Folkright:
Towards a Unifying Signified of Ancient and Modern Pan-Germanic Legal Theory, Tradition and Folklore

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1.0 Introduction

This paper examines the concept known as folkright and then comparatively examines its evolution and change over time throughout the various Germanic legal systems, traditions and cultures – beginning with its embodiment in early Germanic tribal law and ending with the modern day. Over the course of the examination, this paper will posit how folkright is a unifying signified and signifier (defined in section 2.1) between ancient and modern Pan-Germanic legal theory, tradition and folklore. By drawing on approaches and theories from jurisprudence, linguistics, folklore, philosophy, sociology, mythology, history and political science, a picture of the evolution of his term and its usage over time will created.

Pan-Germanic, here, encompasses those peoples and later nations having their principle origins in the Germanic peoples. As modern states would be concerned, nations stretching from Germany in the east across the Atlantic to the United States in the West (including non-Germanic-speaking France and Wallonia) and as far south in Europe as Austria and as far north as Scandinavian. Given the length of this paper and other related limitations, not every nation will be examined; however, a demonstrative sampling of events from various peoples and nations will be used to reach the aim of this paper.

From the earliest legal traditions preserved in the Germanic world, the concept of folkright exists and is central; it was the balancing principle of just government and the guiding tool of justice and fairness. As the concept of folkright became more clearly defined and understood in antiquity, its usage in legal texts and assertions made because of it increased.

Although the concept of government derived by the people, procedural fairness and balancing rights of the freeman against the governing are not uniquely Germanic, the existence in the ancient Germanic of these concepts – albeit it unified into one term – shows a continuance within the cultural

values of folkright as a native, fundamental and basic shared value. The concept might be a shared Indo-European value, but such an exploration is beyond the scope of this paper.

Western historians, traditionally, have been motivated to show a continuity of "Western Culture" from the ancient Greeks through the Romans and then through Romanization spread by Christianity[12]. This practice has allowed for pre-/non-Christian cultures to be considered as primitive, backwards, barbaric or salvages. One need not look much further than any history text book to see instances of arguably pejorative words such as barbarian[3] or primitive (which inherently suggests an axis of superiority-inferiority). This institutionalized arrogance and bias has in the last hundred years begun to brake-down, and a wider acceptance of the importance of oral traditions has emerged.[4] With this changing paradigm, the impact and importance of the cultural contributions given by pre-Christian cultures in Europe has been acknowledged and examined.

As Christianization took hold over those cultures in the later part of the first millennium CE, a Romanization of the limited, informal or loose governmental structures was imposed by the privileged classes (who are defined in section 2.0) and the clergy – a change that would eventually evolve into feudalism.

The resulting restructuring into a feudal system was largely inconsistent with the concept of folkright, and as it spread, the concept of folkright was repressed or purged from the formalized legal structure, which ultimately solidified the power of feudal lords and monarchs. Many central cultural aspects that Christianization attempted to suppress or subvert remained dormant among the masses – the *folk* – and reemerged later on. Evidence of this is best seen in folklore – a term, which etymologically means that very thing (i.e., Old English *folclár* "folklore" meant an instruction/sermon/guide originating from the masses – and even into the modern day of parallel and contradictory "religious" concepts (e.g., the non/pre-Christian concept of ghost, which is irreconcilable under normative Christian dogma). The same happened to fundamental legal concepts such folkright, which went out of the formal structure of

governmental systems but would be revived in the twelfth and thirteenth centuries CE [5] as well as reinvigorated over and over again into the modern age in cycles of suppression and reemergence until the rise of the modern-day mass culture.

.1 A Note to the Reader regarding Usage and Citation

As I have written this paper towards a diverse audience, I feel it important to make a few remarks regarding usage (including structure and format) and citation.

As stated earlier, this paper draws upon aspects and theories from jurisprudence (specifically natural law and analytic jurisprudence), linguistics (specifically socio-linguistics, semiotics, semantics and historical/comparative linguistics), folklore, philosophy, sociology, mythology, history and political science, this paper will assume the reader has only minimal, passing knowledge of these topics and theories and, therefore, provide succinct explains where appropriate, and further readings will be suggested in the corresponding endnotes. Several sections of this paper contain encyclopedic type content; in those instances, some source is cited for general verification or further reading.

Because of the polyglot nature of this paper and the lack of uniformity of spelling conventions in several of the language used herein, the term folkright has been selected as the standard – both for use in spelling and terminology – for consistency, uniformity and clarity. Whenever a quotation appears in a language other than modern English, the word or phrase that carries the same meaning as folkright, it shall appear as a boldface word in order to offset it from the rest of the text, because for the reader untrained in earlier English languages and dialects, difficulty decoding spelling variations may occur. Translations into modern English are also in brackets after all non-English or a non-modern-English terms or quotations.

Note that words marked with an asterisk at the onset are either unattested and reconstructed forms or grammatical non-words (i.e., not actual correct forms).

Citation to historical manuscript sources in the endnotes are referenced in the most easily accessible way, that is the name of the document as it best can be described, followed by a manuscript citation using the Bosworth key to cite sources.[6]

Lastly, because of the largest breath of ancient Germanic law existed in Anglo-Saxon and Danelaw England, examples will be weighted from those sources.

