



## Law, Networks of Power and Integration: The Production Process of the *Liber Iudiciorum*<sup>1</sup>

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### ABSTRACT

During the Early Middle Ages law was a dimension of the social world where the struggles for authority and power were fought. Law-making and its dissemination were objectives carried out by and within networks of power and authority – the production and reproduction of law was a collective practice. In the Visigothic Kingdom of Toledo, this meant that law-making was not only an aristocratic prerogative carried out by the central power, but also that this production process was collectively coordinated. The dissemination of law was also a collective practice, as law was centrally produced, but had to be locally disseminated. In this way, law's production and dissemination were functions of the integration process – that is to say, the relationship between central and local powers. In this essay, I will analyze the production process and dissemination of the *Liber Iudiciorum* promulgated by King Recceswinth (r. AD 649-672) in 654. Through the analysis of epistles, the council actas and the *Liber Iudiciorum*, I will frame both the production and dissemination of law as a collective and coordinated process carried out by the Visigothic aristocracy within its networks of power and integration.

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## ESSAY

**Introduction**

Amidst the scarcity of sources typical of the early middle ages – and, even more, of the Visigothic Kingdom of Toledo – the preservation of a document such as the *Liber Iudiciorum* (*LI*) should amaze the historian.<sup>2</sup> The *LI* offers both a wide thematic scope and an extensive chronological breadth. On the one hand, the *LI* was an attempt to legislate over almost the entire social life of the Visigothic Kingdom, presenting partial perspectives on themes as diverse as theft and abortion. On the other hand, the *LI*'s wide chronological scope and its identification of most laws with a specific king makes it possible to develop analysis about the transformations of Visigothic society in a diachronic way.

The *LI* contains laws signed by nine different kings –in addition to laws identified as ‘ancient’. Among the former, it is possible to discern three different periods of legal reform, when the code went through major transformations: the production of the *LI* itself (AD 643/644-654), inaugurated by King Chindaswinth (r. 642-649/653) and completed by his son and successor, Recceswinth (649-672); King Erwig's reform (681); and, King Egica's reform (693-702). Other kings also edited the *LI*, but the scope of their intervention was comparatively narrower than that of the ‘reformers’.<sup>3</sup>

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<sup>2</sup> This, of course, is a matter of historical investigation in itself. For an initial review see Yolanda García López, “La tradición del Liber Iudiciorum: una revisión,” in *De la antigüedad al medioevo: siglos IV-VIII: III Congreso de Estudios Medievales* (Madrid: Fundación Sánchez Albornoz, 1993), 381–416.

<sup>3</sup> Leovigild's *CR* was, in turn, a compilation and development of the legislative activity of previous decades, mainly Euric's code. P.D. King, *Law and Society in the Visigothic Kingdom*, vol. 5, Cambridge Studies in Medieval Life and Thought, Third (London: Cambridge University Press, 1972), 13–22; Yolanda García López, *Estudios críticos y literarios de la “Lex wisigothorum”* (Alcalá de Henares: Universidad de Alcalá, 1996), 9–17.

Among these three contexts of legal reform, historians have given greater attention to the legislative actions by Chindaswinth and Recceswinth. There are several and good reasons that explain this concentration – not least that this was the *LI*'s moment of actual production and the most important legal reform of the Visigothic Kingdom of Toledo. The intimate associate of these kings with legal reform had as its main consequence a close identification between the meaning of the reform and the previous characterization of their reigns. Once this relationship was established, it became a model for the analysis of every other legislative reform in the kingdom.

A sharp opposition between the monarchy and the nobility is usually the central element of characterizations of Chindaswinth's and Recceswinth's reigns: in Chindaswinth's case, it is a strong monarch opposed to a weak nobility; in Recceswinth's case, a weak monarch opposed to a strong nobility. In such context, the legal reform became only an accessory process that should conform to this previous framework. This framework is what I call the MoNo model, an aprioristic characterization of Visigothic political dynamics determined by the opposition between the monarchy and the nobility. Given the framework established by the MoNo model, the three legal reforms mentioned above were characterized by the prominence either of the monarchy or the nobility over the other party – that is to say, the legal reforms appear as mere instruments used by one party to affirm its power over the other.

The hypothesis I want to develop here takes the opposite path, to argue that each of these three contexts of legal reform were also moments of wide *aristocratic consensus*. In this

way, each major legal reform, such as these, presupposes a profound process of *aristocratic cooperation*. Even if it appears obvious to identify each legal reform with a given king – and the *LI* itself strengthens this perspective by presenting laws signed by specific kings – it is worth highlighting the social character of law making in general. In the Early Middle Ages, laws – and, even more, legal reforms – could not be the product of any *individual* monarch, but only of a restricted *group* of aristocrats. Despite medieval rhetoric, the production and the dissemination of law had an inherently collective character.

