**Leges in Confirmationem Concilii:**
The Relationship between the Monarchy and the Church in Visigothic Hispania

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**ABSTRACT**

There is solid evidence of the narrow relations – occasionally tense or conflictual, and at other times cordial – that existed between the Catholic church and the monarchy in Visigoth Hispania. In any case, the two sources of power cannot be separated, nor can the history of the seventh century be understood without taking into account the relationship between the church and the monarchy. One piece of evidence for this is the so-called *leges in confirmatione concilii*: laws enacted by the kings in the council meetings, at which they were to be sanctioned by the ecclesiastical authorities. Of these, scholars can speak of six laws, the first promulgated by King Reccared (586-601) in the Third Council of Toledo in 589, with the others enacted in the reigns of King Erwig (680-687) and King Egica (687-701). However, before these kings and laws, one can observe the legislative role of the councils. The Eighth Council of Toledo (653), in which king Recceswinth submitted to the bishop’s consideration the possibility of cancelling some laws of his father, and royal predecessor, is especially crucial. Recceswinth’s *Tomus regius* demonstrates the role of the council as a legislative chamber and judicial tribunal, to which the king requested to amend the legal texts as

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1 The following research is part of the project CITHARA (Ref. HAR2015-65649-C2-1-P) by the Ministry of Economy and Competitiveness of the Government of Spain / Feder.
he deemed appropriate. This role would be followed by successive kings, in particular, Erwig and Egica, who would both use several councils to procure the church’s intervention in the drafting or supervision of laws and the promulgation of their *leges in confirmatione concilii*. In this essay, I analyze these laws, their possible origin, scope and content and their role at the heart of all Visigothic legislation, in which some of the laws promulgated in the councils were included.

ESSAY

**Introduction**

The *leges in confirmationem concilii* are defined by José Orlandis as “the laws enacted by various Visigothic monarchs of the sixth and seventh centuries to confirm the canons issued by the general councils of Toledo and to endow them with civil status.” This was not a unidirectional phenomenon. On occasion, through these laws also civil laws were approved, or at least, the secular interest of the kings received canonical approval. Regardless of the content of these laws, they demonstrate the close relationship between the church and the monarchy in Visigothic Hispania, a relationship fraught with tension and distrust but which was amiable when necessary and unavoidable. The powers of the monarch and the church were inseparable and the history of the late sixth century and the seventh century cannot be understood without considering this relationship.

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2 This essay has been translated from the original Spanish by Patricia Di Gialleonardo, Buenos Aires University, Humanities College.


4 José Orlandis, *La Iglesia en la España Visigótica y medieval* (Pamplona: Eunsa, 1976), 185: “las leyes dadas por algunos monarcas visigodos de los siglos VI y VII para confirmar los cánones promulgados por un determinado concilio general de Toledo y conferirles efectos civiles.” The monograph contains a chapter (ch. VI) devoted entirely to this topic: “Lex in confirmatione concilii,” 183-211.
Carlos Petit in his excellent monograph *Iustitia Gothica* suggests the limitation of numerous legal and historical scholars who begin their research with “a determined methodological principle, not expressed and maybe not even evident [...] [of] what the artificial separation of the secular and ecclesiastical environments would be.”

The role of the church in Visigothic Hispania traditionally has been treated in its legislative and conciliar aspects as autonomous and even independent from royal legislation. Scholars have attempted to analyze and define the actions of the bishops and the legal nature of conciliar meetings without including the connection with the kings’ legislative actions.

Orlandis himself echoes the old historiography. In regards to the discussion about the legal nature of the councils, he summarizes the perspectives of some scholar by way of the short affirmation by Claudio Sánchez Albornoz, who said that the councils “neither legislate nor judge.” Orlandis further states that the issue has been widely discussed, which is why he suggests looking at other aspects of the law: its origin, structure and historical effectiveness. In so doing, he argues that the “parallel processes of the canonical strengthening of the civil laws and the royal confirmation of conciliar

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6 Cf. Gonzalo Martínez Díez, “Los Concilios de Toledo,” *Anales Toledanos* 3 (1971): 119-138. Martínez Díez explains how, from the nineteenth century, the legality and nature of law in the councils of Toledo is one of the most debated issues in related studies. Despite the extended historiography, the relationship of the law and the councils is still insufficient due in part to the methodological error of applying modern dogmatic concepts to the historical realities of the conciliar assemblies. For this reason, Martínez Díez also analyzes historicist aspects of the councils.
decisions seem to suggest that, in practice, the convergence of both approvals was a convenient way for rules to achieve the required effectiveness."\(^8\)

From the conciliar acts, particularly from the Fourth Council of Toledo (AD 633) forward, it can be argued that the bishops performed as judges. They adjudicated on ecclesiastical matters certainly, but also on secular matters in determined procedures. The conciliar assemblies dealt with a variety of cases concerning the clergy as well as the laity, and the punishments for not observing the rules went beyond the spiritual, including also pecuniary fines and imprisonment.\(^9\) Despite these pecuniary references being minor and their fulfillment non-mandatory, the legislative capacity and the normative competence of the council is evident.

