



## Response to Visigothic Symposium I, Panel 2: Law

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I would like to begin these brief remarks with words of gratitude to Michael and Dolores for putting together the much-needed Visigothic Symposia, and for having devised a serendipitously refreshing mode of their delivery. The shrewd selection of thematic strains for Symposium I, “Law and Theology,” brings together a diversity of expertise and research directions that mutually reinforce one another and open up new and promising avenues of research. I would first like to highlight the strands that advance the notion of a highly cohesive nature of Visigothic society as they examine complementary aspects of the central production and local enforcement of the law.

1. Isabel Velázquez adds dimension and complexity to the long-held notion of synergy between Visigothic political and ecclesiastical powers as related to legal production. Velázquez examines the *leges in confirmatione concilii* as an example of a complex interaction between ecclesiastical and royal powers in the production of the law. Velázquez shows that the legislative process required a high degree of political maneuvering by the king in order to reach an equilibrium among the principle stakeholders, including the king himself, the bishops, and the political elites. This would begin by the royal presentation of a *tomus*, or the proposed body of legislature, to the council of bishops, first registered

during the reigns of Reccared I (586—601; III Toledo) and Recceswinth (653—672; VIII Toledo). Velázquez shows how the balance of power gradually shifted toward the king in the legislative process during the reigns of Erwig (680—687; XII, XIII, XV Toledo) and Egica (687—ca.702, XVI and XVII Toledo).

While traditionally more scholarly attention has been drawn to collaboration between church and state at the stage of legal *production*, Flora Gusmão provides important insights into the *functioning* of the law by emphasizing how ecclesiastical control of secular powers extended deeply into Iberian communities. She highlights the role of bishops not only as agents of construction of the *Liber Iudiciorum*, but also, and equally importantly, in the enforcement of the law on the ground in their capacity as judges and overseers of other civil servants' integrity.

2. Similar to the manner in which the previous cluster addresses the central production and local enforcement aspects of civil law, another group of papers tackles one of the fundamental Visigothic concerns, that of idolatry and paganism. Dolores Castro insightfully locates the concern with paganism in Isidore's theology of the corruptible nature of man. Capucine Nemo-Pekelman provides a nuanced perspective on how the church used doctrinal leverage to mitigate the effects of forced baptism of the Jews by Sisebut (ca. 615), and how this leverage nearly ceased to exist by the reign of Erwig. In what contributes to our understanding of the deep penetration of the law into the fabric of Visigothic society, Eleonora Dell'Elicine emphasizes the practical responsibility of the

*domini*, or local lords, for the enforcement of correct religious practices among the *famuli* within the confines of local estates.

Together, these papers drive home the notion of Visigothic law as a collective enterprise requiring a high degree of synergy between royal, episcopal and aristocratic figures in the production, dissemination and local enforcement. While we do not know the true geographical scope of Visigothic law on the Iberian Peninsula, the notion of the deep penetration of the law into the fabric of the community (real or intended), and the identification of the key religious and secular local actors of its production and enforcement — bishops, judges, and *domini* — is undoubtedly one of the important takeaways of this Symposium. Further, studies by Isabel Velázquez and Capucine Nemo-Pekelman highlight the evolving nature of the secular-ecclesiastical dynamic in the production of the law and concur in that the balance of power had tilted toward royal characters at the sunset of the Visigothic kingdom. One might be intrigued to explore the connection between this shift in legislative practices and the eventual weakening of the Visigothic kingdom. If such connection indeed exists, it is one of the many tantalizing questions posed in this forum.

Of further interest are the circumstances surrounding the legal revisions by Recceswinth (653), Erwig (681) and Egica (694) discussed by Paulo Pachá. The argument that such legislative activity was undertaken during moments of aristocratic consensus, rather than during periods of royal weakness that would have called for establishing royal preponderance over aristocratic groups (as held by Roger Collins, for example), appears intriguing. However, more evidence is needed, in my view, to support this assumption,

especially taking into consideration Velázquez's argument regarding the political insecurities accompanying the ascensions of Erwig and Egica.

