Response to Visigothic Symposium I, Panel 2: Law

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In this paper, I respond to the other four essays in my section ‘Law’ of the first Visigothic Symposium (VgS 1). A central feature of VgS 1 is the comparative analysis of theology and law in early medieval Iberia developed directly and indirectly across two complementing sections of the symposium. In our section – that of myself and the four scholars whose work I review below: Ruth Miguel Franco, Paulo Pachá, Capucine Nemo-Pekelman and Ksenia Bonch Reeves – we present essays that interact and complement, and at times challenge, one another. We cover the processes and meanings of law and law-code production, law’s relationship to spiritual concerns and to socio-political networks, the narrativity of law and its framing of social order and defining of allies and enemies, and its establishing modes of surveillance.¹

History, law and spirituality are found to be intimately woven together, but this realization alone still leaves us with the question of why, and not only why, but also to what extent do the parts reverberate off one another or are independent of one another? Moreover, to what

¹ For a useful exercise in theoretical thinking about the development of Visigothic law-making and legal processes and the relationship to them of ‘conversion’, not to mention the literal invention of new judicial technologies (e.g. trial by ordeal) by the Visigoths, I recommend a re-read of Michel Foucault’s Surveiller et Punir (Paris: Gallimard, 1975).
degree did they determine historical actions, condition modes of thinking, facilitate juridical performance, affect families and neighborly friendships, and so on. Together, our essays work towards unpacking – but certainly do not answer all of - these questions, broadly agreeing on the production process of Visigothic law (namely, the *Liber Judiciorum* and its contributors and editors), its endowment with rhetorical structuring able to be used by many generations of Iberians, and its establishment of political enemies.

Ruth Miguel Franco, in her essay, “*Sub titulis misi, in Libros Diuisi: Braulio of Zaragoza and his Arrangement of Materials,*” re-examines the letters between Braulio and Recceswinth concerning the former’s editing of a manuscript which historians – e.g. Pachá (see below) – widely believe was the *Liber Iudiciorum.* Her thesis is that the production of the *Liber Iudiciorum* directly involved the work of Braulio of Zaragoza and was effectively a collaborative enterprise between nodes of power. Miguel Franco structures her argument via an interpretive model that interlaces an evaluation of Braulio’s participation in the law-making process with an analysis of the organization of the *LI* and a comparison of that to Braulio’s other editing projects.

Through a succinct manuscript analysis, Miguel Franco confirms that the first book of the *LI* (*LI* I) was part of Recceswinth’s version of the code and that it has distinct Isidorian overtones. This suggests that *LI* I has a direct connection with Braulio, given his well-known personal connections to Isidore. This is shown, in part but importantly here, by his framing of the *Etymologies* with a prefatory copy of his epistolary exchange with Isidore.
As with the functioning of those letters at the Braulian narrativic level of the *Etymologies*, the first book of the *LI* is crucial to the historical-literary framing of the code.

In addition, Miguel Franco reveals (pp. 136-38) how Braulio similarly collated his personal letters to present a specific message. For the collection, Braulio created a thematic plan which organizes the letters in such a way that they mirror one another according to their topical content. This arrangement allows the letters to be consulted in a systematic way and preserves the (rhetorically) most important letter, that to Pope Honorius, to sit in the pivotal position (p. 136).

Braulio’s work on his epistolary collection further proves his ability to conceive of and then organize existing textual materials – whether etymological, historical, epistolary or legal – into new interpretive frameworks for major compilations, such as the *Etymologies*, *Epistles* and the *LI*. In demonstrating Braulio’s likely connection to the law-making process of Recceswinth, despite his antagonistic relationship with the monarchy, Miguel Franco’s essay, and Pachá’s, as will be shown, corroborate one another in arguing for the cooperation of networks in the production of the *LI*, and Braulio’s role in the process.