Perhaps the clearest example of this is with the Eighth Council of Toledo (VIII Toledo), celebrated in 653 and organized by King Recceswinth (r. 649/653-672). It is one of the most important councils, due to its political content and confirmations and its solemn formal aspects. Fifty-two bishops attended the proceedings, as did the king and eighteen members of his court, all of whom signed the acts of the council.\(^10\) Recceswinth, moreover, delivered a lengthy \textit{tomus}. The text of the acts is not structured into canons but into discussions, agreements and pleas, receiving different names throughout the

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\(^8\) The bibliography on the councils in Visigothic Hispania is quite extensive, but on the legislative and normative power of the assemblies see, among others and in addition to those mentioned: T. González, \textit{Política en los concilios de Toledo} (Roma: Pontificia Gregoriana Universitas, 1977); José Orlandis and D. Ramos-Lissón, \textit{Historia de los Concilios en la España Romana y Visigoda} (Pamplona: EUNSA, 1986); Rachel L. Stocking, \textit{Bishops, Councils and Consensus in the Visigothic Kingdom} (589-633) (Michigan: University of Michigan Press, 2000); and, Eleonora Dell’Elicine, \textit{En el Principio fue el Verbo: Políticas del signo y estrategias del poder eclesiástico en el reino de Toledo} (Buenos Aires: University of Buenos Aires, 2007). Nevertheless, in most of the studies, the role of the leges in \textit{confirmationem concilii} is mentioned in a rather cursory way.

\(^9\) Regarding the bishop’s role as judge and, in general, for an accurate analysis on Visigothic legislation and its political and ecclesiastical dimensions see Petit’s, \textit{Iustitia Gothica}.

text: disputatio, congressio, actio, discussio adsertio disceptatio, conloquutio, occasio, obsecratio.\textsuperscript{11} After the signatures of the attendees there is a decretum iudicii uniuersalis editum in nomine principis, which reveals the judicial character of the assembly. Finally, Recceswinth’s lex is issued: lex edita in eodem concilio a Recesuinto principe namque glorioso. This is the famous Liber Iudiciorum (LI) (or Lex Visigothorum) 2.1.6, on the distinction between the king’s possessions and those of the royal office, and on questions concerning the inheritance of the successors to the throne.\textsuperscript{12}

This council has been widely studied. I examine it here in reference to matters such as the seizure and confiscation of possessions by Recceswinth’s royal predecessor and father Chindaswinth (r. 642-649/653), and the aforementioned issue of the distinction between royal and personal possessions decreed in the decretum iudicii uniuersalis.\textsuperscript{13}

This is the council at which Recceswinth asks the bishops to intervene in the redaction and correction of the Liber Iudiciorum and which is intimately associated with the well-known LI 2.1.10.\textsuperscript{14} VIII Toledo is, moreover, a council that reveals the tensions between Recceswinth and part of the nobility with the church.\textsuperscript{15} This council is essential for

\textsuperscript{11} Martínez Diez and Rodríguez, Colección Canónica, V, 179-260.
\textsuperscript{12} A new critical edition of the Liber Iudiciorum is currently in preparation. The international project, co-directed by Isabel Velázquez (UC Madrid) and Michael J. Kelly (SUNY Binghamton) will be published in open-access digital and print form by Networks and Neighbours. In the meantime, I refer the reader to the editions of Zeumer: Lex Visigothorum in Leges Visigothorum antiquiores, MGH Legum, ed. Karl Zeumer (Hanover and Leipzig, 1894 and 1902), 21-313 and 33-456. LI 2.1.6 covers pages 48 to 52 of the 1902 edition. See also Yolanda García López, Estudios críticos y literarios de la Lex Visigothorum (Alcalá de Henares: University of Alcalá de Henares, 1997) and on LI 2.1.6 specifically see Petit, Iustitia Gothica, 146, 168, 324, 368, 373, and 383.
\textsuperscript{14} Petit, Iustitia Gothica, 378-79.
\textsuperscript{15} Velázquez, “Pro patriae gentisque,” 208-10.
understanding the political power of the conciliar assemblies and their role in the history of Visigothic Hispania. From my perspective, this council is, together with IV Toledo, perhaps, the most significant of the seventh century.