2.0 Folkright - Towards a Definition of the Concept

Perhaps the most flexible aspect of human culture is language; precise implications and meanings of words change not only over the course of generations but over the course months, weeks and, in some instances due to speed of information exchange, days[7]. For millennia, philosophers and philologists theorized that language is the constant used to define the world around us.[8] Because of the two preceding factors, of greatest importance is what a word meant at the time it was used, not what the meaning is in the most current conceptualization.[9]

Folkright was a word with many concepts built into it. Although it has often simply been translated as "the understood compact by which every freeman enjoys his rights as a freeman", "public right", "law of the commons",[10] it has meant much more. There are four main parts within concept to folkright:

1. "common law" (*folcriht*, compounded *folc* "commoners, masses, non-privileged" and *riht* "law, right") – being the right to participate in the legislating of law and the power from which the legislating and the monarch derive their powers;
2. freedom[11] (from Old English *freo* "free, exempt from, not in bondage", from Proto-Germanic **frijaz,* from Proto-Indo-European **prijos* "dear, beloved"[12]);
3. inherit (i.e., divinely granted) or inalienable or human rights; and
4. justice and/or procedural fairness.

Folkright was the common, freeman's balance against the established governing nobility: folkright balanced against the rights of privilege. The rights of privilege were the advantages of the privileged class, which were the nobility and the government. Privilege, historically, did not necessary attach to property (land) ownership but rather to authority and place in governmental hierarchy. The importance of being landed was a central concept in the feudal societies that arose towards the end of the first millennium CE. Prior to the feudal system, freemen could claim hold over land under folkland[13], a right derived from folkright and a concept beyond the scope of this paper.

Below are three examples of folkright used in tenth century Anglo-Saxon England (two from dooms and one from a Bible translation and commentary; in Old English). These examples are illustrative of the varying usage of the term folkright. [Punctuation added.]

1. "Arære up Godes riht; and heonan forþ læte manna gehwylcne, ge earmne ge eádigne, **folcrihtes** wyrð, and him man rihte dómas déme"[14]

   [*Let God's right/law be exalted; and henceforth let every man, both rich and poor, be worthy of folkright; and that righteous dooms be judged to him.*]

2. "Gesealde wæpna geweald ofercom mid ðý feónda **folcriht**"[15]

   [*he gave him the power of weapons with which he overcame the folkright of enemies*]

3. "Síe he wyrðe **folcryhtre** bóte"[16]

   [*let him be worthy of *folkrightful/lawful compensation*]

In the first example, there are two words that are key: 1) dom[17] ("law"[18] and which became the modern English "doom"); and 2) *wyrð* ("worth"). Folkright displays two meanings here. It conveys, in the context of the statement as a whole, justice and fairness – equality under the law and fairness of process, "righteous dooms". What remains of written Germanic law (referenced as the King's law or the law of the privileged in those texts) consisted largely of recommended remedies, valuing injuries and setting forth duties and procedure of courts and court officers. The King's law, in contrast to folkright,

offered alternatives to traditional tribal blood feuds and duties[19] – thus preserving both peace and allowing the harmed to save face by receiving justice without having to take any individual action.[20] These remedies set forth recommend compensation values on property (i.e., Old English *feoh* "money, property, cattle") damaged or lost as well as a schedule to determine *weregild*[21] (literally, "man-price/ gold/debt", value of a person who died as a result of conduct of another).[22] By the use of the *wyrð* here and the invocation of God's right/law at the onset, the king has valued everyone to have folkright and made such an inherit and inalienable right.

In the second example, folkright is used to convey lack of bondage or freedom and inherit rights. The empowered person was able through force of arms to take away the freedom (i.e., to put into bondage) and inherit rights of others (namely foes).

In the third example, the word *bót* – compensation as dictated by the king's law (akin to the later concept of a judgment) – is the object modified by folkright, which is an adjective here. The king is making his own orders empowered not by his own authority (i.e., his privilege) but by folkright, equating folkright with lawful.

Several sources from throughout the Germanic world have evidenced that kings would normally swear to uphold folkright at their coronation (even William the Conqueror who later *de jure* ended folkright), suggesting the source of kingship was neither divine or by means of arms but by right of the masses. The invocation to uphold folkright by a king draws a striking comparison: Folkright acted much like what we would consider constitutional law today, i.e., a law that no above all others, including the king. Indeed, in many examples, the kingdom's *weregild* (i.e., *cyne-gilde* "kingdom-value") by folkright belongs to the people. The example below is from the laws of Mercia[23] [punctuation added]:

> "Đonne bið cynges cynges anfeald wer-gild vi þegna wer be Myrcna lage þ is xxx þusend sceatta þ bið ealles cxx punda. Swa micel is þæs wer-gildes on folces **folc-rihtes** Myrcna lage. And for þam cyne-dome geborað oðer swilc to bote on cyne-gilde. Se wer gebirað magum þ seo cyne-bot þam leodum"

> [*Then is a king's simple weregild: six thanes' value by Mercian law, that is, thirty thousand shillings, and that is altogether 120 pounds. So much is the weregild in the people's folkright by Mercian law. And for the kingdom there is due another such sum as bot* (remedy) *for kingdom-gild* (kingdom's value). *The weregild belongs to kindred* (i.e., the privileged)*, and the kingdom-bot to the people* (i.e., the folk/masses/commoners).]

The complexity of the meanings and usage of folkright and its elevation as an inherit and fundamental right strongly suggest that it is a basic cultural signifier and signifies a common universal value shared by the culture as a whole.

2.1 The Sign and its Signified and Signifier[24]

Identifying and attempting to understanding signs and their corresponding signified and signifiers has long had a place in philosophy and more recently also in linguistics (especially in the subfields of semantics and semiotics), psychology, anthropology and sociology. Two theories exist in dissecting signs (Dyadic[25] and Triadic[26]); the latter built upon and expanded the former.