Given the objectives and the limits of this essay, my case study is the legal reform carried out during Chindaswinth's and Recceswinth's reigns. Nevertheless, given the centrality of this reform and its role as a model for the characterization of others, the hypothesis developed also aims to establish the foundations for a new interpretation of other legal reforms in the Visigothic Kingdom of Toledo.

### **Chindaswinth's and Recceswinth's Reigns: Rupture within Continuity**

To investigate the process of production and development of the *LI*, it is necessary to formulate a different characterization of Chindaswinth's and Recceswinth's reigns. As father and son, predecessor and successor, their reigns were closely related. The role of each of these monarchs in the production and enactment of the *LI* is a matter of debate, and I further discuss this matter below. In this section I want to briefly consider how historiography has characterized the reigns of each of these kings and, most importantly, the type of relationship between them – rupture and condemnation or continuity and development.

According to most historians, the main characteristic of Chindaswinth's reign was his project of monarchical centralization – and its main consequence: the affirmation of his power over a weakened nobility.<sup>4</sup> In this way, the first years of Chindaswinth's reign appears as the most adequate moment for the implementation of a major administrative reform whose main objective was to deepen even more the monarchy's power over the aristocracy.<sup>5</sup> One aspect of this administrative reform was the enactment of new laws, if not a complete legislative reform and the production of a new legal code.<sup>6</sup>

In a general way, the double pillars of Chindaswinth's reform were the militarization and the simplification of the kingdom's administrative structure. According to Luis García Moreno, *militarization* meant that the military officers (mainly *dux*) were now also responsible for the former's attribution of 'civil' officers; *simplification* meant the administrative structure's size shrank with the elimination of 'civil' officers (stripped of their previous attributions).<sup>7</sup> Therefore, the most important result of this reform was that power became more concentrated in the hands of fewer aristocrats.

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<sup>4</sup> María del Rosario Valverde Castro, *Ideología, simbolismo y ejercicio del poder real en la monarquía visigoda: un proceso de cambio* (Salamanca: Universidad, 2000), 266. Luis A. García Moreno, *El fin del reino visigodo de Toledo: decadencia y catástrofe - una contribución a su crítica* (Madrid: Universidad Autónoma, 1975), 162–ff.; Pablo C. Díaz Martínez, "Visigothic Political Institutions," in *The Visigoths: From the Migration Period to the Seventh Century: An Ethnographic Perspective*, ed. Peter Heather, *Studies in Historical Archaeoethnology* 4 (San Marino: The Boydell Press, 1999), 340–41.

<sup>5</sup> Luis A. García Moreno, *Historia de España visigoda* (Madrid: Cátedra, 1989), 162–63.

<sup>6</sup> P. D. King, "King Chindasvind and the First Territorial Law-Code of the Visigothic Kingdom," in *Visigothic Spain: New Approaches*, ed. Edward James (Oxford: Clarendon Press, 1980), 131–57. Roger Collins, *Visigothic Spain 409-711*, 1<sup>st</sup> edition (Oxford: Wiley-Blackwell, 2006), 83.

<sup>7</sup> García Moreno, *Historia de España visigoda*, 169.

Chindaswinth's administrative reform, according to some historians, was the monarchical reaction to the specific context in which Chindaswinth himself rose to the throne. That is to say, as argued by García Moreno, the reasons behind this administrative reform "should be searched for in the current state of insecurity, with a weakened central power, and a developed process of sociopolitical feudalization," the reform itself being "[an] attempt to structure a centralized and powerful state over the basis of a profoundly protofeudal socioeconomic reality."<sup>8</sup> In this way, the administrative reform appears as the monarchy's reaction to the nobility's growing power.

The clear paradox within this process is that a reform aimed primarily at curbing the nobility's power ends up giving even more power to nobles, although to fewer of them. To explain this apparent paradox, García Moreno argues that Chindaswinth misunderstood his own context:

To Chindaswinth this militarization and administrative simplification could have appeared as a good way to control a nobility which, in turn, and after converting its members into the king's restricted *fideles*, also wished to concentrate into its hands a greater number of functions of government and levers of power, and already showed a pronounced regionalism. The future would show the king's misunderstanding and the nobility's correct perception.<sup>9</sup>

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<sup>8</sup> Ibid., 161–62.

<sup>9</sup> Ibid., 170.

