The Text of Visigothic Law in Practice

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ABSTRACT

This essay is a case study in the textual transmission of the Visigothic law code or Book of Judgements (Liber Iudiciorum). Rather than relying solely on manuscript copies, I draw on charters as sources for the text, and by tracking the citation of treason law across the corpus of documentation from early medieval Asturias-León and Navarra, I identify three new witnesses. On the basis of this methodology and its results, I then propose a new approach to reading the code through its use in practice which should be taken into account in the revision of the standard Monumenta Germaniae Historica edition.

ESSAY

Charters from early medieval Iberia are more than just written records of transactions: they are intertextualities, their combination of sources establishing their full meaning. They are intersections in a network of texts which encompasses other charters, secular and canon law, Holy Scripture, and monastic rules, and thereby also witnesses to the transmission of each component of that network of texts. For secular law, the text is the Visigothic code or Book of Judgements (Liber Iudiciorum): promulgated by Recceswinth (649/53-72) in 654, revised and reissued by Ervig (680-87) in 681,
defining part of the cultural inheritance of the post-Visigothic kingdoms and counties in the north of the Peninsula. What I propose to offer here is a case study in this channel of that textual transmission – an exercise in juristic papyrology or, better, “juristic diplomatics” – by tracking the citation of one law through the corpus of documentation.\(^1\) The code was edited by Karl Zeumer (1849-1914) in 1902, and though remaining the edition of reference its shortcomings are well known.\(^2\) For now what matters is that he printed the text neatly divided into columns representing the Recceswinth and Ervig recensions, the latter either “pure” or including sundry novels of Egica (687-702), but each based on only four manuscript witnesses; a further twenty codices he classified as “inferior forms,” marking them down with a V for having been “compiled in varied manner.”\(^3\) Since then, the seminal work of Manuel Díaz y Díaz and Yolanda García López has not only identified fifteen more manuscripts, but also drawn out how “inferior” form and “varied” compilation in fact reflect three broad traditions of use made of the Visigothic code in Catalunya, La Rioja, and León-Castilla.\(^4\) This insight is crucial; the logical next step is to apply both copies and uses of the code to its textual transmission, and I aim to make a start for the early Middle Ages.

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The study of the Visigothic code is by definition post-Visigothic: the oldest surviving copy (Vatican City, Biblioteca Apostolica Vaticana, Reg. lat. 1024) dates to the early eighth century.\(^5\) Down to the end of the eleventh century another nineteen copies are known, twelve of them from the Catalan or “occidental” tradition.\(^6\) As such, even a handful of additional witnesses would be significant in proportion, especially so for outside of Catalunya, which is where I shall focus this essay. The study of Visigothic diplomatics is by necessity post-Visigothic too: from before 711, five parchment charters and the *pizarras* (slate texts), all fragmentary.\(^7\) In contrast, just over 4,000 charters survive from the early medieval kingdoms of Asturias-León and Navarra, taking the fall of the caliphate at Córdoba in 1031 as a cut-off date; the richness of documentation from contemporary Catalunya needs no belaboring.\(^8\) The afterlife of the code in these corpora has been the object of much valuable scholarship, especially for the Catalan material.\(^9\) But none of the work on Asturias-León and Navarra has encompassed either all the charters or the full range of legal citations.\(^10\) In fairness, the

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\(^5\) See [https://digi.vatlib.it/view/MSS_Reg.lat.1024](https://digi.vatlib.it/view/MSS_Reg.lat.1024).


editions themselves present part of the problem: few identify even explicit citations of law, let alone implicit allusions.\textsuperscript{11} My own survey suggests that slightly more than one-tenth of this corpus cites the code in direct or indirect form.\textsuperscript{12} In spite of the scant material from the Asturian period (718/22-910), the earliest instances date from the eighth century, indicating unbroken continuity of practice from the Visigothic era, rather than renewal by “Mozarabic” immigration or royal initiative as has been proposed, but either could have contributed to its intensification.\textsuperscript{13} Over time, citation of law became more frequent, rising fourfold in incidence across the Leonese period (910-1031/37); it was twice as common in Galicia and Portugal as in Asturias and León, twice again as in Castilla and La Rioja, reflecting a steadily decreasing level of “textuality” from the west to the east.\textsuperscript{14}


\textsuperscript{12} Barrett, \textit{The Written and the World}, ch. 5.


What did citing law entail? On the surface, the Visigothic code is a basic element of the legitimizing rhetoric of charters. Some citations recur so often as to be formulaic: legal passages or precepts quoted in the preamble or corroboration clause to authorize or rationalize the text or transaction, or else invoked in the sanction clause to assess or assign penalties for any interference with it. They enhance the charter, lend to it a legal patina; they need not have involved consulting the code, but they draw on its authority, and (since not all point to actual provisions found in it) that of written law generally, betokening an audience attuned to legally resonant language. At a deeper level, many more individual citations imply a first-hand engagement with the code: unique or too extensive or adapted in wording to be template in circulation, they presuppose at some stage an encounter with or consultation of it. Laws on inheritance, property ownership, procedures, and punishments here provide not determinants of transactions or resolutions to disputes but a baseline, a complex of operational parameters, bearing witness to a general yet flexible acceptance of written rules for the social interactions involved. This in turn has a quieter manifestation, in implicit rather than explicit citations, the signs of internalization of legal norms into the language of custom, shaping the construction of a charter and the processes which it records and enacts with terms and tenets from relevant legislation. Clearly the contents of the code were always to hand, and enjoyed the authority to define, or least to frame, truth and justice. Who would not wield such power? More than any others, it was kings and

15 See Barrett, The Written and the World, ch. 5, for what follows.
17 Isabel Alfonso, “Judicial Rhetoric and Political Legitimation in Medieval León-Castile,” in Building Legitimacy: Political Discourses and Forms of Legitimation in Medieval Societies, ed. Isabel Alfonso, Julio Escalona, and Hugh Kennedy (Boston and Leiden: Brill, 2004), 78-85; Wendy Davies, “Judges and
counts who realized the potential for Visigothic law as a tool of lordship, and reaped the rewards. In doing so, they left rich evidence of its early medieval textual transmission, and it is the use of treason law by the kings of Asturias-León against their rebellious subjects which constitutes the example for this case study.