VIII Toledo presents a structure similar to that seen in the *leges in confirmationem concilii* and, as I explain next, to all of the councils containing them: the king is presented before the conciliar assembly – accompanied by various members of the *Officium* or by nobles – addresses the attendees and submits the royal *tomus*, whose principle points, together with the content of the canons or the fundamental topics treated in them, are then gathered into the law. In this council, there is no *lex* specifically subjected to conciliar confirmation, but rather the direct enactment of a law of Recceswinth included in the *Liber Iudiciorum, LI* 2.1.6, as noted above. However, it is curious that the *lex* is precisely the counterpoint to the same topic as that of the *decretum iudicii uniuersalis*, conferred immediately before by the bishops. Without intending to match this law to the *leges in confirmationem concilii*, I believe that the structure of the ordination of the council, as transmitted by the acts, is parallel to the formula used in III Toledo (589), which contained a *lex* and may have been the inspiration for VIII Toledo’s bishops.16

**Leges in confirmationem concilii**

The existing laws of this kind are not many: six or seven issued during other general councils.17 Such data is important, since these laws were enacted only at general

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16 In Orlandis, *Iglesia en la España visigótica*, 185-211 there is no allusion to this circumstance; in fact, he states on page 187 that this is one of the councils lacking a *lex*; neither does Martínez Díez make any reference, “Concilios Toledanos”, 134-35.

17 The number depends on whether one considers V Toledo to contain *leges in confirmationem concilii*. Orlandis, in *Iglesia visigótica en España*, 194, argues that it does not, while Martínez Diez, “Concilios de Toledo”, 38 asserts that it does. Below I argue positively in its favor.
(national) councils and not local ones. The first of such laws was issued at III Toledo (589), at which King Reccared (r. 586-601) and the *gens Gothorum* converted the kingdom to Catholicism. During this council, the term *edictum* is expressly mentioned, instead of *lex*.

As recorded in the acts, the council was celebrated on May 8, 589 and was attended by the bishops of Hispania and Visigothic Gaul who the king himself addressed: *ubi Recaredus rex omnibus episcopis loquustus est*.18 The council was summoned by royal mandate (*quam […] princeps omnes regiminis sui pontifices in unum conuenire mandasset*) in order for everyone to rejoice at the conversion of the king, his wife and the *gens Gothorum*, and the resumption of the canonical tradition on its traditional terms (*mos canonicus […] ad paternos reductur terminos*).

Without going into the full content of the royal *tomus* and the famous homily by Leander, Bishop of Seville to c. 600 – both texts that expose important differences between the monarchy and the ecclesiastical hierarchies – it seems evident that Reccared ordered the assembly and, as noted by Manuel Díaz y Díaz, the king set the agenda of the council. In my opinion, the *edictum regis in confirmationem concilii* closing the council and signed by everyone, firstly the king, followed by the Bishop of Mérida, Masona, the eldest, and a pretty long list of attendants, cannot be separated from the royal *tomus*. The existence of the *tomus* and the king’s actual presence, although present in other councils, are typical of those where this kind of *lex* or *edictum* is put forward, and it seems that this is one of the keys to understanding this type of legislation and which can clarify its true significance. At III Toledo, Reccared

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18 Martínez Díez and Rodríguez, *Colección Canónica*, V, 49-159.
sanctioned the full content of the canons by his *edictum*, with synopses and abbreviations also approved: “We sanction that all these ecclesiastical decisions, which we have summarized briefly, are kept with permanent stability in the way in which they are contained in their more extensive writing in the canons.”

The sanctions for the breach of this order, both spiritual and pecuniary, were applied to the laity and the clergy. The king conferred legal validity and civil character onto the ecclesiastical rules and thereby strengthened them. Furthermore, as Orlandis notes, “the parallel procedures for canonical reinforcement of civil laws and for royal confirmation of conciliar decisions seem to suggest that, in practice, the conjunction of sanctions was a convenient way for the rules to attain the required effectiveness.”