In this way, most historians interpreted the reform through a presupposed model that locates the political dynamics of this period in the opposition between monarchy and nobility. The reform appears as the consequence of this opposition and its primary objective was the reaffirmation of the monarchy's primacy. The consequence of Chindaswinth's failure was the establishment of the opposite result: the growing power of the nobility over a weakened monarchy. Like a pendular movement, Visigothic political dynamics would move indefinitely from a context of monarchical centralization of power (and weakened nobility) to another of aristocratic fragmentation of power (and weakened monarchy) and back again. This dynamics, in its historiographical form, is what I call the MoNo model – *Monarchy vs. Nobility*, hence *MoNo*.<sup>10</sup>

In the typical pendular movement that represents the MoNo model, Chindaswinth's reign was the first moment and Recceswinth's was the second. Therefore, Recceswinth's reign appears as clearly distinguishable, if not downright opposed, to his father's reign. Historians have defined Chindaswinth's reign by its radical monarchical centralization, while they have depicted Recceswinth's reign by a pronounced incapacity to assert the monarchy's power over the nobility – a king that fell prey to the nobility's interests. In the core of these opposed characterizations is the presumption of a rupture that marked the relationship between the two reigns.

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<sup>10</sup> I further developed this model in my Ph.D. Thesis: Paulo Pachá, *Estado e Relações de Dependência Pessoal no Reino Visigodo de Toledo (Séculos VI-VII)* (Ph.D. Thesis, Universidade Federal Fluminense, 2015).

Taken as a whole, this interpretative framework based on the MoNo model may offer us a coherent characterization of both Chindaswinth's and Recceswinth's reigns and of their oppositional relationship – a relationship of rupture. The problem with this model is that even if it can sustain a coherent characterization, it is also aprioristic and imposes an external dynamic to Visigothic society during the whole seventh century. In this way, it is unable to explain the relationship between these two reigns in light of the surviving evidence, its temporality and historical context. Hence, it hinders a correct interpretation of the *LP*'s production process and of legislative activity in the Visigothic Kingdom of Toledo. In contrast to this model, I argue that the most significant relationship between Chindaswinth's and Recceswinth's reigns was not rupture, but an essential continuity.

The MoNo model's aprioristic character is one of its most central features. The model aims to explain the whole of Visigothic history, but in its simplicity it ends up being unable to explain any of it. That is to say, the MoNo model reduces all political dynamics to only two possible relationships – one as the mirror of the other: a strong monarchy in relation to a weak nobility; a strong nobility in relation to a weak monarchy. In this way, the model frames every process as the result of an ahistorical and recurrent conflict between monarchy and nobility.<sup>11</sup>

The MoNo model is also unable to investigate and explain the extremely complex relationship that Visigothic legal activity had with the older body of law, as it occurs in

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<sup>11</sup> According to García Moreno, “[the sociopolitical Visigothic structure] had as its consequence the inevitable formation within it of noble factions in continuous struggle for the hegemony represented by the royal power.” García Moreno, *Historia de España visigoda*, 161.



every surviving legal compilation from the period. In this way, suppressions, transformations and inclusions were not uncommon; rather, they were the basis of this legal activity. The *LI* produced during Recceswinth's reign and enacted by the king in 654 was a patchwork of earlier codes, supplemented by several new laws.

Among these earlier laws, there were several signed by Chindaswinth during his reign and kept in the *LI* enacted by Recceswinth. This is important for two reasons: first, it shows that Recceswinth maintained at least part of the legislation produced during his father's reign in his own code – the *LI*. Given that the *LI* was a major legal reform, it would have been the most adequate moment to eliminate any laws that the current king – Recceswinth – did not wish to reproduce in his own code.<sup>12</sup> Not only did Recceswinth preserve Chindaswinth's laws in the *LI*, he preserved some of his most controversial legislation; second, P. D. King argued that Chindaswinth's laws in the *LI* – along with other evidence – indicates that Chindaswinth himself was responsible for the compilation of an earlier code that, in turn, was the basis for the *LI*. In this way, the *LI* was not a major legislative revolution – a completely new legal compilation and the first one to present a territorial character – but the development of Chindaswinth's code, the first one to present these characteristics and the real Visigothic legislative revolution.

The thesis of a rupture between Chindaswinth's and Recceswinth's reigns also disregards the temporality in the process of production of the *LI*. Chindaswinth died in 653, leaving Recceswinth as the sole king. In the following year, Recceswinth enacted the *LI*. However,

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<sup>12</sup> Against this view: Céline Martin, "A reforma visigótica da justiça: Os 'anos de Recesvinto'," *Revista Diálogos Mediterrânicos* 0, no. 4 (July 5, 2013): 97–115.