**Treason Law in the Code**

From its own internal evidence, the fundamental Visigothic law on treason was issued by Chindaswinth (642-53) in the second year of his reign (643-44), then modified either under his son Receswinth or in the production of the Ervig recension, which most notably featured the repeal of execution and blinding as prescribed modes of punishment. The codified text is to be found in Book 2, Title 1, Sentence 6 of the *Book of Judgements* (numbered as 2.1.8 in the Zeumer edition), and is reinforced by canon law decreed at the Seventh Council of Toledo (646), amongst others. As a piece of legislation, it is bombastic and expansive, paranoid and xenophobic, involved and oddly precise, in practical terms surely unworkable. At points there is also noticeable


contamination between the two recensions, such that the presentation of the respective versions may in part be an artefact of the editorial method which Zeumer applied. As context for what follows I provide here a simplified text based on that edition, punctuated for comprehension and subdivided for reference, and an accompanying translation.

[Recceswinth recension] [Ervig recension]

VI. FLAVIUS CHINDASVINDUS REX. VI.22

[1] De his qui contra principem vel gentem aut patriam refugi sive insulentes existunt.


[3] Ut ergo tam dira temeritas tandem victa depereat, et in huiusmodi transgressoribus manifesta iscelera non relinquantur ulterius inpunita, hac omne per evum valitura lege sancimus, ut quicumque, ex tempore reverende memorie Chintilani23 principis usque ad annum Deo favente regni nostri secundo vel amodo et ultra, ad adversam gentem vel extraneam partem perrexit sive perrexerit, aut etiam ire voluit vel quandoque voluerit, ut sceleratissimo ausu contra gentem Gotorum vel patriam ageret, aut fortasse conetur aliquatenus agere, et captus sive detectus extitit vel

22 Zeumer notes five manuscripts reading Recceswinth.
23 Zeumer notes two manuscripts reading Swinhila (621-31).
extiterit, sive ab anno regni nostri primo vel deinceps quaspiam infra fines patrie Gotorum quamcumque conturbationem aut scandalum in contrarietatem regni nostri vel gentis facere voluerit, sive ex tempore nostri regiminis tale aliquid agere vel disponere

[Recceswinth] [Ervig]
conatus est aut fuerit, atque quod indignum dictum

videtur, in necem vel abiectionem nostram sive subsequentium regum intendere vel intendisse proditus videtur esse vel fuerit: horum omnium scelerum vel unius ex his quisque reus inventus

[Recceswinth] [Ervig]
inretractabilem sententiam mortis et si nulla mortis ultione plectatur aut excipiat, nec ulla ei de cetero sit vivendi effusionem perferat oculorum, secundum libertas induita. Quod si fortasse pietatis quod in lege hac hucusque fuerat intuitu a principe fuerit illi vita concessa, constitutum, decalvatus tamen C flagella non aliter quam effossis oculis suscipiat, et sub artiori vel perpetuo erit relinquatur ad vitam, quatenus nec religandus exilio pene, et insuper nullo excidium videat, quo fuerat nequiter umquam tempore ad palatini officii delectatus, et amarissimam vitam ducere reversurus est dignatatem. Sed servus principis factus et sub perpetua servitutis se perenniter doleat. catena in principis potestate redactus,
eterna tenebitur exilii religione obnoxius.\textsuperscript{24}


\[\text{[Recceswinth]} \quad \text{[Ervig]}\]
vel eius, qui morte est pro tali iscelere huius tam nefarii transgressoris\textsuperscript{25}
perimendus, vel huius, qui vite propter
suam nequitiam infelicissime
reservabitur,
in regis ad integrum potestate persistant, et cui donate fuerint ita perpetim securus possideat, ut nullus umquam succedentium regum, causam suam et gentis vitiaturus, has ullatenus auferre presumat.

[5] Verum quia multi plerumque repperiuntur qui, dum his et talibus pravis meditationibus occupantur, argumento quodam fallaci in ecclesiis aut uxoribus vel filiis adque amicis seu in alios quibuscumque personis suas inveniantur transduxisse vel transducere facultates, etiam et, ipsa que fraudulenter in dominio alieno contulerant iure precario reposcentes, sub calliditatis studio in suo denuo dominio possidenda recipiant, unde nihil de suis rebus visi sunt admisisse, nisi solum concinnacione falsissima fictas quasi veredicas videantur scripturas conficere.

[6] Ideoque hanc nequissimam argumentationem presentis legis decreto amputare elegimus, ut, calcatis vel evacuatis seu rescissis scripturis ac fraude confectis, quidquid

\textsuperscript{24} Zeumer notes nine manuscripts showing contamination between [Recceswinth] and [Ervig].
\textsuperscript{25} Zeumer notes eight manuscripts showing contamination between [Recceswinth] and [Ervig].
eo quisque tempore possidere repperiatur quo fuerit in predictis criminibus deprehensus, totum continuo fisci viribus ad integrum adplicetur, ut concedere iam dictas facultates, sicut supra dictum est, cui rex voluerit vel facere exinde quidquid elegerit in sue potestatis consistat arbitrio.