Symposium 1 raises several additional issues that deserve further delving into. One of the most important and least studied questions for our understanding of Visigothic law is that of Visigothic legal terminology. Isabel Velázquez briefly addresses one of the fundamental aspects of Visigothic legal nomenclature, namely the classification of various legislative acts. A related issue, and one that is highly relevant for the (re)construction of sovereignty in the Iberian Northwest after the collapse of the Visigothic state, is the classification of royal subjects and notions of citizenship in *De electione principum* (e.g. *gens*, *uulgus*, *populi*, *ciues*; *ciues* and *populi* as participants in the social order vs. *alieni* and *hostes* as its potential disruptors). To what extent was the Visigothic nomenclature of social groups consistent with Isidorian definitions in *Etymologiae* 1.9? In Asturian neo-gothic political ideology, which developed by the late ninth century, only the term *populus* denotes the king's subjects as participants in the civil concord.<sup>1</sup> The term *gentes* refers to ethnic groups representing alternative centers of power or threats to royal power (Galicians, Basques, Arabs, Northmen, e.g. *gens Sarracenorum*) or is projected onto the Visigothic past (such as the reference to the *gens Gothorum* in the famous battle of Covadonga scene depicting the first post-Gothic Christian victory over the Muslims in 718 or 722).<sup>2</sup> Further understanding of the scope and meaning of terms related to citizenship in the original law,

<sup>1</sup> *Chronicle of Alfonso III*, *Rotensis* version, 130 and 148; *Ad Sebastianum* version, 149; *Chronica Albeldensia*, 178.

<sup>2</sup> E.g. in *Ad Seb.*, 121; *Rot.* and *Ad Seb.*, 126 and 127. In *Crónicas asturianas. Crónica de Alfonso III (Rotense y 'A Sebastián'). Crónica Albeldense (y 'Profética')*, ed. Juan Gil Fernández, José Luis Moralejo, and Juan Ignacio Ruiz de la Peña (Oviedo: Universidad de Oviedo, 1985).

which will undoubtedly be facilitated by the much-awaited searchable critical edition of the *Liber Iudiciorum* (*Lex Wisigothorum*), may shed additional light on the law's intent, the functioning of Visigothic society, and the relationship between the political center and the periphery.<sup>3</sup>

Finally, Michael J. Kelly and Ruth Miguel Franco address editorial practices and modes of dissemination of the law to highlight the literary aesthetics and thus the symbolic meaning of the law, whether as an association with imperial authority or as a literary instrument approaching historical writing. For a scholar of post-Visigothic Iberia, who grapples with the fundamental questions of political, ideological, and legal continuity vs. rupture, these arguments are of particular consequence. Indeed, the *Chronicle of Albelda* famously proclaims about Alfonso II (791—842): “omnemque Gotorum ordinem, sicuti Toletum fuerat, tam in ecclesia quam in palatio cuncta statuit” (“and he restored the entire order of the Goths in Oviedo, according to what it had been in Toledo, both in the church and in the palace”).<sup>4</sup> What these words exactly represent has long been subject to debate. Was the restored equal to what had been lost? Does the chronicle refer to only the superficial, ritualistic aspects of the law or does it refer to Alfonso II formally establishing monarchy? How should we understand the *ecclesia/palatium* dichotomy?<sup>5</sup>

In an echo to this Symposium's focus on law and theology, my contention has been that

<sup>3</sup> The new critical edition of the *Liber Iudiciorum* is an international, open-access project co-directed by Michael J. Kelly and Isabel Velázquez and published by Networks and Neighbours.

<sup>4</sup> *Chronica Albeldensis*, 174.

