. 166-167) reads

and we forbid ordeals and oaths during festivals and the Ember Days and days in Lent, and on legally appointed fast days, and from the Advent till the eighth day after Twelfth Night and from the Septuagesima till fifteen days after Easter.⁴¹

In II Æthelstan 23, we read

If anyone engages to undergo an ordeal, he shall come three days before to the mass-priest who is to consecrate it, and he shall feed himself on bread and water and salt and herbs before he proceeds thither, and he shall attend mass on each of three days. And on the day he has to go to the ordeal, he shall make an offering and attend communion, and

³⁷ LIX Geo. III c.46. I am following the summary in Plucknett, *op. cit.*, 116 ff. On the Norman laws of trial by combat, see Liebermann I, 430-436; 483-484. The related procedure with which trial by combat is sometimes confused, "appeal of felony," also persisted in English law to the early nineteenth century.

³⁸ See Waldo F. McNeir, "Trial by Combat in Elizabethan Literature," *Die neueren Sprachen*, xv (1966) 102-103. According to Upton in the fifteenth century (*De militari officio* II 8), the judges' duty was to see that the arms were equal.

³⁹ *Op. cit.*, pp. 119 ff.

⁴⁰ Heinrich Brunner (*Deutsche Rechtsgeschichte*, 2nd ed. neubearbeitet von Claudius Freiherrn von Schwerin, Systematisches Handbuch der deutschen Rechtswissenschaft [Munich and Leipzig, 1928] II, 541) points out this fact. He argues for the predominance of Frankish influence on Anglo-Saxon ordeal forms and rituals.

For the case of what the poet considers an unjust *judicium* (an ordeal trial of a slave) in a Latin poem on St Swithin by Wulfstan Cantor, see Dorothy Whitelock, "Wulfstan Cantor and Anglo-Saxon Law," *Nordica et Anglica, Studies in Honor of Stefán Einarsson*, ed., Allan H. Orrick (The Hague and Paris, 1968), pp. 87 ff.

⁴¹ Very similar to V Æthelred 18 (Robertson, pp. 84-85).

then before he goes to the ordeal, he shall swear on an oath that according to the public law he is innocent of the accusation (Attenborough, *Laws*, pp. 138–141).

Other examples could be given. The swearing of the oath is important, as the guilty one must be forced into the sin of perjury so that God would be disposed to punish him.

The term “judgment of God” for ordeals of various types is widespread throughout Europe. We have already seen examples from the Continent. The term is used by the synod of North Britain *ca* 500–525 and copied in the Cummean Penitential.⁴² Although the term itself is not common in Anglo-Saxon laws, it is quite frequently used;⁴³ and above all there is no doubt that the whole ritual is based on the notion of asking God to make clear the truth to man.

I have not found any criticism of the ordeal in England such as we have found on the Continent. A closer inspection may turn up some references. However, *Solomon and Saturn* II, 216–220 does speak of the tempting of God in connection with foolish feats. “He who goes into deep water who can’t swim nor is in a ship nor has power of flight and cannot reach ground with his feet — is tempting God foolishly.”⁴⁴ This is a fairly widespread notion but too much cannot be made of this reference.

Let us return to *Beowulf*. From the point of view of legal history, this episode in *Beowulf* may possibly be taken as the long sought-for evidence for trial by combat in England before 1066. However, even if my interpretation of the Grendel-Beowulf battle is correct, it does not necessarily follow that this provides evidence for the early presence of judicial duel in England. We do not, unfortunately, know enough about the circumstances of the poem’s composition. If we could be certain of the date, locale, and authorship of *Beowulf*’s composition, or even one of them, a reference to trial by combat could be of great value. However, we do not know who, where, when, or under what circumstances this Anglo-Saxon epic was composed. We must, I think, take this new possibility into consideration in any further attempt to particularize the poem, but it does not by itself give us any unequivocal clues.

If we wish to believe, on the other hand, that there was no judicial duel in England before 1066, as the evidence seems to show (although negative evidence is

⁴² Texts in John T. McNeill and Helena M. Gamer, *Medieval Handbooks of Penance. A Translation of the Principal “libri poenitentiales”* . . . Records of Civilization, Sources and Studies, xxxix (New York, 1938), pp. 17 and 110. (The *Old Irish Penitential* V 5 *ca* 800 refers to suicides being left to the judgment of God.)