Braulio's (Bishop of Zaragoza, 631-651) epistolary shows that the bishop was already working on the correction of the *LI*'s manuscript for several years (at least since 649) and, therefore, while Chindaswinth was alive and ruling. Braulio and Recceswinth exchanged the epistles in question, but it is difficult to assume that they were preparing such a major legal reform without Chindaswinth's knowledge and agreement.

Lastly, to characterize Recceswinth's reign as divergent to his father's, it would be necessary to ignore the context in which Recceswinth was associated to the throne and, after his father's death, became the sole king. Chindaswinth associated Recceswinth to the throne three years after VII Toledo, so in 649.<sup>13</sup> One of the most important pieces of evidence for understanding this process is a letter written in 648 from Braulio to Chindaswinth. Bishop Eutropius and the *Dux* Celsus also signed the letter.<sup>14</sup> While asserting their humility, all three aristocrats (lay and ecclesiastical) plead for Chindaswinth to associate his son – Recceswinth – to the throne. Historians have explained this episode both as proof of the monarchy's strength and of its weakness, but I would argue that it was neither.<sup>15</sup> Instead, the letter is clear verification of the aristocratic consensus that was in place since Chindaswinth's rise to the throne. In this way, we must reframe the question:

<sup>13</sup> García Moreno, *Historia de España visigoda*, 165; Collins, *Visigothic Spain 409-711*, 82.

<sup>14</sup> According to García Moreno, Celsus probably was the *Dux* of Tarraconensis. Luis A. García Moreno, *Prosopografía del reino visigodo de Toledo* (Salamanca: Universidad de Salamanca, 1974), 39. Luis Riesco Terrero, *Epistolario de San Braulio*, *Anales de la Universidad Hispalense. Filosofía y Letras* 31 (Sevilla: Editora Católica Española, 1975), 148. Collins, *Visigothic Spain 409-711*, 82–83. Both Lynch and Madoz argued that the letter was written in 648. Charles Henry Lynch, *Saint Braulio, Bishop of Saragossa: 631-651, His Life and Writings* (Washington: The Catholic University of America, 1938), 81, 208. José Madoz, *Epistolario de S. Braulio de Zaragoza: Edición Crítica Según El Códice 22 Del Archivo Capitular de León*, *Biblioteca de Antiguos Escritores Cristianos Españoles* 1 (Madrid: Instituto Francisco Suárez / C.S.I.C., 1941), 169.

<sup>15</sup> As evidence of the monarchy's strength see Collins, *Visigothic Spain 409-711*, 83. For its weakness, García Moreno, *Historia de España visigoda*, 165.

it is not about strong or weak kings, but of how the real development of power relations formed, reproduced and transformed aristocratic consensus.

If the elements discussed above are enough to displace the MoNo model and the thesis of a rupture between those two reigns as the only possible characterization of their relationship, then one must also consider other ways to frame this problem. In this way, I argue below that the production process of the *LI* can only be understood within a context determined by wide aristocratic consensus. This context can explain not only the successful royal succession, but also the major transformation of the legislative order. The apex of this transformation was the enactment of the *LI*, but it had begun almost a decade before with Chindaswinth's first laws.

### **The Collective Character in the Production of Law**

The essential continuity between Chindaswinth's and Recceswinth's reigns projects a different light over both reigns and the development of the legal reform during the period. To assert the collective aristocratic consensus that sustained both Chindaswinth and Recceswinth is also to assert the collective aristocratic character of legal production. As shown below, it is not possible to investigate this historical process by focusing exclusively on one reign or the other – on the contrary, the development of this process during both reigns is in itself confirmation of their essential continuity. This is one of the reasons that the analysis of the *LI* needed to begin in the previous section, as it is impossible to discuss the rupture or continuity between these two reigns without referring to the evidence in the *LI*.

One of the key elements for grasping the collective character of the process of producing the *LI* is the wide aristocratic consensus around Chindaswinth during the first years of his reign. According to King, in 643/644 Chindaswinth was responsible for two wide-ranging transformations in Visigothic juridical life: on one hand, the compilation of a new legal code; on the other hand, the transformation of a ‘national’ juridical regime to a territorial one.<sup>16</sup> Both transformations depended on a context where aristocratic consensus was profound and aristocratic cooperation an essential feature. Chindaswinth’s code did not survive in its original form, but the legislative activity carried out during his reign left several traces in other sources. The main one is the *LI*, through the reproduction in it of several laws from Chindaswinth’s code. The proceedings of VII Toledo (646) also present other proofs, both of Chindaswinth’s legislative activity and of the consensus during his reign.