<sup>5</sup> For the bibliographical review and discussion, see Ksenia Bonch Reeves, *Visions of Unity After the Visigoths: Early Iberian Chronicles and the Mediterranean World* (Turnhout: Brepols, 2016), ch. 4, 160—63.

the words “in ecclesia” and “in palatio” evoke the post-Gothic reliance on the two key components of Visigothic legislative order, the canon law and the political law. Although according to scattered evidence, the *Liber Iudiciorum* and *Liber Canonum* appear to have circulated separately in the Iberian north in the late-ninth century, the earliest known manuscript of the *Albeldensia*, the *Codex Vigilanus* (ca. 976) brings together a collection of legal, historical, and patristic texts (*Liber Canonum*, fols. 20—238; *Chronica Albeldensia*, fols. 238<sup>v</sup>—248<sup>v</sup>; *Liber Iudiciorum*, fols. 358<sup>v</sup>—427).<sup>6</sup> We thus have evidence that in the tenth century, law and history were still closely interrelated genres — even though no earlier traces of such transmission practice have been found.<sup>7</sup> Since, as Kelly points out, such practices of manuscript transmission were also the case during the kingdom of the Visigoths, this appears to indicate a high degree of continuity in the perception of the relationship between law and history among Visigothic and post-Visigothic centers of power.<sup>8</sup>

The challenges to our understanding of the relationship between law and history after the Visigoths represent a complex entanglement of issues, from the status of Visigothic law and evidence of manuscript circulation in Iberian Christian territories to the changing notions of royal power and civil concord, to name a few. The collapse of the Visigothic state in 711 ended all new legislative activity, while the perils of a frontier society in the

<sup>6</sup> Real Biblioteca del Monasterio de El Escorial, d. I.2. See Francisco Javier García Turza, *Códice Albeldense 976: original conservado en la Biblioteca del real Monasterio de San Lorenzo del Escorial* (d.I.2) (Madrid: Patrimonio Nacional/Testimonio, 2002).

<sup>7</sup> See Manuel C. Díaz y Díaz, “La Lex Visigothorum y sus manuscritos. Un ensayo de reinterpretación,” *Anuario de Historia del Derecho Español*, 46 (1976), 163—223, 178; Yolanda García López, *Estudios críticos y literarios de la ‘Lex Visigothorum’* (Alcalá: Universidad de Alcalá, 1996), 36; Carlos Benjamín Pereira Mira, “Exodo librario en la biblioteca capitular de Oviedo: el *Codex miscellaneus ovetensis* (manuscrito escurialense R. II. 18),” *Territorio, Sociedad y Poder* 1 (2006), 263—78.

<sup>8</sup> For more on this, see Bonch Reeves, *Visions of Unity After the Visigoths*, 152–94, esp. 174—76.

eighth and ninth centuries significantly impaired the conservation and circulation of extant legal codices. In the meantime, by the late-ninth century, when the Asturian *Chronicle of Alfonso III* and the *Chronica Albeldensia* were penned, the production of the law in the Western world was considered complete, having been superseded by the task of law-keeping.<sup>9</sup> Since the kingdom of Asturias (ca. 718-910), a self-proclaimed Visigothic political successor, professed neo-Gothicism as its political foundation, the *Lex Wisigothorum* was bound to become a crucial linchpin in its political ideology. But what exactly did this imply?

Weaving Visigothic law into the fabric of late-ninth-century chronicle texts meant structuring and styling biographies of Visigothic and Asturian kings as exemplary or, conversely, reprehensible lawkeepers, from their ascent to power to their ruling practices and eventual demise. Central to this practice was the Visigothic concept of peace, or civil concord among the kingdom's subjects, which in turn was viewed as a path to a transcendent peace, or the eternal survival of the kingdom (*LI II.I.IV; De Electione Principium III, IX*). "Peace" was to be maintained by the kings by several means, including legitimate ascension to the throne and decisive military action against rival or rebellious groups, both internal and external to the kingdom. A good custodian of the law, according to the Asturian chronicles, would be rewarded with a transcendent death. Because this conceptual framework guides the selection of events and the composition of royal

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<sup>9</sup> Patrick Wormald, "Lex Scripta and Verbum Regis: Legislation and Germanic Kingship, from Euric to Cnut," in Patrick Wormald, *Legal Culture in the Early Medieval West. Laws as Text, Image and Experience* (London: The Hambledon Press, 1999), 1-43; Yves Sassier, "Le roi et la loi chez les penseurs du royaume occidental du deuxième quart du IX<sup>e</sup> à la fin du XI<sup>e</sup> s.," *Cahiers de civilisation médiévale* 43 (2000), 257—73.

biographies in Asturian chronicles, Visigothic law becomes not only a central ideological instrument in the construction of Asturian royalty, but also the principal literary device in chronicle composition.