Miguel Franco also supports the idea of continuity between the reigns of Chindaswinth and Recceswinth, of which the *LI* is a prime piece of evidence. It demonstrates that Recceswinth was not a weak king, subordinate to the clergy. He was well-trained for the role of monarch, having shared the kingship for years before his father’s death, and was
willing to cooperate with various factions, to the extent that he maintained the glory and right to authority of his family’s dynasty.

In his essay “Law, Networks of Power and Integration: The Production Process of the Liber Iudiciorum,” Paulo Pachá shows how law-making in the Visigothic kingdom was a collective activity, involving a spectrum of power brokers and interested parties. He demonstrates this via the production of the Liber Iudiciorum in the mid-seventh-century by the father and son royal dynastic pair Chindaswinth and Recceswinth. He also introduces the extant letters about the code’s production and associated conciliar acts relating to it as proof of the aristocratic cooperation on legal matters.

At the core of the essay is Pachá’s challenge to what he calls the “MoNo” framework for interpreting Visigothic law production. Scholars embracing this model see law as the result of a constant dialectic of power between monarchy and nobles. This pendulum – it has been usually claimed in the case of the LI – swung in favor of the monarchy during Chindaswinth’s reign and in favor of the nobles during the reign of the LI’s promulgator, Recceswinth. Legal output was, then, the result of a constantly fluctuating (im)balance between the interests of these groups. In contrast to this interpretive framework, Pachá suggests seeing the LI and its Visigothic editions as the results of aristocratic consensus.

To develop this thesis, Pachá first sets out to deconstruct the traditional historiography that presents Chindaswinth as dominant over nobles and Recceswinth as subordinate to them by re-investigating select characteristics of each king and the relationship of their reigns.
The primary feature of the successive reigns is, Paulo concludes, not a break demonstrating an oppositional relationship between monarchy and nobility – Chindaswinth strong, Recceswinth weak – but rather continuity. I agree and believe that the LI’s structure itself is the proof of this, for example, its containing more laws by Chindaswinth than any other king and clearly establishing the family’s dynasty with Recceswinth. The LI, as Pachá implies, effectively institutionalizes Chindaswinth’s policies.

The letters between Braulio and Recceswinth further support the idea of continuity, as Recceswinth was working to produce this text over the course of several years, ultimately promulgated not long after his father’s demise. Also, that Braulio, not a notably close ally of this royal family, was chosen suggests a level of or desire for public agreement between networks. It is not possible, Pachá claims, for the long production and editing of the code, and its transformative impact – replacing all existing law – and its affirmation by Recceswinth at VIII Toledo to have been successful without “the cooperation of the kingdom’s aristocracy.” (p. 184)

The cooperation between authoritative figures and institutions is what led to the final promulgation of the laws, a thesis Miguel Franco’s essay confirms. This hypothesis does not replace the MoNo model, in which, one imagines, cooperation would have been crucial as parties turned from antagonism to settlement. However, it does suggest that the ultimate legal output was an agreed upon document, not a patchwork of constitutions for and against certain parties. This presents the law-code, rightly, as a unified text, one with a coherent narrative.
The key thesis is that law production was not the result of unilateral decision-making, by any person or group. This effectively – and importantly – nuances the MoNo model by demonstrating how productive argumentation and cooperation were at the core of the law-making process, that law expressed the result of dialogue within and between the kingdom’s networks of power. Paulo suggests his thesis as a framework for reading all Visigothic legal production. Although I would be interested to see this elaborated, there is insufficient space in his essay to ultimately defend such an extended claim. However, the narrower thesis on the LI’s production absolutely works.

Complementing the timeframes of the other essays, Ksenia Bonch Reeves moves the discussion into an examination of the use of the Liber Iudiciorum in Asturias. In her essay, “Visigothic Law and the Adversarial Realm in the Kingdom of Asturias: Muslims as the New Jews?,” she provides a later example of the relationship of the LI to historical narrative. Bonch Reeves shows how two Asturian chroniclers engage the LI as a rhetorical strategy aimed at legitimizing the Asturian monarch as the defender of Christian Iberia.