III Toledo was followed by a series of provincial councils, during Reccared’s reign, which do not reference any organization by the king. An exception is the celebrated Council of Narbonne, held shortly after III Toledo, in which there is an allusion to the regulation on the calling of councils by order of the king (*secundum quod sancta synodus per ordinationem gloriissimis domni nostril Reccaredi regis in urbe Toledana finiuit*). It is otherwise stated, as in II Saragossa of 592, that a council is summoned with the king’s permission (*ex permiso gloriosi atque sanctissimi Reccaredi regis*). Such was the case also with the few provincial councils celebrated during King Sisebut’s (r. 612-620) time, in 614 at the Council of Egara and in 619 at II Seville.

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19 “has omnes constitutions ecclesiasticas quas summam breuiterque praestinximus, sicut plenius in canone continentur, manere perenni stabilitate sancimus.”
20 Orlandis, *Iglesia en la España visigoda*, 186 and 195-96: “los procesos paralelos de roboración canónica de las leyes civiles y de confirmación regia de decisiones conciliares parecen sugerir que, en la práctica, la conjunción de ambas sanciones era conveniente para que las normas alcanzasen la deseable eficacia.”
21 The mentioning of the monarch limits the possible dating of most of these councils, the exceptions being Narbonne and Saragossa. For the edition on the councils not transmitted by the *Hispania*, see Vives, *Concilios visigóticos*, 146-50 and 154-55.
Finally, in 633, the next general council was celebrated: IV Toledo, chaired by Bishop Isidore of Seville. At this plenary council, the usurper king, Sisenand (r. 631-636), did not present a lex for conciliar confirmation, nevertheless, the legal importance of the council is evident. The council is referred to as a “constitutional congress” because of its expressed limitation on royal power for the expressed purpose of a united gens, patria and rex. This expression, from canon 75 of the council, was almost certainly constructed by Isidore and complements the ideological and political formulations in his Sententiae, his “spiritual testament”. According to Gonzalo Martínez Diez, canon 75 represents the origin of this political idea.

After IV Toledo, all councils were celebrated by the order and call of the king, who, assisted by his royal court, delivered an opening lecture and submitted a royal tomus to be read. Although these royal summons were not an innovation of the Visigothic monarchy – they came from the East and from the Western council of Arles (314), and occurred amongst various Germanic peoples (Franks, Sueves) – the general councils of Toledo adopted and developed the formulaic system, in clear contrast with the local or provincial councils.
Martínez Diez suggests that the institutionalization of the presence at councils of *potentes* occurred at VIII Toledo, although in V Toledo such persons accompanied the king.\(^{28}\) I think that this fact was already “institutionalized” from at least IV Toledo as each king relied on his own factions of powerful figures and noblemen. The king’s attendance at councils with these men reveals the political expediency of these meetings and their important role in the development of the monarchy’s political policies. As Roger Collins notes, general councils coincided with moments of royal weakness.\(^{29}\) Maybe the role of the ecclesiastical hierarchy was to preserve the legitimacy of the kings. An example is the legitimization of Sisenand’s usurpation and Swinthila’s conviction, in IV Toledo, or the power of royal unction from Wamba, but which could have existed before him.\(^{30}\)

Apart from such ecclesiastical support of the monarchy, the councils became the link between and meeting point of powerful persons in Visigothic Hispania: the king, the bishops and the *potentiores*. Although they have a predominantly ecclesiastical character, and are the apt and adequate context to rule over religious life, to encourage and identify the church’s political situation in its different provincial, local, rural, ecclesiastical and monastic environments, to me, the councils have a pronounced political and legislative character, as they gather, treat and rule over issues affecting and concerning the king, the elite and the people.

\(^{28}\) Martínez Diez, “Concilios de Toledo,” 128.
\(^{29}\) Collins, *España visigoda*, 75.
\(^{30}\) Velázquez, “*Pro patriae gentisque*,” 185.
I agree with several of Martínez Diez’s opinions related to the political extent of the councils, the significance of the royal *tomus*, the king’s actual presence and the share of the kingdom’s magnates in the councils, but I differ substantially in his assessment of the *leges in confirmationem concilii*. According to Martínez Díez, and others, these conciliar decisions are not an “intrusion of the civil power in the ecclesiastical sphere” but “further highlight the Visigothic synods’ typically religious character.” From his perspective, the canons were mandatory, as any other ecclesiastical rule, but the force of law within secular, political society derived only from the king. But this is precisely the political significance these laws acquire. It is a sort of political game implying, if carefully thought out, a close interrelation of powers: the king summons the council, and through the royal *tomus* he declares before the bishops the points to be treated, always permitting, theoretically, independent discussions on matters of ecclesiastical discipline. Then, the attendees settle the canons, the king accepts them, turns them into laws and introduces them to be confirmed by the bishops. They pronounce the mandatory observation of such laws and stated that they will have legal authority thanks to the power of the king.