⁴³ See the *Ritual of the Judicium Dei* of 850–975 (Liebermann I, 401 ff. [*passim*]); the *Hundredgemot* of 946–961 (*ibid.*, I, 195); and *Leges Edwardi Confessoris* of *ca* 1130 (*ibid.*, I, p. 642). The later *Quadrupartitus* uses *judicium* as a synonym for *bellum* (trial by combat) (Liebermann I, p. 484).

The Ritual contains a prayer wherein God’s justice is called upon and recalls to Him “Sidrac,” “Misac” and “Abdenego” and the Susanna case.

⁴⁴ Ed., R. J. Manner, *The Poetical Dialogues of Solomon and Saturn*, The Modern Language Association of America, Monograph Series XIII (New York, 1941), p. 92. See *Glossa ordinaria* on Deut. vi 16 in *PL* 113, 459. The *Judicium Dei rituale* (850–975) does seem to refer to the guilty party as a tempter of God (II, 4, 2; IX, 2, 2; X, 20, 2 [Liebermann I, 407, 416, and 418]), but this is an entirely different notion.

never conclusive), then we have on our hands the problem of accounting for the presence of multilateral ordeal or rather its form and spirit in *Beowulf*. Such a belief would in that case argue against an English origin of the poem in its early forms. The possible Frankish or less likely Frisian origin of the *judicium Dei* would not make our problem any easier.

Nor does the interpretation put forth here help us much in the dispute over the proportion of Christianity and paganism in the poem. When I first came to this understanding of the episode, I thought it might. Although, as we have seen, the judicial duel is probably pagan in origin, it was adopted by and even favored by the new religion. Hence its presence does not help us one way or another. We already know that the poem as we now have it was written by a Christian. If the duel were a purely pagan custom, then we might look on its presence in *Beowulf* as an old relic of a pagan story. But it is not uniquely pagan, and its existence argues neither one way or another. It might even be Christian and yet disapproved of as a tempting of God. But I have found no evidence for this criticism of the duel in England, and in view of the whole context it seems unlikely that it is a criticism of Beowulf's impetuosity vis-à-vis God.⁴⁵

This discussion leads into some of the implications of this interpretation of the Beowulf-Grendel fight for its literary understanding. I do not think Beowulf is being criticized by the poet for tempting God as perhaps Byrhtnoth is. We would surely expect some remark to that effect. Also if *Beowulf* was written in the eighth century as seems likely, this kind of criticism of the judicial duel had not yet been made. As far as I can determine, Pope Nicholas I was the first to raise the issue. The notion of tempting God may have been known from the Bible and the Fathers, but not its application to judicial combat. The poet may, however, have been somewhat desirous of underlining his hero's rashness in describing the combat as a *judicium Dei*.

But it is more likely, I should say, that he wished to stress Beowulf's great piety and faith. Unlike his other combats, he was interfering in a quarrel with which he had nothing to do. It was important to him and to his people to stress the purity of his motives and the nobility of his role as a *flagellum Dei*.⁴⁶ He was an instrument of justice in God's hands. His cause was just, and he was willing to prove it by leaving it all to God.

The interpretation I am suggesting here fits in very closely with Donahue's theory that just before the battle with Grendel, in "the hour of grace," Beowulf "trusted not in his own strength but in the God who had given it to him."⁴⁷ Professor Donahue does not see the ordeal behind Beowulf's stance; but if we do, we get an even stronger impression of Beowulf's faith in the Lord. The notion of trial

⁴⁵ Leyerle argues that Beowulf is being criticized by the poet throughout. See his "Beowulf, The Hero and King," *MLA*, xxxiv (1965), 89 ff.

⁴⁶ In Alcuin's letter to Ethelred, King of Northumbria 793-796, he warns him of the "Flagellum quod venit super ecclesiam Sancti Cudberti" (Haddan and Stubbs, *Councils and Ecclesiastical Documents Relating to Great Britain, and Ireland* [Oxford, 1871] III, 492).