Under the dyadic theory, a sign is composed of the signifier (e.g., parole or spoken word) and the signified (e.g., the thing spoken of). One must seek to understand the relationship between a sign and the thing that it denotes (the denotata) and understand that it is an arbitrary and relative one (i.e., no natural relationships between a word and the object it refers to nor is there a causal relationship between the inherent properties of the denotata and the nature of the sign used).

The triadic theory for the production of meaning that rejects the idea of a stable relationship between a signifier and its signified. Accordingly, signs establish meaning through recursive relationships that arise in sets of three. The primary or initial three are:

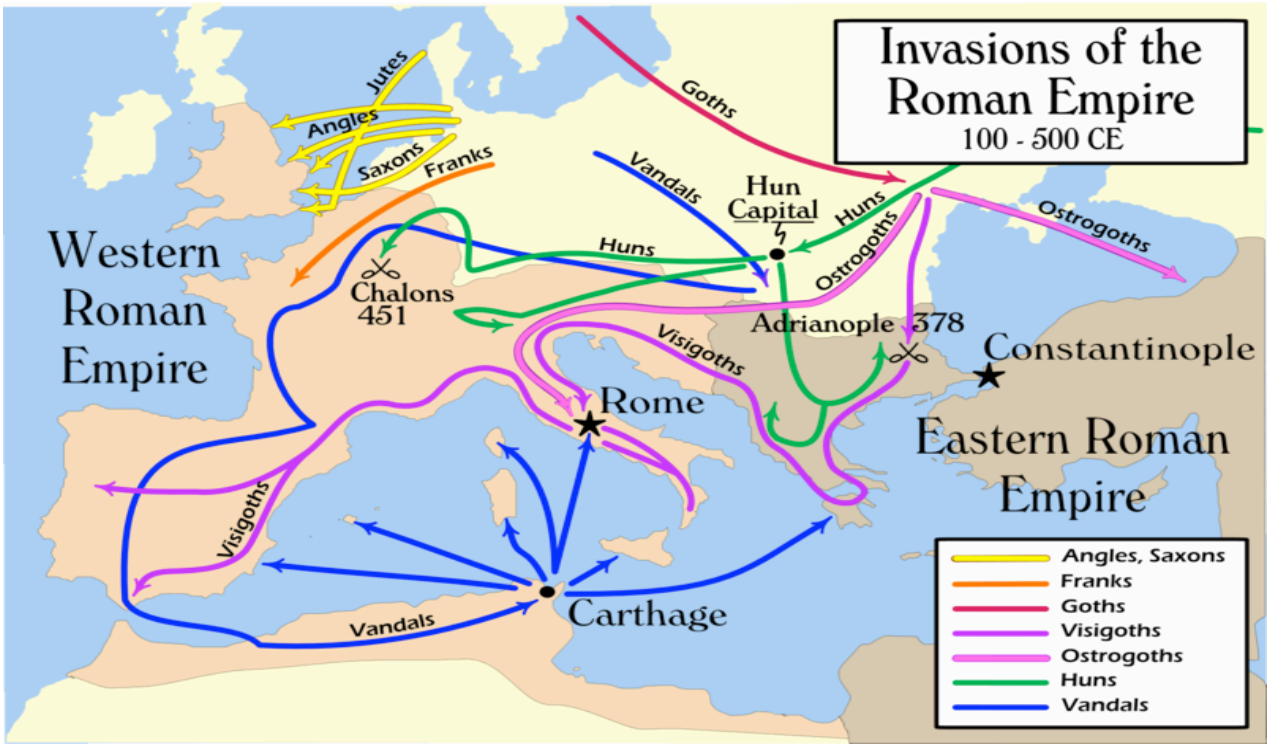
1. the object: anything that can be thought, whether as a concept or thing;
2. the representamen: the sign that denotes the object (i.e., the signifier); and
3. the interpretant: the meaning obtained by decoding or interpreting the sign by the receiver.

The importance to this paper is that word, *signs*, exist but are predated and *survived* by underlying concepts and thoughts. Although the word folkright has long since been lost in the English vernacular, the signified and signifier remain – the range and scope of the meaning that folkright encompassed carry on to this day. This continuance suggests, at least to me and I hope to the reader, that folkright, as a signified, is a culturally embedded concept within the ancient Germanic world.

3.0 The Folkright in the Ancient Germanic World

As previously mentioned, the concept of folkright is prevalent throughout the ancient Germanic world. This section will highlight illustrative examples. Although legal texts from many Germanic groups exist, many of them are influenced by Roman and cannon law. Near consensus exists that the least effected and influenced by Roman and cannon law were those in England and Iceland, primarily because the presence of the Christian Church was slowest in solidifying its power and influence there. That fact does not discount the other texts, but it requires the research to filter out those influences.

The Germanic world is generally divided along the lines of its language divisions. Those are West Germanic, North Germanic and East Germanic; the speakers of the languages within those families generally share common geography. An over-population of males, foreign intrusions from Asia and a weak-looking Rome Empire that appeared ripe for the picking helped to motivate large numbers of Germanic tribes, in whole or part, uproot and migrate. During the apply-named Migration Period, from circa 100 to 500 CE, a great deal of movement occurred within the Germanic world, resulting in the spread of Germanic tribes throughout Europe and a greater interaction between Germanic cultures and foreign ones, namely the Roman Empire. The map below shows the movement during the period. [Note: The Huns also appear on this map; they are, however, not a Germanic people.]