The other *leges in confirmationem concilii* expressly formulated here are included in XII, XIII, XV, XVI y XVII Toledo, although each council maintains differences in their structure.31 The first three were called by Erwig (r. 680-687) and the last two by his

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31 This is not the place to elaborate the discussion, but the conciliar acts’ complex textual transmission should be critically considered. Indeed, one of the fundamental problems affecting these *leges in confirmationem concilii* are the different positions they have in the acts, depending on the recension: *Hispania, Vulgata or Juliana*. Orlandis, *Iglesia en la España visigótica*, 191, says that the *leges*’ structure varies, since XII, XV and XVI Toledo do not contain any relation among the conciliar precepts to those that confer civil effects, amongst other differences. This is true for XV Toledo, and we do not know whether it is so for XVI, as the critical edition of the last two extant Councils (XVI and XVII) has not yet been published; in turn, on XII Toledo he states that the *lex* does not turn out to be an isolated element, but that its decreetal is composed of the whole text of the canons, preceded by a preamble and followed by a conclusion. The later edition by Martínez Díez and Rodríguez, *Colección canónica*, VI: 199-204,
successor Egica (r. 687-701).\textsuperscript{32} XII Toledo was celebrated in 681 and contains thirteen canons about political and religious affairs. Erwig’s words were decisive: he delivered his \textit{tomus} with the respective issues for the bishops to discuss, made the decisions that pleased God and then granted them legal validity. After referring to his way of accession to the throne and urging them to correct any of his predecessor’s precepts regarding the severity of punishment for ignoring military duties. He followed with matters that should be treated in the new laws and offered the bishops to share in the construction of the records to be spread by the \textit{religiosi rectores} and \textit{duces} of all the provinces present at the council. Finally, Erwig asked the attendees, after some discussion, to plead for the matters put forward by him and to establish them in convenient articles. Following the canons, the \textit{lex} is formulated:

\begin{quote}
Great security for the peoples and the kingdom of our \textit{gens} is obtained,
if the decrees of these synodal celebrations, in the same way as they have been written according to the pious interest of our devotion, are also confirmed by the valid response of our unbreakable law, so that what by the most serene mandate of our Highness has been promulgated by means of an articulated writing in titles by the venerable fathers and the most noble men of our palace, is defended before the adversaries by the present edict of this our law. In fact, this law consists of the very definition of the canons, recorded according to the order of the titles, that is to say...\textsuperscript{33}
\end{quote}

\textsuperscript{32} XIV Toledo, celebrated in 684, was a provincial council led by the Carthaginian bishops to deal mainly with the Apollinaris heresy, and it is called by the order of Erwig, due to the impossibility of celebrating a new general council, although the causes are not specified. Nevertheless, as pointed out, it could be the first council out of a series of other provincial councils that would occur in different places in order to deal with the same matter, according to royal decree.

\textsuperscript{33} “\textit{Magna salus populis gentisque nostrae regno conquiritur, si haec synodalium decreta gestorum, sicut pio devotionis nostrae studio acta sunt, ita incomulsibilis, nostrae legis ualido oraculo confirmentur, ut...}”
The reading of the canons asserts the interrelation between civil and religious matters, and political and ecclesiastical ones. The *lex*, proposed by the king, was approved by the bishops who posed their own regulations and together all were granted legal validity by the king, along with the judiciary tribunals in charge of enforcing the collective legislation.

Only two years after XII Toledo, in 683, Erwig called another council, XIII Toledo, at which the king re-addressed the bishops. As suggested by the preface to the canons, there Erwig made two commands: first, he urged the bishops to determine convenient rules for ecclesiastical discipline – granting them control of religious matters; and second, he entrusted the assembly with confirming the articles – presented as having religious purposes – of his *tomus*. Erwig then left the assembly. The content of the *tomus* and the processes of XIII Toledo were predominantly political. The records contain the pardon of *dux Paulus* and the rebels against the former king, Wamba. Also, included are issues connected with tax amnesty. Even the only canons (four out of the thirteen) that deal with ecclesiastical matters are related almost wholly with the competencies and functions of the bishops, the issues that affected their power and public authority. After the signatures of the council’s attendees is the new lecture from Erwig, addressed to private individuals and members of the *fisc*; *omnibus priuatis siue fiscalibus populis*. This is a secular, political letter dealing with economic issues such as taxation and the conditions under which the taxes should be paid to the treasury. Immediately following the *lex* closes the council’s canons. Finally, the council is

