

The Role of the Bishop **According to the *Liber Iudiciorum* (*Lex Visigothorum*)**

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ABSTRACT

The relation between religious and political authorities is a topic hardly lacking in historical discourse. Since the beginning of Christianity the relationship between these sets of figures has been complex. It became even more so in the age of Constantine, when Christianity intensified its expansion and consolidation of power in the West. The bishop represented an essential part in this process. He was a central agent involved in defining the relationship between political powers and ecclesiastical institutions. Some researchers believe that with Constantine the episcopacy became a prestigious position, with judicial and administrative functions, thus attracting members of the aristocracy who had been educated for leadership positions and whose families often already participated in local politics and imperial administration.

The functions that the bishop assumed, and which went beyond his role as religious leader, were also present after the dissolution of the Roman Empire. During the middle ages members of the episcopacy, in general, were from aristocratic families that initially, in some cases, were descendants of Roman senators. Throughout the period it is possible to observe cases in which many bishops and other important members of the ecclesiastical body were from the same family. The episcopate continued to be a

position of prestige and recognition, and even apart from its religious functions it was essential to the function of the medieval society.

In the Visigothic Kingdom, bishops functioned similarly. The bishop played a central role in the narrow and complicated relationship between the monarchy and the ecclesiastical institution, actively participating in the administration of the kingdom. In the Visigothic case, both institutions undertook efforts to regulate society, and sources such as conciliar records and the Visigothic laws demonstrate that the two were in dialogue with one another and participated in each other's legislative practices. In the *Liber Iudiciorum*, the Visigothic law code that was published in AD 654 and which sought to establish a single legislation for all inhabitants of the kingdom, one can find laws that reinforce ecclesiastic decisions. A variety of Visigothic laws also demonstrate how the duties that were attributed to the episcopacy went beyond those of a religious leader. In this essay, I will analyze those laws, as codified in the *Liber Iudiciorum*, to understand the role of the bishop in the Visigothic Kingdom.

ESSAY

In the earliest centuries of Christianity, the relationship between and function of figures within the emergent religion and the political structure of the Roman Empire were contested, complex and ambiguous. An important shift in relations occurred in the period of the Emperor Constantine (r. AD 306-337), when an imperially authorized Christianity intensified its consolidation and expansion, and strengthened its authority in the West. The bishop, the highest position inside the ecclesiastical hierarchy, served an essential role in this process and in the developing cooperation between empire and the Nicene (orthodox) church. During the age of Constantine and from thereafter the

episcopacy became a prestigious office with judicial and administrative functions, one that increasingly attracted aristocratic members who were educated for leadership and were members of established political families, including of the curial and senatorial classes.¹

After the collapse, or within the milieu of transformation, of the empire in the West, amidst the rise of the barbarian successor states, bishops continued to expand their authority by accumulating responsibilities beyond those of a religious community leader. In the Visigothic Kingdom of Toledo, of the sixth, seventh and early eighth centuries, the church and the monarchy collaborated to regulate society. Sources such as the records of the Iberian councils and the Visigothic law demonstrate that both sets of power communicated regularly and participated intimately in each other's legislative practices. In this relationship, which was not without significant conflict, the bishop played a central role. In this essay, I examine the potential extent of the episcopacy's power and its specific roles within the kingdom. To do so, I read the evidence of the laws, namely, the *Liber Iudiciorum* (LI), a law-code promulgated by the Visigothic King Recceswinth (r. 649/653-672) at the Eighth Council of Toledo opened in December AD 653.

The Bishop in the Visigothic Kingdom

Christian doctrine during the period of the late (Roman) empire assumed Greco-Roman traditional values, most characteristically the authority of the *paterfamilias* and the

¹ For an overview see Mark Edwards, "The Beginnings of Christianization," in *The Cambridge Companion to The Age of Constantine*, ed. Noel Lenski (Cambridge: Cambridge University Press, 2007), 137-58, and other articles in the volume.

consequent obedience of community (*familia*) members.² Throughout the late and post-imperial period, Christianity transformed itself into a phenomenon of great social magnitude, and the bishop became an urban representative of major importance. The episcopacy accumulated public functions,³ attained a leadership position within the *civitas*, was incorporated into state apparatuses, and was endowed with judicial responsibilities.⁴ By the rise of the successor kingdoms, western bishops were largely educated men from aristocratic families.⁵ In the Visigothic Kingdom from the 580s, the development of and the conditions for episcopal power were further marked by the church's place within the secular order of the state.