⁴⁷ See "Beowulf and Christian tradition: A Reconsideration from a Celtic Stance," *Traditio*, xxi (1965), 93.

by combat at this date argues for a truly religious attitude. Beowulf fully turns to God at this great moment of crisis in his life.

Further literary questions are also suggested by our interpretation that the actions of Beowulf before the battle with Grendel were conducted on the paradigm of the preliminaries of a trial by combat. Why did Grendel attack Heorot? Was there a possibility that he was a *flagellum Dei* against the Danes? Was Beowulf also a scourge of God sent to destroy at last another scourge who had outlived his usefulness? Was Beowulf uncertain of the justice of his cause? Why did Beowulf watch Grendel's method of attack in the hall? Did he himself wish to have a better case for his action against Grendel? At present, all we can do perhaps is to think again carefully about the meanings of the battle. It looks somewhat different if seen as modeled on a trial by combat.

Strictly speaking, of course, the battle with Grendel could not be a trial by combat because only one combatant appeals to God. Perhaps Beowulf by this very move not only claimed God's help by judiciary duel procedure but by making quite clear to all that Grendel as an accursed descendant of Cain could not call upon God as he had done, emphasized and underlined Grendel's evil nature. On the other hand, perhaps, the Lord's injunction in Genesis not to raise one's hand against Cain might have been in his mind. Only with God's support can one defy the divine command. However, to settle this one would have to go into the whole tradition of Cain to determine whether the prohibition applied to Cain's descendants.⁴⁸ Stevick has recently pointed out that although Grendel is quite clearly evil, there is "no implication [before Beowulf arrives] that Grendel's depredations in Denmark represent strife against God — or that his monster predecessors strove against God by means of attacks on earlier inhabitants of Denmark."⁴⁹ The uncertainty of psychological motives in the first battle of the poem is indeed very great, and only speculation seems possible. The trial by combat element does, however, demand a new looking into it all.

With Byrhtnoth, there is even more uncertainty. It is certainly not a duel *stricto sensu* because the other side does not appeal to God and besides it is not a battle of champions, but of armies against each other. The poet's attitude towards his hero may be condemnatory although there is an ambiguity of mood, perhaps reflected in the word *ofermōd*. Tempting God by the judicial combat is not as far as I know alluded to in tenth-century England or earlier, but the notion

⁴⁸ On the problem of whether monsters like Grendel are human, see Augustine, *De civ. Dei* XVI 8. Monsters were a problem to any Christian providential view of the universe. If they existed, they could not be *contra naturam*, especially as the birth of human monsters was well attested.

⁴⁹ "Christian Elements and the Genesis of *Beowulf*," *MP*, LXI (1963-64), 85. Stevick is interested in the pre-history of the poem when it existed in its oral state and as it was transformed by writing; nevertheless, what he has to say about the Grendel-Beowulf battle (pp. 84-86) has some relevance to my theme. We have to assume the present *Beowulf*-poet was a conscious artist of some sort no matter what he had to work on. Stevick makes much of the difference between the narrative of the combat, which does not refer to God very much, and the comments of the poet-persona and Hrothgar; but the poet-persona is telling it all in our *Beowulf* and does not believe that Beowulf is a Christian. The problem is not whether Beowulf and the original story are pagan — that we can take for granted — but to what extent *Beowulf* as we have it is Christian.

of tempting God, as *Solomon and Saturn*⁵⁰ shows, was not unknown. Perhaps the poet feels that Byrhtnoth has no right to call upon God to decide the battle; perhaps not. In any case, the hero calls upon God and allows his enemies to approach on even terms. He at least wants to make it a trial by combat to that extent even if all the conditions cannot be filled.

The two suggestions offered here, then, force us to rethink our interpretations of *Beowulf* and *Maldon* and raise again the question of trial by combat in England before the Norman Conquest. Whether we can accept the latter in England then or not, it is clear that Old English literature affords at least two examples of something very close to it. As Selden says, it may not be "easy to prove this custom in England" then, but this lack has always occasioned surprise. Perhaps we can now look at the matter differently.

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⁵⁰ See above, note 44. No doubt there are other references to the notion, particularly in Latin literature, of the time unknown to me. I wish to thank Professor Fred C. Robinson of Stanford University for helpful suggestions which I have used in this paper.