3.1 West Germanic Cultures

The West Germanic languages are the modern, middle and old manifestations of High German, Low German/Saxon, Dutch, Frisian, Flemish and English, as well as Afrikaans (from early modern and modern Dutch) and Yiddish (a blend of High German, Hebrew and Slavic influences). Two medieval legal texts (not from the Anglo-Saxons or Franks) and two notable exist in this group.

The two notable – albeit minor – legal texts are the Low German *Sassen Speyghel*[27] (circa 1220 CE) and the *Lex Alamannorum* (over the period from the eighth to the twelfth centuries CE).

The two notable members of this group are the Franks (Frankish is a High German dialect) and Anglo-Saxons (both Low German dialects). After the migration period, the Franks settled in Gaul, which is modern-day France and western Germany, while the Angles and Saxons crossed the North Sea and entered into Britain.

3.1.1 *Sassen Speyghel*

Sassen Speyghel (modern German: *Sachsenspiegel* "Saxon mirror") divides law into two categories: *Landrecht* ("land law" or "common law") and *Lehnrecht* ("duty law"). *Landrecht* governs free people ("legal persons") and regulates property rights, inheritances, matrimonies, the distribution of goods, the regulation of various civil legal disputes, criminal law and the procedures and construction of the courts. In terms of modern legal systems it can be thought of as including criminal and civil law. *Lehnrecht* determined the relationship between the different estates and feudal rights. The concept of a law to protect free persons was retained, herein, even into the existence of feudalism.

3.1.2 *Lex Alamannorum*

Lex Alamannorum, a Latin text from the Alamanni (a south German subgroup), exists in about 50 manuscripts; the earliest begin from circa 730 CE. It is divided into 3 sections: clerical law, ducal law and popular law. Clerical law largely empowers the Church and sets forth obligations between the Church and monarch. The other two divisions are much like the *Sassen Speyghel*, where ducal law is *Lehnrecht* and popular law is *Landrecht*.

3.1.3 The Frankish Empire

The Franks were very quick to adopt Roman ways and Christianity after they seized control of Gaul, which had been a Roman stronghold.[28] Despite the influences from Roman and cannon law, numerous manuscripts from the Franks describe folkright through the Carolingian period (the second Frankish dynasty, and the one to which Charlemagne belonged). Not much information exists about the Frankish law prior to the migration.

In the period before the founding of the Frankish Empire, the Franks had developed their law mainly according to custom and popularity and to do so was a matter for the people, i.e., it was folkright. When the rule of the Merovingian kings (the first Frankish dynasty) had extended over the different Germanic tribes, this purely popular method began to be disused. Although their own hereditary right was to remain to the members of the different tribes and the "Principle of Personality"[29] was recognized, a great change in the tribal law was unavoidable, due to the emergence of the Frankish Empire and its centralization of power, placing, as in the Roman system, supreme power in the monarch.

The Franks wrote two legal texts for their own people (*Lex Salica*, circa 500 CE, and *Lex Ripuaria*, 630s CE) and added in creating at least two for conquered peoples (namely, *Lex Frisionum* for the Frisians, circa 785 CE and *Lex Saxonum* for the Saxons, circa 803), all in Latin and heavily drawing upon Roman and cannon law. They likely also wrote or directed to be written the *Lex Alamannorum* from/for the Alamanni (circa 730 CE) and *Lex Bajuvariorum* from/for the Bavarians (circa 745 CE).

On December 25, 800, Charlemagne was crowned in his capital of Aachen and proclaimed by Pope Leo III *Imperator Augustus*, later recognized as Holy Roman Emperor. At the Assembly of Aachen of 802 (where Charlemagne, administrators and clergy met), he summoned those familiar with the laws of the different tribes in order to procure materials for the drafting of new laws. This practice was not unusual in the ancient world, as even the Roman Empire (Charlemagne's model)[30] often allowed dual legal systems to exist.

The Franks had expanded their territories in all landward directions, unifying other continental Germanic tribes in modern-day Germany and the modern-day Low Countries, so this rewriting of the old laws was done to create more uniformed throughout their growing empire. Several contemporary historians[31] cite that Charlemagne ordered previously unwritten laws to be written down, including those recently conquered Germanic tribes, such as those of the continental Saxons, Thuringians, the Chamavi and, possibly, Frisian. In every instance, those laws included folkright – by both name and concept, attesting to the prevalence of the concept throughout the Germanic world.

But the comprehensive scheme of reform moved at a slow snail's pace to fruition, which made it necessary to issue numerous regulations on particular points to correct and to supplement the old copies in order to satisfy the need for a continuing development of the law. Charlemagne's success was partial as it took several years to complete, which allowed local tribal leaders to find ways to minimize his changes as much as possible without raising suspicion. Year by year prescripts of every possible kind were issued, decrees that claimed validity either in the whole kingdom or in single districts, rules of a general or special character, explanations of existing regulations of the laws, supplements to correct conspicuous deficiencies in previous laws, and in addition directions for the state officials in their government. At the time it was complete, it amounted to the largest reorganization of people and laws in known history, but in the process, instead of creating a more uniform system, the number of localized changes by subsequent district decrees created more layers and bureaucracy (which was, indirectly, a goal, as this did strengthen imperial power).

Not surprisingly, these new laws and ordinances could be roughly divided into two groups: Those embodying the concepts of folkright and those embodying the concepts of the King's law (which was generally more like Roman and cannon law and drew strongly on those sources).