*quod serenissimo nostrae celsitudinis iussu a uenerandis patribus et clarissimis palatii nostri senioribus discreta titulorum exaratione est editum, praesenti huius legis nostrae edicto ab aemulis defendatur. Est enim haec ipsa definitio canonum sub isto renotata ordine titulorum, id est.....*” Martinez Díez and Rodríguez, *Colección canónica*, VI: 200.
decreed valid across all the provinces of the kingdom, for both secular and religious persons:

We decree that all the previous decisions of the synodal meetings are observed from this day and moment, with all care and diligence, in all the provinces of our kingdom, so that they remain protected by the evident dignity of a powerful authority, and last consolidated thanks to the permanent condition of its vigor. For this reason, by virtue of the disposition of this sacred law, we decree and ordain equally to all the religious figures in general and also to the laymen who reside under the jurisdiction of our kingdom, that none despise the synodal acts, nor dares to omit or to break them.

In 688, the new king, Egica, Erwig’s son-in-law, summoned other general council, XV Toledo. The acts show a singular structure, as the content is not articulated in canons. At the council, the king addressed the congregation with a request for the confirmation of his *tomus*, which effectively was a royal command to approve the *tomus* after it was read: “Pay attention to them (i.e. to their words) I beg you, examine them and grant them the unbreakable sanction of your deliberation.” The king then delivered the *tomus* and retired from the meeting. The bishops read the royal documents, which contain the king’s demand for the assembly to exempt him – for the sake of the common

34 “Quae omnia praemissa synodalium institutionum decreta a praesenti die uel tempore omni cura omnique vigilantia per cunctas regni nostri prouincias decernimus obseruanda, qualiter et praespicuum auctoritatis ualidae fastigium subeant et perpetuo uigoris ordine solidata persistant. Quam ob rem sacrae huius legis oraculo omnibus generaliter religiosis atque etiam laicis sub regni nostri dicionem manentibus interdicimus pariter et iubemus, ut praedicta synodalia gesta nullus contemnat, nullus etiam praeterire aut commuellerre audeat […].” Ibid., 273-74.
35 Orlandis, *Iglesia en la España visigótica*, 19. However, Orlandis doesn’t mention anything else in particular and it is that the *lex* – of a minimum extension – is after the signatures, in contrast to other councils.
36 “His, queso, attendite, his pertracte, his deliberationis ferte inconstuulsibilem sanctionem.” Martínez Díez and Rodríguez, *Colección canónica*, VI: 292.
good against private interests – from fulfilling his promise to Erwig to protect the
latter’s family. As at the previous council, political issues were entangled with
ecclesiastical ones: the request for the rescinding of the oaths was answered by the chair
of the council Julian, Bishop of Toledo (680-690). After dealing with the issues, the
bishops returned to the propositions of the king’s tomus, ruling in his favor. The lex is
limited to corroborating what was established in the council. The structure of the acts,
without canons, and the council’s content, made it unnecessary to insist on legal
confirmation, yet it is indicated as such by its title: Data lex confirmationem concilii
generalis [...] and its content:

Granting our favor to the diverse and distinguished synodal acts of our
time, thanks to which we have been able to absorb the abundant doctrine
of the sacrosanct faith, but we have also known that the chain of the
indissoluble oath has been broken, with the promulgation of this law we
decree the following, that what has been established by the deep-rooted
strength of the canons, be guarded by all with jealous and diligent
observance.\textsuperscript{37}

Egica summoned two more Toledan councils: XVI in 693, and XVII in 694.\textsuperscript{38} The
tomus of XVI Toledo exceptionally demonstrates the confluence of royal and episcopal
action. The king expressed his desire for churches to be restored instead of left

\textsuperscript{37} “Discretis et eximiiis temporis nostri gestis synodalibus praefauentes, quibus et doctrinae sacrosanctae
fidei auriumus copiam et indissolubilis iuramenti nouimus contractam esse catenam,\textsuperscript{37} id lege
promulgata decernimus, ut ea ipsa quae inconuulso decernimus, ut ea ipsa quae inconuulso canonum
uigore decreta sunt, ab omnibus cautissima et diligenti observatione seruentur [...].” Martínez Díez and
Rodríguez, Colección canónica, VI: 344.