The bishop, leader of the Christian community and the highest-ranking person in the ecclesiastical hierarchy, was a central figure who could mediate between institutions. The main activities of the bishop were charitable, namely, caring for the faithful of the diocese, especially for the poor, the sick and the indigent. As members of the episcopacy more broadly, bishops were required to visit churches to ensure the proper performance of liturgy and ecclesiastical rules, visit the monasteries to name abbots and others, and correct the violations of the monastic rule. They also had to supervise baptism, destroy idols and, if needed, act as judges and supervise civil constructions. Moreover, attending councils was an obligation for bishops.⁶ Most of those activities

² José Fernández Ubiña, "Paz y conflicto en el cristianismo primitivo: el papel de los obispos," in *De cara al más allá. Conflicto: convivencia y asimilación de modelos paganos en el cristianismo antiguo*, ed. Mercedes López Salvá (Zaragoza: Pórtico, 2010), 13-50.

³ Fernando Ruchesi, "El obispo y sus roles públicos en la Galia merovingia; designación, funciones y su alcance en los siglos VI y VII d.C.," *Signum* 13, no. 1 (2012): 70-93.

⁴ Iñaki Martín Viso, "Organización episcopal y poder entre la Antigüedad Tardía y el Medievo (siglos V-XI): Las sedes de Calahorra, Oca y Osma," *Iberia* 2 (1999): 151-90.

⁵ On this see Pablo Fuentes Hinojo, "Patrocinio eclesiástico, rituales de poder e historia urbana en la Hispania Tardoantigua (siglos IV al VI)," *Studia Historica. Historia Antigua* 26 (2008): 315-44.

⁶ For the role of the bishop in the Visigothic Kingdom see: Javier Arce Martínez, "Obispos," in his *Esperando a los árabes. Los visigodos en Hispania (507-711)* (Madrid: Marcial Pons ediciones de Historia, 2011), 261-82.

are present in the Visigothic laws, and not only in ecclesiastical legislation. The episcopacy occupied a central place in the formation and propagation of the kingdom's decisions and the bishop had diverse responsibilities.

The Visigothic Kingdom was a volatile political entity, especially at moments of royal succession, which were marked by conflicts and revolts.⁷ The Visigothic monarch was often scrutinized by the aristocracy and his alliance with the church, even if problematic, was formed out of mutual desire to bolster the power of both institutions: the royal court and the central church. On the one hand, the Spanish (Catholic) Church wanted to consolidate its position as the hegemonic religion in the peninsula and broader kingdom; cementing its relationship with the monarchy was a fine way to secure its dominance. On the other hand, for the crown, this alliance represented a reinforcement of royal power and an attempt to elevate the king above aristocratic disputes.⁸ Both the monarchy and the church undertook efforts to regulate Visigothic society, and, considering the alliance between them, were involved in each other's legislative practices.⁹ The general councils of the church became assemblies in which the monarch, bishops and important aristocrats of the kingdom participated, and where decisions were taken not just about religious questions but also about politics, economy

⁷ Recceswinth, for instance, faced potentially numerous revolts, including one by a noble named Froia, who is known of by an extant letter of Tajo, Bishop of Zaragoza from 651 and the successor of Braulio. Recceswinth's father and royal predecessor, Chindaswinth, was himself a usurper.

⁸ Ruy de O. Andrade Filho, "Um espelho esmaecido: O reino visigodo de Toledo: Cristianismo e monarquia," *Signum* 14, no. 1 (2013), 124-51.

⁹ Some historians defend the possibility that the bishops participated in and assisted with this event. Ortiz de Guinea argues that this cannot be proven because of a lack of extant documentation, but does believe that this assembly was open to episcopal assistance (see Ortiz de Guinea and Lina Fernández, "Participación episcopal en la articulación de la vida política Hispano-Visigoda," *Studia Historica: Historia Antigua* 12 (1994): 159-67. The efforts undertaken by both institutions in regulating the kingdom demonstrate the instability of the conjuncture, as it was an attempt to homogenize the canonical and civil legislation in the kingdom and reinforce the administration of ecclesiastical and royal powers.

and administration. Such decisions, to acquire legal validity tended to be incorporated into canonical codifications and ultimately also a new legal code, the *Liber Iudiciorum*.