[7] Alia vero quicumque ab hac fraude aliena inventa extiterint, ordinata legibusque confecta, vigore legum maneant solidata, illis ab huius legis sententia personis evidenter exceptis, quibus a precedentibus regibus culpa dinosicitur fuisse concessa. Nam si humanitatis aliquid cuicumque perfido rex largiri voluerit, non de facultate eius sed unde placuerit principi, tantum ei solumodo concessurus est quantum hereditatis eiusdem culpati vicesima portio fuisse constiterit.

[Recceswinth] [Ervig]


[1] On those who prove to be deserters or dissidents against the king or people or land.

[2] By how many catastrophes the land of the Goths has to date been shaken, and by how many provocations from exiles and how much cursed arrogance on the part of traitors it has continually been troubled, is known to nearly everyone, because they perceive a lessening of the land, and we are often obliged to take up arms on this account, rather than that of vanquishing foreign foes.

[3] Therefore, in order that such appalling recklessness – at long last crushed – may be permanently destroyed, and that the flagrant crimes by offenders of this type may no
longer be left unpunished, we decree by this law to stand for all time that whosoever, from the era of King Chintila of honored memory down to the second year (God willing) of our reign and from now onwards, has traveled or will travel to a hostile people or foreign parts, or has even wished to go or will someday wish to go, so as to take action with the most criminal audacity against the people of the Goths or the land, or perhaps so that he may try for a while to take such action, and has been or will be captured or exposed, or if someone from the first year of our reign or henceforth has wished to cause any unrest or intrigue whatsoever within the frontiers of the land of the Goths to the misfortune of our kingdom or people, or from the time of our rule

[Recceswinth] [Ervig]

is seen to take or set in motion any such action, has tried or will try to take or set in motion any such action, and (what seems unworthy of mention)

is seen to have been or will be revealed to be aiming or have aimed at our murder or overthrow or that of future kings: let anyone found guilty of all these crimes, or one of them,

[Recceswinth] [Ervig]

receive an irrevocable sentence of death, though he should not be punished by any vengeance of death or suffer the gouging out of his eyes, according to what had hitherto been instituted by this law, scalped even so let him receive 100
other than with his eyes gouged out, such that he may not see the downfall in which he had evilly taken pleasure, and also that he may ever grieve to lead so very bitter a life.

lash, and he must then be bound over into a still stricter and nigh permanent exile, besides which he will at no time ever return to the honor of palatine office. Instead, made a slave of the king and brought into the power of the king under the permanent chain of slavery, he will be held liable by the perpetual bond of exile.

[4] Moreover, let all the possessions either of him who must be destroyed by death for such a crime or of him who will be spared for a very unhappy life on account of his iniquity remain entirely in the power of the king, and to whomever they have been given, let him hold them unmolested forever, such that none of the future kings, compromising his own cause and that of the people, may ever dare to take these away in any respect.

[5] Nevertheless, many frequently come to light who are found, while implicated in these and similar such corrupt preparations, to have conveyed or be conveying their properties on some fraudulent basis to churches or wives or children and friends or to any other individuals whatsoever, and who even, reclaiming those very things which they had falsely transferred into the ownership of another by the law of revocable grant
(iure precario), take them back through premeditated cunning into their own ownership to hold once more, whence they have been seen to have lost none of their possessions, but are only seen to pass off counterfeit documents as genuine by the most deceitful fabrication.

[6] And therefore, we have determined to eradicate this very malicious ruse by the enactment of the present law, in order that, once the documents put together by this trickery have been suppressed, voided, or annulled, whatever anyone is discovered to own at that time when he has been detained in the aforesaid offences may all be forthwith added entirely to the resources of the fisc, so that granting the properties already mentioned, as is said above, to whomever the king wishes or doing with them whatever he chooses may rest in the judgement of his authority.

[7] Now, whatever other things have been found unconnected to this trickery, arranged and carried out according to the laws, let them stand reinforced by the strength of the laws, manifestly exempting from the pronouncement of this law those individuals for whom guilt is acknowledged to have been pardoned by earlier kings. For if the king wishes to bestow some human consideration on any treacherous person at all, he will grant him, not out of his property but from wherever else it pleases the king, only so much as has been established to have been a twentieth portion of the estate of the same guilty party.

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Treason Law in Charters

We catch our first glimpse of Visigothic treason law in post-Visigothic legal practice at the end of the ninth century. Alfonso III (866-910) granted three diplomas to Santiago de Compostela of property confiscated by law from traitors against his rule: in the earliest, from 886, he handed over possessions formerly belonging to Hermegildo and his wife Yberia, who had rebelled and consequently lost them “by the decrees of the laws and the teachings of our synod” (*per legum decreta et nostre sinodis instituta*).27 The citation, if that is even the word, is general, imprecise, and indeed on three more occasions the king made no mention of the law at all, but simply gave away possessions previously owned by faithless subjects. Here he seems to have been relying implicitly on his legal right to do so, as when in 895 he made an exchange of a *villa* owned by Vitizane “the unfaithful” (*infidelis*), who had lost it for his crime; according to a retrospective account from 1007, this troublemaker rebelled for seven years, until Count Hermegildo Gutiérrez delivered him in defeat to Oviedo, where all his land was confiscated and redistributed.28 Yet few successors of Alfonso III adopted the same tactics. Ramiro II (931-51) gave three *villae* of Gonzalo Muñoz, rebel aristocrat, to San Cristóbal de Vega in 946, while Ordoño III (951-56) donated a district to bishop Rosendo which certain cousins or nephews (*suprini*) had lost on account of their “abominable disloyalty” (*execrabilis infidelitas*) in 955, and Ramiro III (966-84) made


a testament to the episcopal see of León in 981 of property impounded for comparable infidelity to the king. Silent lurks the Visigothic code: behind these all is the same legal framework, a presumption that traitors forfeited their possessions to the crown, but it is implemented without direct citation of the law.