The Chronicle of Albelda, from the 880s, and the Chronicle of Alfonso III, written by the king in the early 900s, proclaim political continuity with the Visigothic monarchy via the Asturian leader Pelagius, military leader of the victory over the Muslims at Covadonga in 718 or 722. This claim to genealogical successorship, as Bonch Reeves notes, alone could not have secured political power, since others also could claim, perhaps more genuinely, genealogical continuity with the Visigoths. So, the chroniclers needed a more dynamic legitimation narrative.
What they decided to do was enhance the claim to legitimacy by eliciting the connection of the Asturian kings to Visigothic law, namely the *Liber Iudiciorum*, which by the ninth century was being referred to in ethnicized (genealogical-narrative ready) form as the *Lex Visigothorum*. The Asturian monarchs were the successors to the Visigoths also in the law. By association to the *LI*, they were also defenders of the faith and of the Peninsula from enemies.

Relying on the authority of the *LI* and building upon an essentially post-*Chronicle of 754* narrative of Visigothic consensus – a ‘state’ unified in orthodoxy and consistent in its attempts to convert political and religious enemies, primarily Jews – our Asturian chroniclers, Bonch Reeves argues, used Visigothic law to define the parameters of ‘state enemy’. In the *LI*, Jews are this arch-enemy and are described as heretical, untrustworthy, fraudulent, perverse and other nasty adjectives. In our Asturian chronicles, as Bonch Reeves demonstrates, the figure of the Jew is replaced with the figure of the Arab and/or Muslim, who is ascribed the same negative traits.

The Asturian monarchy was, then, through its preservation of Visigothic law and the upholder of the faith, the defender of the (long-established and orthodox) law, in addition to being the royal lineage that militarily defeated the Muslim armies and was genealogically tied to the Visigoths. Ultimately, what we see is the employment of

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2 Yolanda García López convincingly argues that the name change occurred then in the ninth century (García López, *Estudios Críticos y Literarios de la “Lex Wisigothorum”* [Alcalá: Universidad de Alcalá, 1996], 35-69). However, there is room for speculation on an earlier transition, on which see Michael J. Kelly, *Writing History, Narrating Fulfillment: the ‘Isidore-Moment’ and the Struggle for the ‘Before Now’ in Late Antique and Early Medieval Hispania* (PhD Thesis, University of Leeds, 2014): 223.
narrative strategies to build legitimacy within an inter-regional rhetorical struggle for power. This was not the first or the last time the *LI* would be elicited for such purposes.

Returning our section to the Visigothic period, Capucine Nemo-Pekelman interrogates the figure of the Jew in Visigothic canonical law. She demonstrates how dialectical of an issue Jewish conversion and the place of Jews in Visigothic society were between clerics, some of whom, it otherwise has been shown, had direct impact on the writing of Visigothic ‘secular’ legislation, especially the *LI*. The unified voice found in the *LI* was the result of extensive debate. Exposing this helps us to understand the rhetorical dynamics of the *LI* editions and their later applications.

In “Divine Justice and Freedom: On Canon 57 of the Fourth Council of Toledo (633),” Capucine Nemo-Pekelman seeks to clarify the intentions of Canon 57 of IV Toledo concerning the prescribed forced baptism of Jews. To do so, she analyzes the canon’s language, particularly its concern with the acts of freedom and grace. She asks to what degree did ecclesiastical figures at IV Toledo attribute freedom and grace to the process of Jewish conversion; give preference to one or the other; and, what did their choice ultimately mean?

Since IV Toledo was presided over and its canons likely written by Isidore, Nemo-Pekelman analyzes the progression of his thought on conversion and his reaction to Sisebut’s order forcing Jews to convert, which comes to fruition with Canon 57. Nemo-Pekelman correctly sees the seeds of Canon 57 in Isidore’s earlier work from the 610s.
Shortly after Sisebut’s order and in the middle of his reign, Isidore began formulating a response to the attempted forced conversions, with which he disagreed on theological grounds. Isidore’s position progresses from reluctant affirmation of the order to condemnation in Canon 57 in 633.