The *Liber Iudiciorum*

The episcopacy, which was a consolidated position of power acting across social and political spheres in the kingdom, significantly participated in the construction of the Visigothic law code. The *Liber Iudiciorum*, as issued in 654, was a unique code that regulated the whole of Visigothic territory, across Iberia and Gaul. The *LI* was afforded lasting significance throughout the Iberian middle ages because it served as a basis for politicized historiographies and new legislative codes and systems. The *LI* is considered a ‘complete’ law code because it dealt with diverse questions and issues throughout its medieval life, and is extant in numerous manuscripts.¹⁰ The *LI* has 12 books, each divided into a certain number of chapters containing laws distinguished as either old and anonymous (*antiquae*) – derived from earlier Visigothic law and modified for the code, or (three) by King Reccared (r. 586-601), (two) by King Sisebut (r. 612-621), by King Chindaswinth (r. 642-649/653), or by Recceswinth. Later revisions of the *LI* added laws by kings Wamba (r. 672-680), Ervig (r. 680-687) and Egica (r. 687-700).

The *LI* was a crowning achievement of the Visigothic Kingdom,¹¹ and as such offers knowledge of the intended political aims of multiple monarchs, as well as information

¹⁰ For a list of the manuscripts and discussion see Yolanda García López, *Estudios críticos de la “Lex Visigothorum”* (Alcalá: UAH, 1996), 35-36 and Manuel C. Díaz y Díaz, “La *Lex Visigothorum* y sus manuscritos. Un ensayo de reinterpretación,” *Anuario de Historia del Derecho Español* 46 (1976): 164-71.

¹¹ Paula Barata Dias, “Violência e conflito na sociedade visigótica do séc. VII. Uma leitura da produção jurídica goda do século VII,” *VI Jornadas Luso-espanholas de Estudos Medievais. A Guerra e a*

about Visigothic institutions and the everyday life of the inhabitants of the kingdom. As argued by P.D. King, the law reflected the internal organization and social conditions of the kingdom.¹² Thus, critical analyses of the *LI* provide historians a fair opportunity to reconstruct narratives on the conditions and operations of the kingdom. Central to the construction, dissemination and functioning of the *LI* were the bishops, and generally the space of the episcopacy. An investigation into their specific actions with regards to the *LI* – given their place within Visigothic society, as explained above – allows even deeper insight into the code and its social meaning.

The Bishop in Visigothic Law

The bishop, as noted, was a central figure in late antique and early medieval Iberian life, with administrative, legal, municipal and religious authority. The position of bishop is eminently portrayed in Visigothic law, and his role as judge - reinforcing the image of a fair bishop and responsible community leader – is evident. *LI* 2.1.22, for example, says that if someone declares a suspicion about the integrity of a judge, a governor, a vice governor or any other official, and demands access to his superior, or has suspicion of the superior himself, that person cannot be subject to delay, especially if he is poor. Yet, who decides whether the case should proceed must do so together with the bishop of the diocese, whose opinions and judgments must be written and signed by him. In this, the bishop acts as a judge of other judges, that is, the judge of other officials that were accused of a lack of integrity. The bishop – as a person of integrity who participates actively in trials – has the duty to supervise and register the case. *LI* 2.1.22, as others, reinforces the episcopacy's authoritative standing in the

sociedade na Idade Média, 6, 7 e 8 de novembro de 2008. *Actas...Sociedade Portuguesa de Estudos Medievais, Sociedade Espanhola de Estudios Medievales* (2009), 573-89.

¹² P. D. King, *Derecho y sociedad en el reino visigodo*, trans. M. Rodríguez Alonso (Madrid: Alianza, 1981), 12-13.

kingdom, demonstrating that judicial procedure was part of the episcopacy's duties. It also presents the bishop as a supervisory judiciary official, suggesting that his position in the church, as a leader and protector of Christians of the diocese, set him within a privileged social station.

The illustrious position of the bishop appears also in *LI* 2.1.28, a law affirming that the ministers of God – to whom the divine authority was given to remedy the misfortunes of oppression and poverty – should be vigilant against judges who oppress the people with unfair decrees, whose mistakes can be forgiven. However, if any official invested with judicial power made an unfair decision or unjustly imposed a sentence, the bishop of the diocese must summon the accused judge and together they must make a fair decision, in the presence of other ecclesiastics or other people of respectability. If the judge, by wickedness, refused to correct his mistake after the bishop told him to, the bishop had the privilege to review the case and to be the judge of it. The bishop must act on behalf of those who were oppressed, and the decision made by the accused as much as the decision made by the bishop must be registered. Here again is evident the role of bishop as leader of the Christian community, protector of the oppressed and caretaker of his diocese, even and especially in situations of injustice committed by more powerful individuals. In addition to his religious role as defender of the weak and oppressed, judicial power was afforded to the episcopacy in such a way that he became the arbiter of civil suits. As judge of other judges and state authorities, the bishop attained a powerful secular post, providing a 'moral compass' and establishing – and defining – communities by his ecclesiastical piety, a relationship familiar to the old *paterfamilias*.