The text of Visigothic treason law first becomes explicit in documentation from the reign of Vermudo II (982/84-99), when royal authority had reached its nadir as he struggled against magnate insurgency and Umayyad incursion. The chronicler Sampiro, who had begun his career as a notary under this ruler, flagged a shift in practice, recording that “he confirmed the laws established by King Wamba [672-80] and ordered the canons to be disclosed” (leges a Banbano principe conditas firmavit, canones aperire iussit). A notable attribution: some Visigothic legislation bears his name, and identifying him here presupposes a fair knowledge of the code in contemporary currency. More to the point, the picture of legal renewal tallies with the activity which we find in the diplomas, for Vermudo II cited treason law more often than any other king. The earliest case comes from 994, when he gave a villa to the

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31 Liber Iudiciarum, 4.5.6-7, 6.5.21, 9.2.8; cf. Amancio Isla Frez, “La monarquía leonesa según Sampiro,” in Historia social, pensamiento historiográfico y Edad Media. Homenaje al Prof. Abilio Barbero de Aguilara, ed. María Isabel Loring Garcia (Madrid: Ediciones del Orto, 1997), 53-54.

Galician monastery of Celanova which Suario Gundemáriz had appropriated “without my instruction or assent” (*extra mea iussione vel voluntate*) before rising in revolt; after God had restored the king, all property of the rebel was his to do with as he pleased “as the holy canons and Gothic law provide and judge in such matters” (*sicut canones sancti et lex gotica de talibus ordinat et iudicat*). Though drafted by Sampiro himself, the diploma does not draw directly on the text of the relevant legislation, but a year later, when one Erus Fofiz was discovered to have joined the insurgency and his possessions were seized pursuant to “the canon and Gothic law” (*canonem et lex gotica*), the unnamed scribe of this act paraphrased its opening words.

[Celanova 223] [Liber Iudiciorum 2.1.8]

Dum autem pervenit talis auditus in presentia regis, mandavit ad sagiones suos et preserunt illi omnia quicquid invenerunt tam villas quam et omnem rem suam, sicut in canonem et lex gotica docuisset:

**Qui** bona minime agunt et ad regis [1] De his **qui** contra principem vel ordinationem **insolentes existunt.** gentem aut patriam refugi sive **insulentes existunt.**

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33 Emilio Sáez and Carlos Sáez, *Colección diplomática del monasterio de Celanova (842-1230), III (989-1006)* (Alcalá de Henares: Universidad de Alcalá de Henares, 2006), 221.

34 Sáez and Sáez, *Celanova III*, 223.
The joint citation of secular and canon law in these cases is noteworthy, suggesting an awareness that Visigothic treason law had been reinforced by subsequent Church councils in its compact to support the crown.\textsuperscript{35} The two authorities were intended to be complementary, and Vermudo II drew on them as such, underlining this in a donation to Celanova from 996 of property taken “by authorization of the decrees of Catholic law” \textit{(per auctoritatem catolice legis decretum)}.\textsuperscript{36} Osorio Diaz had joined with the Saracens “against our people and land” \textit{(adversus gentem et patriam nostram)}, two-thirds of the secular trinity of \textit{princeps, gens, patria} which animates the legal pronouncements of the Visigothic Church and crown; he had been expelled and lost all his possessions, for it is only, as the confirmation clause observes, “ignorant and uneducated men who know nothing of the law, like they reject the decrees of kings” \textit{(idiote homines et imperiti qui nesciunt legis principum decreta quasi reprehendunt)}.\textsuperscript{37}

By deploying these twin bodies of law, a ruler could not only regain his position materially, impoverishing his enemies and enriching faithful supporters, but also reassert his legitimacy on a symbolic level via the spectacle of consulting and announcing its provisions. Vermudo II held one such council in 998, as recorded by a chancery copy from 1020, to denounce “sons of perdition” \textit{(filii perdictionis)} who had sought out Muslim allies and overthrown his rule for an interval: “to be done by way of example to the others of this persuasion” \textit{(ut ceteris de hac opinione in exemplo fiat)}, he disposed of all the property of Gonzalo Vermúdez, a captured conspirator, on the authority of “what is found in the most sacred canon and Gothic law on rebellions and opponents of the king and their belongings, as is known to be instituted and inscribed

\textsuperscript{36} Sáez and Sáez, \textit{Celanova III}, 229.
\textsuperscript{37} Hélène Sirantoine, \textit{Imperator Hispaniae. Les idéologies impériales dans le royaume de León (IX\textsuperscript{e}-XII\textsuperscript{e} siècles)} (Madrid: Casa de Velázquez, 2013), 81-122 (esp. n. 92).
in Book 2 and its titles, written by the holy fathers of old” (*quiquid in sacratissimum canonem et godicam legem inventur de revellionibus uel contradictoribus regis sive de fagultatibus eorum, sicut in libro secundo et in eius titulis constitutum vel exaratum a prioribus sanctis patribus scriptus ecce decernitur*). The beneficiary was none other than Sampiro, who also received another *villa* seized “by holy law” (*per legem sanctam*).