However, regulating the preexisting rights of these newly incorporated peoples, chiefly in reference to the authority of the Frankish Empire, was a balancing act, because renouncing the laws of

those tribes from amongst themselves in all areas of law risked resistance and possible uprisings. Thus, on the one hand stood the rights of the tribe (i.e., its folkright), while on the other hand, the laws issued by the imperial authority were needed to supplement those matters not dealt with or of imperial importance. Following the Roman model, those laws often contrasted sharply with folkright. The friction of these two forces during Charlemagne's rule, generated a desire to created a type of legal dualism, and in a very superficial sense, one was created

By King's law and the "Principle of Personality", the monarch could exercise no influence on the right of the tribes united in the Frankish Empire and could only by *banriht* ("power of command, essentially contrary to law") impose new laws. As problems between folkright and the monarch's power arose, however, the monarch simply issued ordinances curbing folkright, and, in effect exceeded his powers and creating laws in opposition to folkright. The desire for folkright to be maintained resulted in continuously renewed attempts – and subsequent failures – to establish a workable system of legal dualism.

In Charlemagne's defense, however, most of his legislation showed on the one hand protection of the serf both in status and place of residence, and on the other a spirit of folkright; the transition into feudalism was, in itself, incompatible with the concept of folkright.

The Carolingian Capitularies, law which dealt with secular matters, were commonly divided into three groups according to contents, origin, and period of validity: (1) Capititla legibus addenda; (2) Capitula per se scribenda; and (3) Capitula missorum. The first were to contain those decrees which modify or supplement laws of folkright. The second were to refer to such ordinances as concerned the relation of the subjects to the Frankish Empire. The third were to be instructions for the king's envoys.

The first, according to the usual view, were raised to law by a decision of the people. The second were called into existence on the ground of an agreement of monarch and the annual assembly but did not claim lasting validity. The third owed their origin to the personal decision of the monarch alone and

were of merely temporary validity. This division is a Romanization of the division often seen in tribal law elsewhere.

These problems were not exclusive to the conquered tribes, which the Frankish Empire was trying to incorporate. The Franks themselves had had the two traditional powers in operation in the tribal system, the King and the People, working in harmony and in opposition. When Charlemagne began to centralize and concentrate his power, a conflict between popular influence and royal influence manifested itself within the Frankish tribe. Because Charlemagne was, in theory, removing both privilege and folkright from the majority of the Franks, the conflict of popular and royal influences was not limited to the sphere of legislation; it became prominent in all aspects of daily life.

As the consolidation and centralization of power was brought to a close, the long struggle between these two concepts of law ended with the advance of what was desired by the central authority. The tribal authorities largely remained until feudalism came into full effect, but older institutions of such as those Herzog ("Duke, partly local ruler, partly local official") was set aside. When the last representative of the internal ducal authority died in 788, his district was linked on to the usual Frankish county administration. Only among the Basques and the Bretons did any native dukes remain after 788, and those dukes were not independent representatives of local popular authority, as they had been in the past. Instead, they were merely officials of the monarch and were assigned or occasionally granted special powers.

.4 Anglo-Saxon England

The best attest and most through use of folkright is without argument in Anglo-Saxon England. When the Angles, Saxons and Jutes arrived, the monastic system is largely in place and would, after conquest, provide a source for source and ability to draw upon other sources of knowledge; additionally, the invaders were isolated and insulated by distance from early possible source of problems, such as

Rome and Byzantium. Additionally, the Anglo-Saxons were the only one of the Germanic tribes to produce legal texts in their own language; all of the other produced theirs in Latin. Without the Anglo-Saxon sources, there would be little basis for understanding folkright as it is preserved elsewhere.

Much like the divisions of law that arose in the Frankish Empire, the many small kingdoms of the Anglo-Saxons created three types of laws: 1) laws and collections of laws promulgated by folkright; 2) statements of custom as recorded by the monarch; and 3) private compilations of legal rules and enactments. The second type of law was recorded in books (*doms*), and many of these survive. The third area was the king's administrative law.

Many of the *dom*-book laws reinforce folkright in what we would consider to be "common law rights of action" today. Similarly, many of them protect as a common right actions by the privileged class and the king against the masses, much like constitutional law of today.

Most of the relevancy of Anglo-Saxon law has been described in earlier sections and the rest is described in section 4.0.

Here is a list of the major, relevant *doms*[32]:

- The Laws of Æthelberht, King of Kent 560-616 CE
- The Laws of Kings Hlothhære and Eadric 673-686 CE
- The Laws of King Wihtræd 690-725 CE
- The Laws of King Alfred 871-901 CE
- The Laws of King Edward the Elder, 901-924 CE
- The Laws of Alfred, Guthrum, and Edward the Elder
- The North People's Law (Ninth Century CE ?)
- Mercian Law (Ninth Century CE ?)
- The Laws of King Athelstan 924-939 CE
- The Laws of King Edmund I 939-946 CE
- The Laws of King Edgar 959-975 CE

The time depth for comparison as well as the great number of Anglo-Saxon texts has allowed for inference to be drawn that have proven constant in other texts.

3.2 North Germanic/Norse Cultures

The North Germanic languages are the modern and middle manifestations of Danish, Faroese, Icelandic, Norwegian and Swedish as well as their common ancestor Old Norse (East & West); additionally, the pigeons of Scots and Norn are generally considered North Germanic. While the Icelandic sagas are the best source in helping to understand the practical applications of Germanic legal concepts, as no legal texts exist other than those produced well after the influences from Roman and cannon law have become extremely apparent.