#### *a) VII Toledo*

Chindaswinth summoned the Seventh Council of Toledo in 646, following the enactment of his code in 643/644. The main issue discussed by this council was the ecclesiastical legislation – ‘on ecclesiastical and lay deserters or traitors’ – that mirrored Chindaswinth’s most polemical piece of legislation in the royal code – *LI* II.1.8.<sup>17</sup> On this issue, the council ruled in a manner as harsh as the king had done a few years before. Some authors, working within the frame established by the MoNo model, saw this council’s proceedings as

<sup>16</sup> King, “King Chindasvind and the First Territorial Law-Code of the Visigothic Kingdom.”

<sup>17</sup> *Concilios visigóticos e hispano-romanos*, ed. José Vives (Barcelona: Consejo Superior de Investigaciones Científicas, Instituto Enrique Flórez, 1963), 249–53; *Leges Visigothorum. Monumenta Germaniae Historica. Leges Nationum Germanicarum, I*, Monumenta Germaniae Historica, I, ed. Karl Zeumer (Hannoverae; Lipsiae: Impensis Bibliopolii Hahniani, 1972), 53–57.

evidence of Chindaswinth's policies against the nobility and of his hold over the Visigothic Church.<sup>18</sup> I want to propose here an alternative interpretation: VII Toledo was the first aristocratic evaluation of Chindaswinth's policies and, as such, it was a decisive moment in the establishment of a new legislative order.

The assembly of VII Toledo only explicitly discussed Chindaswinth's *LI* II.1.8. Even then, the bishops hardly mentioned the law enacted by the king a few years before. Nevertheless, in the subtle manner typical of the councils in dealing with delicate issues, the debate recorded in the proceedings could only occur against a more complex background. Here the researcher confronts two possibilities without enough support to choose one over the other: on the one hand, if King's hypothesis is correct, *LI* II.1.8 was one piece of legislation within a new legal compilation. In this way, the framework for the discussion about this specific law is the debate about the new code; on the other hand, it is possible to argue that *LI* II.1.8 was one of Chindaswinth's first legislative acts and preceded his new compilation. In any case, what matters here is to highlight the fact that VII Toledo was debating not only one law, but also its response to the king's intent to establish a new legislative order. In either case, the council's answer was the reaffirmation of the aristocratic consensus around Chindaswinth's rule.

*b) Braulio's role in the correction of the LI*

Once the fundamental continuity between Chindaswinth's and Recceswinth's reigns has been established, the evidence of convergence between royal and ecclesiastical legislation

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<sup>18</sup> Collins, *Visigothic Spain 409-711*, 83–84. García Moreno, *Historia de España visigoda*, 164–65.

during Chindaswinth's reign acquires a more profound significance. One of the most telling proofs of this convergence is the role of Braulio in the production of the *LI*. As one of the most important bishops of the Visigothic Church, Braulio's role moved beyond convergence and became interpenetration.

Braulio's epistolary collection gathers several letters that show witness to intense political and religious activity during the first half of the seventh century. The letters in the epistolary cover a period from 610/620 to 651, and his correspondents were a heterogeneous group including Chindaswinth, Recceswinth, Eugenius II of Toledo, Taio (Braulio's successor as bishop of Zaragoza) and Fructuosus.<sup>19</sup> Concerning Braulio's legislative activity, the set made by the epistles 38, 39, 40 and 41 is central: *Ep.* 38 and 40 are from Braulio to Recceswinth (38 and 40) and the two replies from the king are *Ep.* 39 and 41, which must have been written between 649 and 651.<sup>20</sup> The theme that provides coherence to this set is the correction of a manuscript sent by Recceswinth to Braulio.

In the first epistle (38, from Braulio to Recceswinth) the bishop asks the king to forgive him for not having finished yet the work that the king had asked him to perform. Braulio says that he was unable to do it both because of the several corrections that were needed in the manuscript and his weak health.<sup>21</sup> Recceswinth's answer (39) manifests his understanding and encouragement: aided by God, Braulio should persist in the task.<sup>22</sup>

<sup>19</sup> Madoz, *Epistolario de S. Braulio de Zaragoza*, 55–56.

<sup>20</sup> *Ibid.*, 55.

<sup>21</sup> *Ibid.*, 171–73; Riesco Terrero, *Epistolario de San Braulio*, 150.

<sup>22</sup> Madoz, *Epistolario de S. Braulio de Zaragoza*, 173–74; Riesco Terrero, *Epistolario de San Braulio*, 150.