In the first redaction of his *De Origine Gothorum* (ch. 60) around 619, then preserved in the second around 625, Isidore criticizes the un-wise use of force in conversion. For Isidore, conversion could not be accomplished by a single event, it was a life-long process that is never completed in life. As such, no forced conversion could be successful, a point made clear in Canon 57, which states that nobody comes to true faith by force.

By a corresponding timeframe of texts, Isidore affirms Sisebut’s actions, saying basically that ‘hey, sometimes good things happen by the accident of a fool’ (p. 156). This is confirmed in a canon preserved in a collection of excerpts now at the end of VIII Toledo (at which Recceswinth’s *LI* was affirmed), but which, it is maintained, derives from the mysterious Third Council of Seville held about 624. Nemo-Pekelman notes that this canon may derive from II Seville in 619. If so, in real time, Isidore’s support in canonical literature was matched almost contemporaneously by criticism in other texts. In any case, Isidore excluded “canon 10” of III Seville from [the canonical collection known as] the *Hispana* when he compiled it (directed its compilation) in the 630s, around the time of Canon 57.

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3 See Isidore *Sententiae* 2.8.1 and 3.51.6, *De Viris Illustribus* 28, and *Etymologies* 7.12.
This supports the idea that the latter’s critique of forced conversion is Isidore’s ultimate opinion.

Isidore’s problem with forced conversion is multifaceted, as is evident also in Canon 57. Conversion is a non-evental process, yes, but more than that it is one that requires proper knowledge, which itself is conditioned by the readiness for and reception of divine grace. Throughout the second book of his Differentia, knowledge is, for Isidore, a central virtue of ethics and crucial to proper faith. Chapter 60 of the De Origine Gothorum illustrates the importance of knowledge to proper conversion, an idea taken from Paul’s letters to the Romans in which he accuses Jews for emulating God without proper knowledge of Him. Nemo-Pekelman, building on recent research by Wolfram Drews and by Else Marmursztejn, respectively, shows how Isidore brilliantly turned the punitive focus of the Pauline text on its head, using its condemnatory thesis against the orthodox Sisebut: by forcing conversion, human justice was being substituted for divine (p. 158-59). In Canon 57, the participants of IV Toledo condemn the forced conversion of the Jews by Sisebut according to the same Pauline principles as turned around by Isidore to condemn the action of a Christian leader employing justice and faith without proper knowledge. Thus, Nemo-Pekelman, in showing Canon 57 as Isidore’s critique of Sisebut’s forced-conversion legislation, successfully removes the ambiguity from Canon 57.

Furthermore, in Canon 57, freedom of choice is central to salvation, yet ultimately nobody is saved except by the intervention of grace. Nemo-Pekelman shows, by working through Augustine and Isidore’s adherence to him, that grace is “the necessary condition of
salvation” (p. 163); all good, including conversion, relies first on the random chance of divine grace on those who merit it. As Isidore argues in De fide catholica, not everyone, such as a faithful Jewish person, merited grace. The point is that grace was the deciding factor in proper salvation and conversion. Human freedom, the choice to convert, to spend one’s life dedicated to conversion, is necessary, although it can never be a successful process without divine grace, since “human freedom is imperfect without grace” (p. 164)

As such, Jews were partly innocent of their unbelief, for their choosing to believe incorrectly, since they had not been endowed with divine grace.

In conclusion, there are number of theses and ideas in the essays of our section that overlap, correspond to and support one another – decisions made by debate, the use of texts and literature for political and spiritual authority, etc. – but if I were to highlight a single common thread quilted across the essays of our section it would be that Visigothic elite – if not wider – society was remarkably literate. Individual texts – such as legal constitutions or canons – were employed in diverse fashion, knowingly endowed with and performed to instill different meanings across times and places, even by the same figures and institutions. Moreover, such texts were discarded or employed as primary sources within processes of historical narration, in ways reminiscent of the methods of modernist historians. Legal writing and the production of edited volumes or codes were, with many other texts, central components of this Visigothic literary-historiographical culture.