\textsuperscript{38} As mentioned in n. 31, critical editions of these councils have not yet been published, so I rely here on
the Vives edition, Concilios visigóticos. In 691, a provincial council was celebrated in Saragossa, also
called by Egica, that contains just five canons, the first four belonging to the ecclesiastical sphere and
the last to the royal figure. This established that, upon the death of the king, the queen is forced to a
convent.
abandoned, mentions Jewish persecution, discusses homosexuality, and notes deep concern for regicide and for any other conflict that could challenge his authority. The *tomus*, moreover, reveals that the king and bishops worked together to revise and reform laws and canons from Chindaswinth to Wamba, which were considered to be redundant or harmful. This is clear evidence of the intimate relationship between the monarchy and the church. Religious issues were intertwined with those affecting the king’s stability. The content of the *tomus* and the canons are echoed in the *lex* which, in turn, notes the need to rely on the bishops for updating laws when needed.

XVII Toledo, celebrated the following year, has an identical scheme with a structure similar to that of XIII Toledo, modelled after III Toledo. At XVII Toledo, Egica briefly addressed the assembly – of bishops, illustrious men and nobles – and then left them to read the *tomus*. In it, the king urges the assembly to treat spiritual matters first, followed by the order to deal with the ‘Jewish problem’ for which he develops a terrible proposition for the expulsion of the Jews. He follows this with an allusion to the bishops daring to officiate requiems for living men, to finally entrusting the bishops to establish litanies during three days each month as a way to remove from the minds of some thoughts against the king. In the *tomus*, Egica also asks the assembly to remain loyal to him. The nine canons that follow develop the content of the *tomus*. After the closing

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40 It is not literally said that the King retires, but that can be inferred, in keeping with prior councils.
prayers, the *lex* summarizes the issues of the council without referring to specific canons.\(^\text{41}\)

Thus, it seems to me that there was a direct connection between the royal *tomus* and the *lex in confirmationem concilii*, with the latter a consequence of the former. A century after III Toledo, Erwig and Egica reintroduced the explicit formulation of these *leges* and enhanced their political authority in ways relevant to their situations.\(^\text{42}\) Removed from the circumstances of the kingdom’s conversion and the *gens Gothorum*, the new *leges* were motivated by the interests of Erwig and Egica, whose insecurities were the result of their ascensions and the growing power of internal and external enemies.

**General Councils without *leges in confirmationem concilii***

It can seem curious that after III Toledo’s *lex* no other was enacted, it would seem, until XII Toledo, and, indeed, this is not a universally accepted thesis. For example, Gonzalo Martínez Díez argues that one of these laws was also enacted in 636 at King Chintila’s (r. 636-639) V Toledo. For Martínez Díez, moreover, the absence of *leges* from the extant acts of other general councils does not necessarily mean they were not issued.\(^\text{43}\) This is a fair point, but it should be counterbalanced by careful analysis of each of these councils – IV to XI Toledo – for which laws of this kind do not appear to have been enacted.

\(^\text{41}\) A structure, then, that is similar to that of XV Toledo. But, as in that council, there is a certain uniqueness, at least in terms of its transmission, since the subscriptions have not been preserved.

\(^\text{42}\) It should be noted that these general councils, starting with Erwig in XII Toledo, were all chaired by Julian, who likely wrote the acts and the laws and resumed the practice of the *leges in confirmationem concilii* established in III Toledo.

\(^\text{43}\) Martínez Díez, “Concilios de Toledo,” 135.
The *leges* was a legal procedure adopted for III Toledo, likely influenced by Byzantine imperial precedents and encouraged by Leander. As a response to specific historical circumstances, there is no reason to establish the *leges* as procedure for all subsequent councils. On the contrary, the fact that the *leges* prominently re-appeared only in councils chaired by Julian of Toledo is a clear indication of his intention. Julian institutionalized the *leges* process for turning ecclesiastical rules into civil laws and, simultaneously, for approving, through the episcopal assembly, the royal *tomus* and instructional documents.

As noted, the councils, whose content is largely political and civil, in some cases, or predominantly ecclesiastical, in others, represent and exemplify the collusion between the monarchy and the church. They, moreover, demonstrate the joint legislative policy and even the judicial role that bishops eventually played. The presence of the magnates was, increasingly, also a consequence of the secular and the ecclesiastical powers working together and should not be considered separately, as Carlos Petit notes and as mentioned at the beginning of this essay.44

The *leges in confirmationem concilii* were directly associated with the presentation of the *tomus*. IV Toledo, whose importance and unique characteristics did not require the issuing of a *lex* gathering the council’s content. At this council, King Sisenand stood before the assembly and asked them, on grounds of the decrees of his predecessors, to maintain the canonical law and correct decayed ecclesiastical practices. But, in the way the acts have been kept, there is no mention of the king presenting a royal *tomus*. The same happened at VI Toledo (638), summoned at the request of the Chintila, who did

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not attend and did not present a *tomus*. This is in contrast to V Toledo, two years before, at which such a presentation did happen, to which I refer below. VII Toledo, called by Chindaswinth in 646, reveals an identical situation: the council is summoned at the request of the king, but the king was not in attendance and there was no royal *tomus*. During Recceswinth’s reign, several general and provincial councils occurred. At his VIII Toledo, the king opened the assembly, delivered the *tomus* and issued the *lex LI 2.1.6*, with a structure parallel to the councils that present the *leges in confirmationem concilii*.