Similar ideas are observable in other laws, for instance, *LI* 6.5.1, which prohibits the mutilation of a slave's body. According to this law, if a master without a previous investigation in a court of justice deprived his slave of his lips, nose, tongue, ear, foot or eye, or any other body part, the master must be condemned by the bishop of the diocese to three years of exile plus penance. Here one can see that the bishop is the only authority in charge of punishing this specific crime, reinforcing his role as protector of the oppressed and also as a recognized authority in the civil law. Other laws support the power and recognized authority of the episcopacy in the kingdom too, such as *LI* 8.5.6 on the ownership of lost horses and other lost animals. That law puts the bishop's authority on the same level of the governor and other judges, as do *LI* 2.1.22 and *LI* 2.1.28. Those promote the episcopacy as an authority that must solve cases when the civil authority fails – a check on secular power. *LI* 7.1.1 similarly presents the bishop on par with the governor, and later as an authority that can provide an order that could be given only by the king when civil authority fails.

LI 2.3.1 further elicits the power of the bishop. This law refers more to the king, but also means a lot when it mentions the bishop, since only the bishop and the king are exceptional enough to have the right to be represented by someone else in a judicial process. *LI* 2.3.1 states that if the king or the bishop has a judicial process with anyone he should select a personal delegate to whom the transaction will be entrusted. It is the duty of people in power to decide matters of law not to be submitted to the annoyances of the judicial process. It is, moreover, an insult to the dignity of such men to face contradiction by lower persons. *LI* 2.3.1 also demonstrates a concern with discovering the truth, providing yet another reason why both authorities, especially the king, must

choose someone to represent him: in order to prevent their positions of authority from becoming an obstacle to a fair trial.

Considering the close relationship between the monarchy and the church, there are some laws that present decisions that were made in councils and, to have or to maintain legal validity, were written into Visigothic law. *LI* 3.4.18 is about the celibacy and the purity of life of the ecclesiastics. It affirms that if it is undoubtedly proven that a priest, a deacon or a subdeacon married or fornicated with any woman, the bishop or the judge, as soon as they learn of it, must end the relationship. When the accused is taken to his ecclesiastical superior he must be confined and obligated to do penance according to the council's records. If the bishop does not punish the accused, he shall pay two kilograms of gold to the royal treasure and punish his subordinate immediately. If the bishop is willing to act in favor of the accused, he can summon a council or take the matter to the attention of the king. The women involved in the infraction must receive one hundred lashes by the judge's order and all access to them will be forbidden; and, the law, as established by the canons of the church, should be applied by the bishops.

From a reading of *LI* 3.4.18 one can moreover observe that it fortifies a sacred canon, meaning it is an ecclesiastical law, a decision made in a council that was transferred to the legislative code to reinforce its legal value. Despite presenting a punishment to the transgressors of this law, which also has to be applied according to the sacred canons, it indicates that the privilege of the ecclesiastic can only be violated with an undoubtable proof of the transgression. Therefore, this law, while punishing the ecclesiastic that breaks the rule also remembers their privileges. There is no mention of

a punishment for the bishop if, for example, he is accused of having a relation with a woman, but rather only if he did not punish his subordinate.

There are other laws about ecclesiastical matters, reinforcing the decisions made in the councils, including some related to assets and properties. According to *LI* 5.1.2 it is in the kingdom's interest to protect the temporal rights of the ecclesiastical institution, which reinforces once more the close relationship between the clergy and the monarchy. *LI* 5.1.3 affirms that if a priest or a bishop, or any other member of the clergy, sell or donate any asset that belongs to the church without the knowledge of other ecclesiastics, the transaction will not have validity until it is made as per the sacred canons. This law represents an attempt to protect the properties of the ecclesiastical institution and fortifies the relevance and influence of the church councils.

A final point of discussion is the punishment of the bishop in Visigothic law. The laws mentioned so far reinforced the broader authority of members of the episcopacy, however there are some laws that impose a punishment in certain situations. *LI* 2.1.17, for instance, dictates that if a bishop ignores the summons of a judge he must pay a fine, while for other ecclesiastics the punishment is more rigorous. The bishop was the only member of the ecclesiastical hierarchy to receive a different penalty, and the only one to be spared of corporal punishment. On a matter such as the defense of the realm, a bishop also could be punished. *LI* 9.2.8, added to the code by Wamba, declares that, when the kingdom is invaded, all subjects, whether bishops, clergy, governors or anyone else, must defend the realm. Anyone who failed in their responsibilities would be exiled at the will of the king, to whom they might need to hand over their assets.