Allusions to Visigothic law and legislative practices in Asturian texts fulfill a secondary function of mythologizing the Visigothic past by portraying Wamba and Egica as good keepers of the peace and casting the last Visigothic kings, Witiza and Rodrigo, as poor lawkeepers.<sup>10</sup> Curiously, the *Chronicle of Alfonso III* begins royal biographies with the last journey of Recceswinth, a legislator king, from Toledo to the hitherto unidentified village of Gérticos, where he is said to have died. This is followed by a much more extended narrative of Wamba's reign, for which the chronicler depends on Julian's *Historia Wambae regis*.<sup>11</sup> The chronicler particularly underscores Wamba's legitimate ascension and the subjugation of the Asturians and the Basques, who had been rebelling continuously against the Visigoths; he underscores the "tyranny", or unlawful conduct by Paulus,<sup>12</sup> Wamba's envoy who had joined the rebellion in Gallia Narbonensis, and Wamba's judicially impeccable response to the rebellion ("cum eo [Paulo] judicialiter intendit"<sup>13</sup>). Egica is praised for the same peace-keeping activity (the suppression of rebellions), although without the same level of detail. Ervig is reprehended for illegitimate ascension and for altering the laws of his predecessors ("legesque predecessore suo editas ex parte corripuit at alias ex nomine suo edidit/adnotare precepit" – notice the negative connotation of

<sup>10</sup> *Rot.*, 118, 120; *Ad Seb.*, 119, 121. For a thorough analysis of this framework as it relates to Asturian kings as well as the last Visigothic kings Witiza and Rodrigo, see Bonch Reeves, *Visions of Unity*, Ch. 4, 179–94.

<sup>11</sup> *Ad Seb.*, 117.

<sup>12</sup> *Ad Seb.*, 117.

<sup>13</sup> *Rot.*, 116.

“corripuit”), however this king is also praised for moderation in ruling his subjects (“ut fertur, pius et modestus erga subditis fuit”/ “ut fertur, erga subditos modestus fuit”).<sup>14</sup> Witiza is censured for abolishing the councils and discarding the canons, which the chronicle interprets as the reason for the kingdom’s collapse (“concilia dissoluit, canones siggillauit ... Iste namque Spanie causa pereundi fuit”).<sup>15</sup> Rodrigo is charged with continuing Witiza’s practices, although without much detail (“nempe in peccatis Uuittizani ambulabuit et non solum zelo iustitie armatus huic sceleri finem inposuit, sed magis ampliavit”).<sup>16</sup>

Writing history in Asturias as a chronology of the kings’s relationship with the law constitutes a bold practice, given that evidence of the law’s circulation in the post-Visigothic Northwest is scarce at best, especially when compared to post-Visigothic Catalonia in the northeast.<sup>17</sup> Yet the careful adaptation of the *Lex* to the realities of late-ninth-century Iberia allowed the Asturian kingdom to distinguish itself among rival centers of power and eventually transcend its place and time. Given the highly skilled composition of Asturian chronicle texts, one that weaves the spirit (if not directly the letter) of Visigothic law into the realities of the late-ninth century Iberia, Kelly’s argument regarding the literary significance of Visigothic law sheds additional light on the continuity, rather than rupture, between Visigothic and post-Visigothic legislative activity and historical writing — a

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<sup>14</sup> *Rot.*, 118; *Ad Seb.*, 119.

<sup>15</sup> *Rot.*, 118; cf. also *Ad Seb.*, 119.

<sup>16</sup> *Ad Seb.*, 121.

<sup>17</sup> Michel Zimmerman, “L’usage du droit wisigothique en Catalogne du IXe au XIIe siècle: approches d’une signification culturelle,” in *Mélanges de la Casa de Velázquez* 9 (1973), 233—81.

process that, we might add, invests both law and history with an entirely new level of literary dimension.