The most relevant sags are the aforementioned Njáls saga and Egíls saga.

3.3 East Germanic Cultures

The East Germanic languages included Gothic, Burgundian, Lombardic, and Vandalic; no modern East Germanic languages exist, and the only sizable text that survives is in Gothic, as just samples of the other languages have been found; although reconstructions exist, but no legal texts from amongst them.

Four Latin texts have survived:

- *Code of Euric* from the Visigoths (circa 471 CE)
- *Lex Burgundionum* from the Burgundian (circa 500 CE)
- *Edictum Rothari* from the Lombards (circa 643 CE)
- *Lex Visigothorum* from the Visigoths (circa 654 CE)

The East Germanic peoples were the first to come into major and extended contact with the Roman and Christian world, and the concept of folkright is nowhere notably distinguishable.

4.0 The Historical “Death” of Folkright: The Norman Conquest of Britain

Folkright *de jure* ended as a viable legal construct with the Norman Conquest of Britain; thus, completely the heavily-Roman-influenced-cultural conquest of the Germanic lands. Although William did, at his coronation, swear as past kings had to uphold folkright, he and his lineage essentially began to militarize Britain and create a more structured and stricter feudal system. The Anglo-Saxons had built a complex and highly sophisticated bureaucratic system (the shire system), so it was relatively easy for William to make change.

By the end of the conquest (usually considered in 1204, when all resistance was defeated), the Normans were installed as the nobility. The *domesdæg* "Doomsday Book", completed in 1086, should almost absolute Norman control - French names predominated even at the lower levels of the aristocracy.

5.0 The Reemergence of the Concept of Folkright (as a Signified)

Although the word folkright disappeared from legal usage, the concepts that it embodied – its referential signified – remained among the masses in oral tradition and folklore. Legends of Anglo-Saxon kings were well preserved – especially those of Alfred the Great, who united England and pushed back the invading Danes to establish the Danelaw border. Alfred also championed the use of Anglo-Saxon in government. As Norman French replaced English as the language of the court and the nobility, English ceased to exist accept for amongst the masses. Although Norman French left lasting impressions on the English language, it failed to capture the hearts and minds of the masses, as evidenced by the lack of any real positive folklore about the Normans. At the time Henry I took the throne, who was the first English-born monarch since the Norman Conquest, the Norman French dominance was beginning to give way.

Folkright remained as a signifier in Germanic mass culture and folklore, reemerged slowly as the feudal system decayed. The assertion of folkright came again first not from the folk as a mass but from the new burgher mercantile class that began to emerge in the latter days of feudalism.

5.1 The Charter of Liberties, the Magna Carta Libertatum and the Bill of Rights

By the end of the twelfth century CE, the Anglo-Saxon nobility had completed a gradual reestablishment of itself, such that it intermarriage between the resurrected noble houses of the Anglo-Saxons and the Norman French was common place.

Just prior to his ascension to the throne, the old privileged class reasserted itself and forced Henry I to proclaim upon his ascension the Charter of Liberties (or the Coronation Charter, because it was proclaimed on Henry I's coronation day) in 1100. The Charter of Liberties bound the English king to certain laws regarding the treatment of church officials and nobles; in essence, it was the beginning of decentralization of power and laid the ground work for the Magna Carta Libertatum (signed and amended between 1215-1297 CE) and the Bill of Rights (1689 CE), which further bound the king, gave the privileged class more power and gave more general procedural fairness to all free persons.

But it did more than that; the Charter of Liberties, and later the Magna Carta Libertatum and the Bill of Rights, also gave rise to the reestablished the folkright concepts of justice and procedural fairness – not just for the privileged but for the masses as well. Indeed the concept of limiting the monarch's power by anything other than divine law harks back to the concept of folkright as constitutional law. Once again a balance – albeit not a fair – balance was beginning to be struck between the folk and the privileged.

5.2 The German Peasants' War (1524-1525 CE)

Der deutsche Bauernkrieg ("the German Peasants' War) was the most notable peasant uprising under feudalism and was the largest and most widespread uprising in Europe until the 1789 French Revolution. The popular revolt in the Holy Roman Empire occurred in the backdrop of the unfolding of the reformation and consisted of revolts by peasants, townsfolk and lower nobility. At its height, an estimated 300,000 peasant insurgents were taking part; most estimates put the death toll at around 100,000.

The peasants – the masses that were the lowest strata of society – had few rights but through their labor supported all other parts of society. Just a step above slavery, these peasants were serfs and thereby the landed property of their vassal lords. Truly avoid of any rights and legal status over their many generations of servitude. The vassal lords and princes had imposed serfdom and Roman law; whereby they had no protections, no folkright. The chaos caused by the Reformation and the worsening of conditions it created for them, gave raise to a desperate attempt to regain some status.

Ultimately, the revolt failed because of the lack of any coordination and means; however, it did become a source of folklore and helped to revive many legends of past champions of the people.[33] With that revived folklore, folkright the signified reemerged.

5.3 The American and French Revolutions

The American and French Revolutions represent the return of folkright as a dominate concept in pan-Germanic legal theory. Although the privileged class was very involved in both revolutions, the underlying concepts of freedom and inalienable rights to all (albeit not really to all at first) as well as a law above ruling entities are a distinct return to folkright.

With its preamble ultimately reading "We the people", the United States Constitution (being the byproduct of the American Revolution) returned to the Anglo-Saxon *dom* of the government being the ownership of the people and being ruled by an authority higher than the government itself. It set forth

rights to all freemen, including rights of procedural fairness and protection against the government. The rights set forth in the U.S. Constitution and its first ten amendments can be understood as a modernization of folkright.