In the third epistle (40 from Braulio to Recceswinth) the bishop tells the king that his work is done, and sends him its results.<sup>23</sup> In this letter Braulio also mentions that he divided the corrected manuscript into chapters, and if the “king’s men” (*seruorum uestrorum*) were not able to understand it, they should check the original material. Unfortunately, this epistle’s text is not complete and we do not know how it ended. Recceswinth’s answer (41) manifests again his understanding of and praise for Braulio’s work. The king confirms that he received the letter and the corrected manuscript, thanks the bishop and highlights the importance of his labor.<sup>24</sup>

There is some agreement between historians and other specialists on the identification of the manuscript mentioned in these letters as an initial version of the *LI*.<sup>25</sup> According to King’s hypothesis, the manuscript in question would have been the legal code promulgated by Chindaswinth in 643/644. King also states that the two-year gap between Recceswinth’s last letter to Braulio and the presentation of the *LI* at VIII Toledo was the necessary time finish the code – i.e., the *LI*.<sup>26</sup>

If these elements are united one can see how Recceswinth continued his father’s legislative activity. In summary, during the first two years of his reign Chindaswinth oversaw the hasty production of his code. The code would have merged earlier ones, such as Leovigild’s *Codex Revisus* and the *Breviary of Alaric*, with the addition of several laws signed by

<sup>23</sup>Madoz, *Epistolario de S. Braulio de Zaragoza*, 174; Riesco Terrero, *Epistolario de San Braulio*, 152.

<sup>24</sup>Madoz, *Epistolario de S. Braulio de Zaragoza*, 175; Riesco Terrero, *Epistolario de San Braulio*, 152.

<sup>25</sup>Ruth Miguel Franco, “Braulio de Zaragoza y la corrección del Fuero Juzgo,” *Helmantica: Revista de Filología Clásica y Hebrea* 58, no. 175 (2007): 86. The author offers a synthesis of the several hypotheses on the manuscript identity. Her conclusion is that the manuscript probably was the *LI*.

<sup>26</sup>King, “King Chindasvind and the First Territorial Law-Code of the Visigothic Kingdom,” 148–49.

Chindaswinth himself. Its main consequence was the profound reordering of the legal system in the Visigothic Kingdom, from an ‘ethnic’ to a territorial one. In 643/644 Chindaswinth enacted the new code, a wide-ranging and, in a certain way, urgent legal action.

If one must always doubt the typical identification of the monarch as the sole lawgiver, in Chindaswinth’s case this is even more important. As shown above through the critique of the MoNo model, Chindaswinth’s royal ascension appears to have been the result of a diverse intra-aristocratic consensus. In this way, it is logical that his government as well – including his legislative activity – was established over these same aristocratic foundations. Added to it is the magnitude of the legislative transformation that Chindaswinth’s code represented, one that could only be effective through the cooperation of the kingdom’s aristocracy. Therefore, we have sufficient elements to state that Chindaswinth’s code represented the legislative labor of a wider aristocratic group, a feature that is even more apparent during the transformation of this code into the one known as the *LI*.

The swift elaboration and enactment of Chindaswinth’s code, however, had as its consequence the immediate attempts to correct the code’s first version. Already examined above is Braulio’s participation in this work, and as he was involved, there is evidence to suspect that others were too.<sup>27</sup> Braulio was one of the main figures in the Visigothic Church

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<sup>27</sup> Given that Braulio wrote his letter to Recceswinth in 649, he probably received the task from the king sometime before. In this way, the correction of the *LI* must have begun between 644 and 648. Madoz, *Epistolario de S. Braulio de Zaragoza*, 171–73; Riesco Terrero, *Epistolario de San Braulio*, 150.



of the period, but he was not particularly close either to Chindaswinth or to Recceswinth.<sup>28</sup> That Braulio was chosen by Recceswinth to undertake major corrections in Chindaswinth's code only shows the collective character of this legal enterprise and how even somewhat 'oppositionist' figures were part of it.

### c) VIII Toledo

The evidence from VIII Toledo's proceedings also shows that the law's process of production had a clear collective character. In relation to VII Toledo, the political landscape was very different during VIII Toledo (653): this was not the decisive moment for the establishment of a new legislative order but of its re-evaluation and development almost one decade after its enactment and confirmation. This was also the first moment after Chindaswinth's death in which the aristocracy gathered itself in a council. In this way, VIII Toledo had multiple objectives: it represented the evaluation and correction of some of Chindaswinth's laws (as policies) from the previous decade; it functioned as an informal confirmation of Recceswinth's authority as sole king; and, most significant of all, during it occurred the presentation of the *LI* to the aristocratic assembly.<sup>29</sup>

There are several elements in the council's proceedings that could sustain the hypothesis above, but I want to focus on the analysis of a specific text in the proceedings – the royal *tomus*.<sup>30</sup> The *tomus* was a message signed by the king and one of the council's first tasks

<sup>28</sup> For the conflict between Chindaswinth, Braulio and Eugenius, cf.: Riesco Terrero, *Epistolario de San Braulio*, 132–37. Collins, *Visigothic Spain 409-711*, 88.