Such public acts had resonance. Osorio Iohanni, in a donation to Celanova from 1001, took care to relate how our friend Erus Fofiz had scorned the service owed his king in accord with “the canons and book of judges” (*canones et liber iudicum*), and Vermudo II had taken his property “by authorization of the law” (*per auctoritatem legis*) and “canonical and judicial opinion” (*canonica et iuditialis sententia*), giving one part of it to Osorio Iohanni. Similarly, his son and successor Alfonso V (999-1028), when meditating on his father’s reign in 1012, recounted how Alabel and his wife Gunterodo had agitated against him, going over to Count García Fernández of Castilla: the king seated himself before his court, and “enquiry was made through the whole volume of the law” (*facta est questio per omnem volumine legis*), like the Day of Judgement come early.

For our purposes, whereas the charters of Celanova, though rich sources for legal practice, offer limited gain in reconstructing the early medieval text of Visigothic

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40 José Antonio Fernández Flórez and Marta Herrero de la Fuente, *Colección documental del monasterio de Santa María de Otero de las Dueñas, I (854-1108)* (León: Centro de Estudios e Investigación “San Isidoro,” 1999), 90; see also Alfonso García Leal, *El archivo de los condes Fruela Muñoz y Pedro Fláñez. La formación de un patrimonio nobiliario en la montaña asturleonesa (854-1048)* (León: Universidad de León, 2010).
law because of their secondary transmission through the twelfth-century Tumbo de Celanova, this diploma is an early witness to it, surviving in the original in the monastic archive of Otero de las Dueñas and proceeding to quote treason law nearly verbatim.

[Otero 90]          [Liber Iudiciorum 2.1.8]
Et dum talia previderet rex, sedente in
solio suo et omnis cetus in sinodo, facta
est questi[o] per omnem volumine legis:

De is contra princibem vel gentem aut [1] De his qui contra principem vel
padriam refugi vel insolentes existunt. gentem aut patriam refugi sive
insulentes existunt.

In ipsa setencia dicit:

[Ervig]

transgressoris in regis ad integrum transgressoris in regis ad integrum
potestate persistant et cui donate fuerit potestate persistant et cui donate
ita perpetim secure possideat ut nullus fuerint ita perpetim securus possideat,
unquam succedencium regnum ut nullus unquam succedentium
causam suam et gentis viciaturus regum, causam suam et gentis
ullatenus auferre presumat. vitiaturus, has ullatenus auferre
presumat.
The omissions and discrepancies are minor (orthography aside, securus has become secure, a plausible adverb, regum has become regnum, a simple error), while the whole clearly reflects the Ervig recension, mobilized effectively. When Alfonso V gave this sequestered property to Munio Muñoz on Easter Sunday at Oviedo, he participated in the self-fashioning narrative of authority and legitimacy articulated by his father before him, and thereby gained the same advantage over his own rebellious subjects. By the same token, each property involved took on a “legal history” as it passed from rebel to king and king to faithful subject.

Yet there was more than one way to cite the law, and in other contemporary cases of treason and confiscation the code justified and enabled royal action purely through language, silent or implicit citation discreetly endowing the diplomatic text with words of power. The earliest instance of all from the reign of Vermudo II falls under this heading: he explained in 990 that a certain Conanzo had begun spreading rumors of his death while he was in Galicia and had raised uproar around León; returning and arresting the bad lad, the king extracted a promise by written agreement (placitum) that he would offer no further opposition, or forfeit his possessions. As such, when Conanzo resumed his life of villainy, all his property passed by virtue of that charter to the king, and he was free to dispose of it however he wished.

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42 Ruiz Asencio, León III, 541.
Post non multum temporis, mentiti sunt ipsum placitum et revocabit ab infidelitate et cum adversariis nostris vastabit et depredabit et latrocinabit amplius quam dudum; in populis nostris sceleribus comisit multis et supra modum multis, propter quam a nobis concessum [et per ves]trum scriptum est ut:

[Ervig]


Another early witness surviving in the original in the cathedral archive of León, the diploma is signed by the notary Munnio frater and iudex, but it also bears the monogram of Sampiro. We can perhaps detect his hand in the composition of the narrative, which reflects not only the terms of treason law but also its text; even without any citation, “the so heinous offender,” one of its more memorably baroque formulations, leaps straight off the parchment.
In other words, Visigothic legislation frames both the action and its presentation, and diplomas into and through the reign of Alfonso V report rebellions by and confiscations from other rogues in the same discursive mode, quietly predicating the legitimacy of appropriation on the law.⁴³ Even his mother Queen Velasquita, widow of the late king, seized land from the rebel Felix Agelazi after he had resourcefully escaped royal wrath by Viking barque.⁴⁴ It was simply part of the mentality of royal diplomatics, and this may explain a curious outlier from 906, preserved in an imitative twelfth-century copy with interpolations, which describes how Alfonso III, after putting down a Galician insurrection, announced at Lugo his legal right to seize all the property of his enemies and bestow it on anyone of his own choosing.⁴⁵

[Valencia de Don Juan 1] [Liber Iudiciorum 2.1.33]

Placuit mihi ex animo ac voluntate omnium magnatum visum est, tam nobelium personarum quam etiam infirmarum, ut inimicis nostris inquirerem et in legali sentencia mitterem sed liber iudicialis, stantia sexta de liber secundo et de secundus titulus dicenti:

⁴³ See e.g. Ruiz Asencio, León III, 719, 741; Lucas Álvarez, Santiago, 63, 90; Gregoria Cavero Domínguez and Encarnación Martín López, Colección documental de la Catedral de Astorga, I (646-1126) (León: Centro de Estudios e Investigación “San Isidoro,” 1999), 230B; José María Fernández del Pozo, “Alfonso V, rey de León,” in León y su historia 5 (León: Centro de Estudios e Investigación “San Isidoro,” 1984), 5.
⁴⁴ Pedro Floriano Llorente, Colección diplomática del monasterio de San Vicente de Oviedo (Oviedo: Monasterio de San Vicente de Oviedo, 1968), 30.
De aliis personis qui regiam De his, qui regiam contemserint contempserint iussionem, invenimus iussionem.

quidam ex ipsis nefandus et sacrilecus
qui ad nostris male fecerunt in tempore Quicumque ingenuorum regiam revelionis, quos a me fecerunt in terra iussionem contemnere invenitur […]
Gallecie simulque in multisque partibus
unde loncum per sincula conscribere sed
sub brevitate claudendum est.

Although the reference is in fact to a related law on those who disobey a royal command, the citation given is to Book 2, Title 2, Sentence 6 of the “judicial book” (liber iudicialis), one off from the treason law which the scribe, or interpolator, must have had in his mind.

The immediate successors of Vermudo II faced equal unrest in their reigns, and they followed his lead in deploying Visigothic law to meet the challenge.46 In a diploma of 1023 surviving in the Tumbo de León, a cartulary compiled in the first third of the twelfth century, we find Alfonso V granting a donation, once again to Sampiro, of property formerly owned by Eicta Fosatiz. He had betrayed his king, joining with Count Sancho Garcia of Castilla in rebellion, and so, as “the law authorizes” (lex abtorigat), he lost his lands to the crown.47

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47 Ruiz Asencio, León III, 802 (see also 748); Carvajal Castro, Bajo la máscara del regnum, 132-36.
Propter hanc rem apprehendimus ipsam hereditatem de iure illius propter ipsam infidelitatem vel scandalum quam misit in finibus nostris, sicut nos lex abtorigat atque canit in liber secundus vel in titulis eius:

Ut tam nefarius sceleratores qui contra principem gentem vel patriam nostram mentientes atque contradictores extrant in principis potestate permaneant ipsi et omnia bona illorum ut quid de illis vel de rem suam facere voluerit sui fuisit incostanter arbitri.

[1] De his qui contra principem vel gentem aut patriam refugi sive insulentes existunt.

[4] Res tamen omnes huius tam nefarii transgressoris in regis ad integrum potestate persistant et cui donate fuerint ita perpetim securus possideat, ut nullus umquam succedentium regum, causam suam et gentis vitiaturus, has ullamtenus auferre presumat.

[6] […] ut concedere iam dictas facultates, sicut supra dictum est, cui rex
The scribe Viliulfus may have offered a rather vague citation of “Book 2 and its titles,” but in what follows he demonstrates a thorough internalization of treason law, drawing recognizably on the language of three discrete passages from its text to fashion his own summary.

On a similar occasion four years earlier, Alfonso V had given property taken from his enemies to his loyal Pedro Flaíñez, and in the written record, another original from Otero de las Dueñas, we find “Gothic law” (lex godicat), cited chapter and verse, still more present.\textsuperscript{48}

\[\text{[Otero 124]} \quad \text{[Liber Iudiciorum 2.1.8]}\]

De profanus et abesarius et scelus acius
factis dici nobis lex godicat et octoriga,
secundum dici in liber II et titulo I
kapitula VI:

\textbf{De iis qui contra pricipe gente vel [1] De his qui contra principem vel patria refuca aut} mentitus fuerit vel ars \textbf{gentem aut patriam refugi sive insulentes existunt.}

fecerit tam compleri quam consiliarit vel

insolenter exsitant.

[Ervig]

Sic inventus fuiet aut effusione aut exhis quisque reus inventus, et si nulla
aucculorum at dekalbatum tamen aut ex his quique reus inventus, et si nulla
exilio perditurus dignitate set serbus perferat oculorum, secundum quod in
pricipe factus et sum perpetua lege hac hucusque fuerat constitutum,
sebitatis catena in pricipis potestate decalvatus tamen C flagella suscipiat et
retus eterna tenebitur exilio sub artiori vel perpetuo erit religandus
relicacionem obnosius. exilio pene et insuper nullo umquam
sub artiori vel perpetuo erit religandus
potestatem; sed servus principis factus
tempore ad palatini officii reversurus est
et sub perpetua servitutis catena in
principis potestate redactus, eterna
tenebitur exilii reliagatione obnoxis.

[Ervig]

Res tamen vel omnes nefarii transgresoriis in regis ad integrum postestatem existit et cui donate potestate persistant et cui donate
donante de manu principis ita perpeti fuerint ita perpetim securus possideat,
securi posidit ut nulus umquam ut nullus umquam succedentium
The notary Veila evidently knew his law: here he has both expanded on the title and distilled (if overly concisely) the treatment of penal slavery and exile with keywords from the text.\textsuperscript{49} But when reiterating the royal privilege of seizing and disposing of the property of the rebel, he has also clarified that privilege, complementing the passive “they have been given” with a statement of agency, “by the hand of the king,” to eliminate any source of ambiguity.