This sentence was to be applied to bishops, priests and deacons, while other members of the clergy were judged with the laity.

Laws about Jews were a very complicated matter in the kingdom, but also present a punishment for the episcopacy. Some pose rigorous fines and penalties for the bishops, such as *LI* 12.2.15, passed by the zealot King Sisebut, which asserts that if a bishop or other member of the clergy, or a layman, is guilty of protecting or defending a Jew, he must be excluded from the Christian community, be excommunicated and lose a quarter of his assets to the royal *fisc*. This law presents the same penalty for everyone, showing that on this occasion in Jewish matters legislation was rigorous and that even the bishops, who normally had the role of instructing converted Jews, could be excluded from the Christian community, over which they were supposed to hold ultimate authority.

Final Thoughts

The laws analyzed in this essay reinforced the legal position of bishops, who were leaders not only of their religious communities, but also participated extensively in the civil and administrative matters of the kingdom. The Christian values associated with the bishop, the origins of the position, also contributed to the functions that the episcopacy acquired in the public life, for instance, as protector of the weak and oppressed, and his role as judge. The privileged position of the bishops is paramount in the law, as seen too in the prescribed penalties on bishops: they could be punished in certain situations, but their punishments tended to be lesser or otherwise special because of the bishop's rank and prestige within the kingdom. In short, the bishop appears in the *LI* as a recognized authority: he participated in politics and legislation, served at

councils and in the *officio palatino*, and overall played a crucial role in the functioning of the state and daily life of people in Visigothic Iberia and Gaul. The bishop was a leader of religious communities imbued with pious responsibilities, but also a public administrator. Most of all, the bishop was characterized as a fair person who was responsible for justice and therefore served as a superior judge and arbiter, a legal figure with power, prestige and with a diversified social-bureaucratic role, essential for the operation of the state.

Bibliography

Andrade Filho, Ruy de O. “Um espelho esmaecido: O reino visigodo de Toledo: Cristianismo e monarquia.” *Signum* 14, no. 1 (2013): 124-51.

Arce Martínez, Javier. *Esperando a los árabes. Los visigodos en Hispania (507-711)*. Madrid: Marcial Pons Ediciones de Historia, 2011.

De Guinea, Ortiz and Lina Fernández. “Participación episcopal en la articulación de la vida política Hispano-Visigoda.” *Studia Historica: Historia Antigua* 12 (1994): 159-67.

Barata Dias, Paula. “Violência e conflito na sociedade visigótica do séc. VII. Uma leitura da produção jurídica goda do século VII.” *VI Jornadas Luso-espanholas de Estudos Medievais. A Guerra e a sociedade na Idade Média, 6, 7 e 8 de novembro de 2008. Actas...Sociedade Portuguesa de Estudos Medievais, Sociedade Espanhola de Estudios Medievales* (2009), 573-89.

Díaz y Díaz, Manuel C. “La *Lex Visigothorum* y sus manuscritos. Un ensayo de reinterpretación.” *Anuario de Historia del Derecho Español* 46 (1976): 163-224.

Edwards, Mark. “The Beginnings of Christianization.” In *The Cambridge Companion to The Age of Constantine*, edited by Noel Lenski, 137-58. Cambridge: Cambridge University Press, 2007.

Fernández Ubiña, José. “Paz y conflicto en el cristianismo primitivo: el papel de los obispos.” In *De cara al más allá. Conflicto: convivencia y asimilación de modelos paganos en el cristianismo antiguo*, edited by Mercedes López Salvá, 13-50. Zaragoza: Pórtico, 2010.

Fuentes Hinojo, Pablo. “Patrocinio eclesiástico, rituales de poder e historia urbana en la Hispania Tardoantigua (siglos IV AL VI).” *Studia Historica. Historia Antigua* 26 (2008): 315-44.

García López, Yolanda. *Estudios críticos y literarios de la Lex Visigothorum*. Alcalá de Henares: UAH, 1996.

King, P.D. *Derecho y sociedad en el reino visigodo*. Translated by M. Rodríguez Alonso. Madrid: Alianza, 1981.

Martin Viso, Iñaki. “Organización episcopal y poder entre la Antigüedad Tardía y el Medioevo (siglos V-XI): Las sedes de Calahorra, Oca y Osma.” *Iberia* 2 (1999): 151-90.

Ruchesi, Fernando. “El obispo y sus roles públicos en la Galia merovingia; designación, funciones y su alcance en los siglos VI y VII d.C..” *Signum* 13, no. 1 (2012): 70-93.