Much like the American Revolution, the French Revolution through off the governance by the monarch and nobility and aimed to establish governance from the people. When drafting the princoiples upon which a new government should be formed, the *Assemblée nationale constituante* ("National Constituent Assembly") created the *Déclaration des droits de l'Homme et du citoyen*) ("Declaration of the Rights of Man and Citizen" – more akin to the U.S. Declaration of Independence). Much of the concepts core to it were taken from the U.S. Constitution, and with it, come the conceptulization of folkright. A prime example is in Article 1, which reads *Les hommes naissent et demeurent libres et égaux en droits. Les distinctions sociales ne peuvent être fondées que sur l'utilité commune* ("The principle of any sovereignty resides essentially in the Nation. No body or no individual can exert authority which does not emanate expressly from it").

In contrast to the American Revolution, which was largely a revolution of mercantile burghers against their monarch, the French Revolution included a large amount of the peasantry, of the masses. This distinct becomes somewhat moot, as the United States did not have a feudalistic system nor did it have a mass or folk populous at the time of revolution, and thus the majority of colonists were of the burgher class.

6.0 Summary and Conclusions

This paper examined the concept known as folkright and then compared its evolution and change over time throughout various Germanic legal systems, traditions and cultures. The folkright signified – the essence of the underlying concept of folkright – remained within the cultural consciousness largely

dormant under feudalism, only to reemerge as a dominant feature again in the modern era. It has become the single unifier of ancient and modern pan-Germanic legal thought.

The American and French Revolutions paved the way for massive reorganization of the overall societal and economic of Europe. Coupled with the rise of the industry, feudalism came to a slow death[34], when in 1848, when the Austrian Empire became the last "Western" state to outlaw serfdom.[35] The Industrial Age had begun and with it, cities and new economic classes of people grew and emerged in new ways, and the political structure need to transition with it. Capitalism, and likewise Communism and Socialism, emerged as economic doctrines upon which to model these changes.

However, one change was largely a byproduct of the many of the new technologies that came about with these advancements in industry and social change: Mass Culture.[36] With rise of mass culture, a return to inherit power of the masses, the folk, has returned and come circle in the pan-Germanic world, even in "Roman" law countries, these rights have emerged dominant[37].

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1 This bias has largely motivated by religion; here, the desire to show the superiority of Christianity over previous or alternative religions stemming directly from Church dogma was the main factor.

2 This practice, ironically, has pre-Christian origins and is nearly as old as recorded history. One need only examine "biographical" histories of ancient cities, kings, or peoples (e.g., the Yngling Dynasty in Sweden traces itself by to the Norse God Frey or the Japanese imperial family's claims of direct descendant of the Japanese sun goddess Amaterasu).

3 Indeed the word barbarian itself is a good example of this. The word meaning of the word conveys primitive, savage and/or uncivilized. M.L. *barbarinus,* from L. The Proto-Indo-European base **barbar-* meant echoic of unintelligible speech of foreigners (cf. Sanskrit *barbara-* "stammering" or "non-Aryan" or Greek (transcribed) *barbaros* "foreign, strange").

4 Numerous works criticizing this practice have been published, but a solid start and easy read is Zinn, Howard. *A People's History of the United States*. Harper & Row. (1980), which is still in print today.

5 See Reynolds, S., *Law and Communities in Western Christendom, c. 900-1140*, 25 AM. J. Legal Hist. 205 (1981).

6 As listed in Bosworth, J. and Toller, T. N., An Anglo-Saxon dictionary, based on the manuscript collections of the late Joseph Bosworth, 1898 (main volume); 1921 (supplement). Available electronically.

7 Some of best examples of this phenomenon are politically connected words, such as liberty (originally

[8] This line of though can be traced back to the ancient Greek and Indian Vedic philosophers all the way through to the modern field of philosophy of language (a subfield that combines linguistics and philosophy). In recent years, it has been best described in the Sapir–Whorf hypothesis (or "linguistic relativity hypothesis") in linguistics and other social sciences and cognitive therapy in psychology. For further information on the Sapir–Whorf hypothesis, please see Gentner, Dedre & Goldwin-Meadow, Susan (Eds.), *Language in mind: advances in the study of language and thought*. Massachusetts, MIT Press (2003). For further information on cognitive theory, see Beck, A., *Cognitive Therapy and the Emotional Disorders,* NY: Penguin. (1993).

[9] In the practice of law in common law countries, the change in meaning over time has been problematic for the continuing use of case law and upholding doctrine of stare decisis. E.g., "In assessing statutory language, unless words have acquired a peculiar meaning, by virtue of statutory definition or judicial construction, they are to be construed in accordance with their common usage." *Muller v. BP Exploration (Alaska) Inc.*, 923 P.2d 783, 787–88 (Alaska 1996). The notion of understanding words in their plain language meaning invokes two questions: 1) whose usage (i.e., whose plain language); and 2) when (time of the enactment of the statute or date of the decision or at the time of the present question before a court)at what time the meaning of the word or words in question.

[10] See, for example, Bosworth, J. and Toller, T. N., An Anglo-Saxon dictionary, based on the manuscript collections of the late Joseph Bosworth, 1898 (main volume); 1921 (supplement). Available electronically at, among other places, http://www.ling.upenn.edu/.