The final early medieval example, from the reign of Vermudo III (1028-37), takes the practice one step further by citing treason law not in isolation but supported by other relevant legislation. The colorful narrative of 1029 retails how Ovecus and his wife Adosinda refused to do service (\textit{servitium}) for properties which they held in contract of labor (\textit{ad operandum}), or to acknowledge the new king when he demanded their return, and barricaded themselves in the fortified \textit{castro} of Aguilar in Galicia, looking to Count Rodrigo Romániz as their new patron and protector.\textsuperscript{50} The king intervened to take back a church of San Salvador in Maceda in the midst of the warzone and hand it to Bishop Pedro of Lugo, confirming a grant made by his father, and the diploma, transmitted by the thirteenth-century Tumbo Viejo, stipulated in support that royal donations may not legally be vacated without fault by the beneficiary.


[Lugo 16] 

[Liber Iudiciorum 5.2.2]

Et pro hanc scelus que nobis feci iterum, detruncavimus hac confirmationem sicut dicitur in libro V titulo II et sententia II ubi dicitur:

De donationibus regis quod non De donationibus regis.

opertet statuta convelli quia convellenda esse precipientis culpa […] quia non oportet principum statuta non fecerit. convelli, que convellenda esse percipientis culpa non fecerit.

Et iterum in libro II titulo I et sententia VI [Liber Iudiciorum 2.1.8] ubi dicitur:

De his qui contra principem aut [1] De his qui contra principem vel gentem patriam refugium vel gentem aut patriam refugi sive insolentes existunt. insulentes existunt.

Ibi dicitur:

Res tunc omnes huius tam nefarie [4] Res tamen omnes huius tam nefarii transgressoris in regis ad integrum transgressoris in regis ad integrum potestatem persistant et cui donate potestate persistant et cui donate
The unnamed scribe handled both laws the same way, running together the title with the main provision: for royal donations, the pertinent text came from the end of the statute, for treason, the middle, twofold legal cover for an act of both confirmation and appropriation.

The three original diplomas which we have reviewed (dating to 990, 1012, and 1019) increase the number of non-Catalan early medieval witnesses to the text of Visigothic treason law from seven to ten.\(^5\)\(^1\) With no pretension to offering a new edition, I consolidate their legal citations here, presenting them in date order and highlighting words independent of the code.

\textit{Liber Iudiciorum} 2.1.8

[Otero 90] De is contra princibem vel [1] De his qui contra principem vel gentem aut padriam refugi \textit{vel} insolentes \textit{gentem aut patriam refugi sive insolentes existunt.}

[Otero 124] De iis qui contra pricipe gente vel patria refuca aut \textit{mentitus}
\textit{fuerit vel ars fecerit tam compleri}
\textit{quam consiliarit vel} insolenter exsitant.

Sic inventus aut efussione aucculorum at dekalbatum tamen aut ex his quisque reus inventus, et si nulla mortis ultione plectatur, aut effosionem perferat oculorum, secundum quod in lege hac hucusque fuerat constitutum, decalvatus tamen C flagella suscipiat et sub artiori vel perpetuo erit religandus exilio pene et insuper nullo umquam tempore ad palatini officii reversurus est dignitatem; sed servus principis factus et sub perpetua servitutis catena in principis potestate redactus, eterna tenebitur exilio relicacionem obnosius.

Res tamen uius omnes tam nefarie transgressoris in regis ad integrum potestate persistat et cui donate fuerint ita perpetim secure possideat, ut nullus umquam succedentium regum, causam suam et gentis vitiaturus, has uullatenus auferre presumat.

Et rem] uius tamen nefarie transgressoris in regis ad integrum
potestate persistant et cui donate fuerit ita
perpetim secure possideat ut nullus
unquam succedencium regnum causam
suam et gentis viciaturus ullatenus
auferre presumat.

[Otero 124] Res tamen vel omnes nefarii
trascresoriis in regis ad intercum
potestatem persistent et cui donate fuerit
de manu pricipis ita perpeti securi
posidiat ut nulus unquam succedecium
recum causam suam egentis viciaturus
facia.

This is a snapshot of the text of Visigothic treason law in practice around the
millennium. On the whole that text shows a fairly high degree of fidelity, but it is also
very partial, a fragment of the whole, shorn of any context. By a comparable process of
carrying over only what was most relevant, “case law” initially issued in extenso
became the telegraphic statements which characterize many late antique and early
medieval codes. 52 Here in early medieval Iberia the full text of treason law had been

52 Patrick Wormald, “Lex scripta and verbum regis: Legislation and Germanic Kingship, from Euric to
Cnut,” repr. in Legal Culture in the Early Medieval West: Law as Text, Image, and Experience (London:
Hambledon Press, 1999), 1-43; Thomas M. Charles-Edwards, “Law in the Western Kingdoms between
the Fifth and the Seventh Century,” in The Cambridge Ancient History, XIV. Late Antiquity: Empire and
Successors, A.D. 425-600, ed. Averil Cameron, Bryan Ward-Perkins, and Michael Whitby (Cambridge:
Cambridge University Press, 2001), 260-87; Caroline Humfress, “Cracking the Codex: Late Roman
winned down to just two subsections, maybe three, with one simple, forceful message: all property of traitors belonged to the king.