Nothing similar happened at the rest of the councils before XII Toledo: IX Toledo, a general council celebrated in 655;\(^{45}\) X Toledo, a general council celebrated in 656;\(^{46}\) and, the provincial council of Mérida, celebrated in 666. None were attended by the king presenting a *tomus* and subsequently none contain a *lex*. During Wamba’s reign only two provincial councils were celebrated: XI Toledo in 675, at which Carthaginian bishops celebrated the return of councils in the *urbis regia* after an eighteen-year hiatus; and, III Braga of the same year, which also had a strong ecclesiastical character. The rest of the councils, general and provincial, for the remainder of the Visigothic period, complied with the rule of the king’s attendance, presentation of his *tomus* and the enactment of the *leges in confirmationem concilii*.

\(^{45}\) With a much lower attendance and in which only ecclesiastical matters were treated, several of them regarding the bishops, and without dealing with issues directly affecting the king or the kingdom.

\(^{46}\) Except for canon 2, it is about those breaking the oaths made to the king, the rest of the canons referring to ecclesiastical matters. However, this council is important in illustrating the bishop’s legal role, as two decrees are approved in it by the bishops regarding Potamius of Braga’s punishment and dismissal in favor of Fructuosus, as well as the decree about Martin of Braga’s and Racimirus’s (Bishop of Dumio) testaments.
A clear pattern has emerged of royal presence, *tomus* and *leges* vs. non-attendance and none of the latter. Chintila’s V Toledo appears to be an exception to the rule. As noted, Orlandis denies the idea the existence of a *lex* in this council, whereas Martínez Diez considers it possible. Orlandis believes that the king attended the assembly and requested the approval of a set of litanies that then constitute the first canon, followed by canons with a secular character. After them is Chintila’s supposed *edictum*, which only confirms and sanctions the litanies and should not be considered a *lex in confirmationem concilii*. Martínez Diez argues that Chintila, for fear of reaction against him, pretended to be modest and so did not style the apparent *edictum* as a *lex*. I contend that, because, as a unit, the council complies with the structure in which *leges* arose, we should read the closing edict as a proper *lex*.

I am not sure if Martínez Diez is right when he talks about the “pretended modesty” (*aparente modestia*) as a reason for Chintila not to including in his *lex* the rest of the canons favoring him. It seems to be that it is not true that the king did not include any reference to these. He did, albeit vaguely. In the absence of explicit mention of the terms *lex* or *edictum*, the king uses the example of the litany as a subtle device to confirm, by his royal authority, *everything agreed to in the council*: “Therefore, by granting our favor to so sacred a decision, which deserves to be embraced with all desire, and confirming everything what has been established in the same synod, we decree [...].” In form and in content, then, despite its peculiar presentation, V Toledo contains a *lex in confirmationem concilii*.

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48 Martínez Diez, “Concilios de Toledo,” 38.
49 “Quodcirca tam sacratissimae electioni et omni Desiderio amplexentae regali auctoritate fauentes et quaecumque in eadem synodo definita sunt confirmantes decernimus [...].”
Finally, the text of V Toledo contains a contradiction that indirectly reveals what I have been arguing throughout this essay about the shared path of the monarchy and the church, which was a partnership in which the king, through councils, exerted varying degrees of pressure on the bishops. In the preface to the acts of V Toledo, it is said that the king, in front of the assembly, ordered the bishops to approve, through his mandate and decree, that the entire kingdom, as of December 13, observe annually three days of litany. In the final edict (the lex), the king indicates that this was, in fact, a request of the bishops: “And so, bishops of the diverse provinces assembled in the city of Toledo, we were begged with insistence in our meekness that this religious practice should be established according to their opinion (i.e. the bishops).”

50 “Ideoque nostrae mansuetudinis collectis in urbem Toletana ex prouinciis diuersis episcopis adhortationis extitit instantia, ut tempore congruo haec religionis per eorum sententiam institueretur obseruantia […]”
Bibliography

**Primary**


**Secondary**