<sup>29</sup> King, "King Chindasvind and the First Territorial Law-Code of the Visigothic Kingdom," 148; García López, *Estudios críticos y literarios de la "Lex wisigothorum"*, 24; Collins, *Visigothic Spain 409-711*, 90.

<sup>30</sup> As for the memory of Chindaswinth's reign, the VIII Council's proceedings ends with an *Item Decretum iudicii universalis editum in nomine principis* in which the former king is mentioned accompanied by the epithet *gloriosae memoriae*. The correction of Chindaswinth's policies carried out by the council do not

was to read it aloud in front of the whole assembly. As such, the *tomus* often defined one or more questions that the council should discuss and deliberate. If this custom was not then unprecedented, after VIII Toledo it was a constant feature of the general councils.<sup>31</sup>

Recceswinth's *tomus* in VIII Toledo was long and mentioned several subjects. However, it is clear that the presentation of the *LI* to the conciliar assembly was one of the main issues. It is important to note that Recceswinth directed himself first to the bishops and then specifically to the higher aristocracy – who were also present at the council. According to the conciliar proceedings, Recceswinth presented the following message to the bishops:

We decree and conjure your assembly by the congenial, coeternal and inseparable Trinity of the supreme divinity, [...] that any cause which come to your ears through the claims of whomever it be, you shall decide it according to us, employing the rigor of justice mercifully and temperance of mercy justly; and all that in the legal texts seems corrupted or superfluous or improperly preserved, with the approval of our serenity, reform it according to the true justice and the necessities of life; you shall clarify with common-sense some of the heart's obscurities and doubts, and in this manner endeavor to decide with temperance and piety, according to the rules of our nobles, all claims of any kind and questions about the orders which were taken to your presence [...].<sup>32</sup>

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indicate a complete rejection of his legacy. The conciliar assembly did not try to erase or understate Chindaswinth's memory; instead, it was another tool to develop the state as a space of aristocratic cooperation. Vives, *Concilios visigóticos e hispano-romanos*, 289–93.

<sup>31</sup> José Orlandis, *Historia de los concilios de la España romana y visigoda* (Pamplona: Universidad de Navarra, 1986), 173.

<sup>32</sup> Vives, *Concilios visigóticos e hispano-romanos*, 264–65.

The message's main feature is the explicit recognition of the bishops' role concerning both the production and the dissemination of the law. The king's message mentions first the bishops' role in the dissemination of the law – they appear as representatives of the king's justice. In this way, Recceswinth decreed that any causes that were presented to the bishops should be settled 'according to us' (*cum nostra coniventia terminetis*), that is to say, through the law enacted by the king.<sup>33</sup> Almost in the same breath, the king then mentioned the bishops' role in the production of law, including the code that he was then presenting to the assembly – the *LI*. Recceswinth's explicit instruction to the assembly was to correct the code's text – be it through suppression, amendment or addition to the text. In this way, Recceswinth's message exalted the bishops' capacity to do it, but he quickly added that "the approval of our serenity" should accompany those changes.<sup>34</sup>

The king's message to the lay aristocrats was parallel in its meaning to the message directed to the bishops, but it also presented some singularities. Addressing the group composed by the most powerful lay aristocrats – the *vir illustris* from the *Officium Palatinum* – Recceswinth presented the following picture:

And also to you, illustrious men [*inlustres viros*], whom an ancient custom chose among the palatine office [*officio palatino*] to attend this holy synod, those who are adorned by an illustrious nobility and a sense of fairness appointed you as heads of the people and whom I have as associates in the government [*in regimine socios*], loyal during the misfortune and vigorous during the prosperity, and by which justice enforces the laws, mercy softens

<sup>33</sup> "[...] cum iustitiae vigore misericorditer et cum temperamento miserationis iustissime." Ibid., 264.