[11] The French-loan-word liberty became fashionable in English after the Norman Conquest, and the two terms are largely synonymous today in English. However, the connotation described in the note below never existed in the French or Latin root of liberty.

[12] It appears that the word primary conveyed "beloved, friend, to love" - perhaps from the terms "beloved" or "friend" being applied to the free members of one's clan (as opposed to slaves). Cf. Gothic *frijon* "to love", Old English *freod* "affection, friendship", *friga* "love", *friðu* "peace"; Old Norse *friðr,* German *Friede* "peace"; Old English *freo* "wife"; Old Norse *Frigg* ("wife of Odin") literally "beloved" or "loving".

[13] For more on folkland, the preeminent works are: Vinogradoff, P., "*Folcland*", English Historical Review, vol. Viii (1893); and Vinogradoff, P., "*The Transfer of Land in Old English Law*", pp. 532-548, Harvard Law Review, vol. 20, No. 7 (May, 1907).

[14] The eleventh Doom of King Edward the Elder (901-924 CE). L. C. S. 1; Th. i. 376, 10: L. Ed. 11; Th. i. 164, 20: L. Edg. ii. 1; Th. i. 266, 4: L. Eth. vi. 8; Th. i. 316, 28.

[15] From a tenth century Bible translation and commentary; Exodus, Chapter 22. Cd. 143; Th. 179, 1; Exod. 22.

[16] Preface to the Laws of Alfred (871-899). L. Alf. 13; Th. i. 46, 25.

[17] Old English *dom* "law, judgment, condemnation," from Proto-Germanic **domaz,* from Proto-Indo-European root **dhe-* (cf. Sanskrit *dhaman-* "law" or Greek (transcribed) *themis* "law"). The concept of Doomsday is from Old English *domesdæg* – the Old English translation for the Christian Judgment Day. The modern meanings of doom and doomsday are a clear example of the changing meaning of words.

[18] Law is a word of Old Norse (Danish) origin: Old English *lagu* from Old Norse **lagu* "law" (collective plural of *lag* "layer, measure, stroke" literally meaning "something laid down or fixed") from Proto-Germanic **lagan* "put, lay". Thus laying down the law is a type of verbal paradox (i.e., one cannot lay down something that is already laid down).

[19] Primary and secondary sources abound describing claims and responsibilities of individuals, such as personal protection and revenge, oaths, marriage, wardship, succession, supervision over settlement, and good behavior. One's actions were exertions of the individual's will and also were considered equally acts of kindred.

[20] The best examples of this usage that are recorded are in Icelandic sagas (many available on-line in translation, such as at http://www.sagadb.org. The most complete and clear example is Njáls Saga.

[21] The word *wer(e)* survives in modern English only in the compounds were+animal (e.g., werewolf, wererat)

[22] A good example of how this was used survives in Grettis sags, Chapter 27, "The Suit for the Slaying of Thorgils Makson"; a notable dispute over determination of *weregild* is found in Egil's saga, chapter 82, in a dispute over a slave.

[23] End of Preamble of "Of Mercian Law" or "The Mercian Dooms". Th. i. 446, 125.

[24] This relationship was initially best described in Saussure, F., *Course in General Linguistics.* Eds. Bally, C. And Sechehaye, A., Trans. Harris, R. La Salle, IL. Open Court. (1983). Several modern linguistic theories add in factors of the reciever (the one recieving the communication), as the reciever's knowledge and understanding will color the meaning of the sign, such that the intent of the sign might be understood differently than intended. The linguistic subfield of semantics, employed here, only examines the relationship between signs and signifers.

[25] Saussure's theory. *Id.*

[26] Pierce, C. *Collected Papers of Charles Sanders Pierce. Volumes I and II*. Cambridge: Harvard University Press. (1960).

[27] Only parts of this manuscript still exist today. I was fortunate to get copies of some of them some years ago, but I know of no source in print for them.

[28] Much of the information in this section is encyclopedic in nature; a good source for further reading or verification, is the Internet Medieval Sourcebook, a collection of transcribed manuscripts from Europe over time. A special legal section exists at http://www.fordham.edu/halsall/sbook-law.html

[29] Here, it was understood that members of tribes could choose to abide by their own laws in absence of any other authority.

[30] Charlemagne wanted to return to Europe the stability that it enjoined under Rome. Romanization of the Roman Empire and Roman ways has been a reoccurring theme in Europe that was likely linked to the liturgical education and Roman-centric-ness of the Catholic Church.

[31] E.g., Reuter, Timothy (trans.) *The Annals of Fulda*. (Manchester Medieval series, Ninth-Century Histories, Volume II.) Manchester: Manchester University Press. (1992).

[32] All available electronically; e.g., at http://www.fordham.edu/halsall/sbook-law.html

[33] Evidence exists for this in the examination and the search for the Urgeschichte; see Grimm, J., Teutonic Mythology, Dover (1966 reprint).

[34] Technically, the island of Sark was the last to have feudalism. On July 4, 2007 the island's Chief Pleas approved a law which introduces a 30-member chamber, with 28 elected members and retaining only two unelected members. On April 9, 2008, the Privy Council approved the Sark law reforms, and the first elections under the new law will be held in December 2008 and the new chamber will first convene in January 2009

[35] The Austrian Empire did this largely for reactive reasons due to the earlier failed revolts in nearby Germany.

[36] Perhaps best developed earlier on in the Frankfurt School by philosophers such as Adorno, Horkheimer, Marcus and Benjamin.

[37] Cf. the Convention for the Protection of Human Rights and Fundamental Freedoms.