Texts as Fragments

When the kings of Asturias-León had their diplomas equipped with legal citations, the code was a sure ally in the consolidation of power. But it was something of a free agent, and when their counts took action in the same line, the benefits accrued to them, with predictably destabilizing results. An embattled king facing a restive aristocracy, Alfonso V might seem an unlikely stepfather to early medieval Iberian law, promulgating the *Fuero de León* in 1017 to confirm, supplement, and revise the Visigothic code. All his predecessors had retained the laws of their predecessors to perform legitimate succession to the Visigoths; he attempted more, a legislative restatement of royal power, spoken in the familiar language of authority. But who was there to interpret it for him? The legal fluency which made possible citation of the code in charters was the gift of those responsible for their creation and dissemination. It was the scribes who, just as the clergy could “write Scripturally” from their deep immersion

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in the Bible, had the capacity to “write legally” from the regularity of their engagement with the law. In the background of the rising incidence of legal citation across the Leonese period is another development, the consolidation of the scribal profession in the later tenth century, which brought to the fore career notaries such as Sampiro, who has featured so prominently in this review. It is not merely correlation; as scribes graduated from occasional technicians to recurrent assistants, faithful retainers worthy of reward, their employers came to recognize the advantage in their expertise. The diplomas of Vermudo II and his successors make such use of written law to seize property from traitors because they had advice to hand.

If scribes were the personnel responsible for legal citation, where did they get hold of copies of the code to read? There has been a great deal of work on books in early medieval Iberia, but most of it has aimed at reconstructing the libraries of institutions or persons, or to trace the effects of the “Mozarabic migration” on literature and literary culture in the north of the Peninsula. These “fixed libraries” in the treasuries of

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56 See Barrett, The Written and the World, ch. 2; Lucas Álvarez, La documentación real astur-leonesa, 219-33, 661-66.
monasteries and churches can be inventoried from charters of endowment; they are typically approached from the perspective of the beneficiaries, but the same charters also witness the books, both liturgical and literary, of their royal, episcopal, ecclesiastical, and lay granters, the collections existing before those assembled by monasteries and churches. Even so, the components of the network of texts cited in the charters, above all the Visigothic code, are rarely found to be catalogued in them. Only in Galicia, and only three times at maximum, do we read of codices circulating: Beatus presbiter gave a “book of judges” (libro iudicum), amongst many others, to San Salvador de Arnoya in 889, while the founding endowment of Celanova included “one Psalter book and one Gothic [legal? liturgical?] book” (libros psalterio I et goticum I) in 938, and Sisnandus presbiter donated a “Gothic book” (librum goticum) to Santa María de Barbadelo in 967. Surviving copies of the code are scarcely more common:


outside Catalunya, six from before 1031. One-tenth of the charters cite the law; how many more copies of it must be lost?

This mismatch of codices and citations tells us something else: that access to a whole copy, a complete text, was not necessary for its use. In 950, a certain Fredesindo confrater, with his heirs, brothers, nephews, and fratres, made a donation to the Leonese monastery of San Pedro de Eslonza of some pasturelands (bustos), which a son of Alfonso III had marked out for his ancestors, in order to retire an outstanding debt valued at nine measures (modii) of wheat. Ordinary enough, it would seem, but transcribed on the reverse side of the original are two laws from the Visigothic code, regulating the care of animals on loan. Transaction and legislation are related, but the laws have been written by a hand and in a script distinct from the charter, indicating a different context or the involvement of another agent. Whatever the precise circumstances, the clear implication is that, at some point soon after this transaction had been completed, a scribe jotted down laws which he considered relevant to Eslonza and its affairs. And this is our missing link: texts in fragments. Yet the second scribe was working from a defective exemplar, and the copy which he made has a lacuna in the middle of each line of the law. Others will no doubt have had access to better, fuller exemplars, and there is a social history of transmission to be written. This fragment and others need to be reassessed, not as fragments but as access points. Informally,

62 José Manuel Ruiz Asencio and Irene Ruiz Albi, Colección documental del monasterio de San Pedro de Eslonza, 1 (912-1300) (León: Centro de Estudios e Investigación “San Isidoro,” 2007), 24; Liber Iudiciorum, 5.5.1-2.

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partially, books could circulate piecemeal in such extracts written out on spare parchment by the same scribes who cited them.

What does this mean for the Visigothic code? Each scribe stocked the shelves of his mental library with charters, secular and canon law, Holy Scripture, and monastic rules, but how? By first-hand consultation: in the monasteries and churches of their royal, episcopal, ecclesiastical, and lay patrons – these libraries circulated constantly, changing hands with institutions and individuals. By memory: from some moment of exposure, like the verses of Scripture cited in charters by way of the liturgy.64 By copying other charters: scribes mastered their craft by imitating models, the work of other scribes, conserved, consulted, copied, and circulated as needed. By this means the fragments of source texts which they cited were kept in currency; contact with a codex could have come as rarely as once in a generation or more, yet sufficed, and for some the code must have existed only in charters. Early medieval Iberia was bonded by text, but not text as we know it. For most writers, readers, and listeners, the part was the whole. We need to redefine what “knowing” a text meant in terms recognizable to the inhabitants of this world. For some, the fact of law was enough to shape behavior, for others, scattered passages, sentences, words originating in texts seen or heard directly perhaps just once, if ever, but transmitted at a distance were the reality of the larger work, what to us is its real, complete, perfect form. This is the textuality of fragmentary, imperfect knowledge: the minority with books and libraries within reach may have had a fuller armory of written resources for deployment, but personal access was not straightforwardly a limiting factor in the balance of power so long as texts lived too in

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fragments. We confront early medieval books as books, as discrete and integral, and so
we interpret them, but for the majority of their audience, those who lived with and by
them, they were scattered fragments. No edition which fails to reckon with this reality
can claim to represent the text of Visigothic law in practice.
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