<sup>34</sup> "[...] nostrae serenitatis adcomodante consensu." Idem.

them and against the rigor of norms the moderation of equity reaches the temperance of the law, [...] that you follow a rule of so much truth and just discretion, so that you do not distance yourselves in your reflection from the consent of the present Fathers and of the holy men, whatever you know is close to innocence, or that touches with justice, or that is not alien to piety or pleasing to the only God, you deign to include it without delay, with modesty and good intentions, knowing that in all that you follow these good desires of mine, you make yourself pleasing to God, and in confirming these decrees of you, by my benevolence, I make myself pleasing to God with you.<sup>35</sup>

In formal terms, this is almost a repetition of the previous message directed to the bishops: Recceswinth also identifies the lay aristocracy as responsible for law enforcement – the dissemination of law – and for the production of law. Their role in the dissemination of law is clear; they are those ‘by which justice enforces the laws’. Moreover, concerning the production of law, the king asks them to change the laws whenever this is necessary, an initiative that he says he will confirm – therefore retaining his right not to do it.<sup>36</sup>

The main question concerning Recceswinth’s *tomus* and position in VIII Toledo is why the king needed to submit his code to changes and corrections by the aristocracy. Within the MoNo model, this can only appear as the submission of the king to the nobility. However, as shown above, an alternative explanation can be less partial: in this way, the expression

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<sup>35</sup> Ibid., 265.

<sup>36</sup> There is no doubt that Recceswinth’s *tomus* made reference primarily to the changes in the *LI* II.1.8. Nevertheless, it should not be overlooked that Recceswinth presented this question in such general terms, indicating the possible aristocratic intervention in the code as a whole.

used by Recceswinth to refer to the lay aristocrats is revealing: they are his ‘associates in the government’ (*in regimine socios*).<sup>37</sup> The Visigothic state’s structure unveils itself not as the stage for the continuous conflict between monarchy and nobility, but as the expression of aristocratic cooperation, one that reproduces the state itself.

Recceswinth’s major achievement in VIII Toledo was to tie the enforcement of the law by the aristocrats to the application of the *LI*. However, this was not achieved through coercion and imposition of the code, but through the construction of a consensus which was expressed in the same code – as the king recognized that the aristocracy had the (collective) right to change the law as it saw to be fit. In this way, Recceswinth was also able to preserve for himself the right to reject the proposed changes made by the conciliar assembly, highlighting his role as articulator of the whole process.

In submitting the *LI* to be corrected and approved by the conciliar assembly, Recceswinth recognized and dealt with two different sets of issues: on the one hand, he recognized the (local) aristocracy as the actual authority responsible for the application and dissemination of law. In this way, Recceswinth also recognized that the Visigothic state had a structure spatially hierarchized.<sup>38</sup> Therefore, the *LI* could be effective only if it implicated in its production the aristocrats responsible for its latter enforcement; on the other hand, Recceswinth’s *tomus* also represents a willingness from the king to assert the aristocracy’s role on a wider level – that is to say, its role in the reproduction of the Visigothic state.

<sup>37</sup> “[...] regimine socios, in adversitate fidos et in prosperis amplecturos strenuos.” Vives, *Concilios visigóticos e hispano-romanos*, 265.

<sup>38</sup> Jamie Wood and Sam Koon, “Unity from Disunity: Law, Rhetoric and Power in the Visigothic Kingdom,” *European Review of History: Revue Européenne d’histoire* 16, no. 6 (December 1, 2009): 793–808.

**Conclusion: Cooperation, Conflict and the Process of Integration**

The analysis presented here of the *LI*'s production process illustrates the complementary dynamics of both conflict and cooperation. The process resulted in the emergence of a prominence of cooperation (and the consensus from which it is an expression), but it did not deny the multiple interests in the conflict. The process of the production of law in the Visigothic Kingdom of Toledo was never unilateral or directed in an autocratic manner – be it by the monarchy or the nobility – but its development took place always *within* the state. Therefore, as one of the essential structures of aristocratic articulation, the development of law was the result of specific answers for a given context and its transformation.

The prominence of cooperation and consensus in the production of law, however, does not mean that conflict was absent, but only that the Visigothic state was strong enough to articulate, channel and settle it in its interior. The approach developed here, therefore, does not aim to deny the presence of intra-aristocratic conflict or even the formation of aristocratic factions in opposition. Instead, its objective is to recognize that intra-aristocratic conflict was not a process external to the state and potentially catastrophic, endangering its own reproduction, but an internal dynamic that played a fundamental role in its development. The intra-aristocratic conflicts – mainly after Chindaswinth's reign – thus should be framed within a wider process of consensus-building in the Visigothic Kingdom. This consensus was dynamic and emphasized, at times, the monarchical direction of the process and, at others, the importance of the aristocracy to its reproduction. This shows that aristocratic reproduction relied on the articulation of both moments:

centralization and regionalization. In this way, the production of law was both a consequence and a requisite for the integration process of the Visigothic Kingdom.

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