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The Visigothic Code (Book VI):
Translation and Analysis

by

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This thesis deals with Visigothic criminal law. It is concerned, specifically, with Book VI of the original version of the last Visigothic law code, the *Leges Visigothorum*, promulgated in Spain by King Receswinth in the year 654. As the title suggests, the thesis is divided into two distinct parts: a translation and a commentary.

Although the *Leges Visigothorum* was the last official law code in the Visigothic Kingdom, it underwent many changes before the Arab invasion of Spain in the eighth century. There is one English translation of the last version of the code, the *Forum Iudicum*. It was prepared by S. P. Scott and published in 1910 as *The Visigothic Code*. Unfortunately, there are no English translations of the code in its original form, the *Liber Iudiciorum*.

In this thesis I have translated one of the twelve books of the *Liber*. Book VI contains fifty-one laws. It is titled *De Isceleribus et Tormentiis* ("Crimes and Tortures"). It has five chapters: I) "Accusation;" II) "Concerning Sorcerers, Those Consulting Them and concerning Poisoners;" III) "Abortion;" IV) "Wounds and Mutilations," and V) "Murders and Deaths of Men."

The commentary in the thesis is composed of four chapters. The first one is introductory. It establishes the *Leges Visigothorum*...
within the whole corpus of Visigothic law, and outlines the contents of the code. The second chapter discusses the role of punishment in the Visigothic Code. It devotes special attention to decalvation, and points out the different views concerning its nature: shaving the head versus scalping. Chapter III is the most important of the chapters in the thesis. It attempts to present the two general schools of thought concerning the application of Visigothic law, and then it relates the discussion to Book VI by analyzing the laws in the book that have entered the controversy. The Germanist school believes Visigothic law followed Germanic custom and was personal. In this case the Visigoths would have been ruled by one legal system and the Hispano-Romans by another. The Romanist scholars prefer to think it followed Roman tradition and was territorial law. If such had been the case, it would have been the only law in the land, it would have been applicable to all subjects alike and would have united the two peoples. The last chapter is dedicated to the Latin text. The first part of the chapter deals with the differences in Book VI between the Liber Iudiciorum and the Forum Iudicum. The second part speaks of the didactic style in the Leges Visigothorum, which is very different from the short and direct style of most of the leges barbarorum.

The text followed for the thesis is Karl Zeumer's critical edition of the Leges Visigothorum. In this edition he presents the code as it developed historically. It was published in 1902 in the section of the Monumenta Germaniae Historica entitled Legum Nationum Germanicarum.
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CHAPTER I

The Liber Iudiciorum

The last law code the Visigothic kings are known to have promulgated is the Liber Iudiciorum. It was the joint work of King Chindaswinth, who reigned in the years 642-649, and of his son King Receswinth, who succeeded his father from 649 to 672. The Liber also contained laws from earlier monarchs, some of which were revised, as well as some laws Chindaswinth had already put into effect throughout the realm. It was Receswinth who actually promulgated the code by the so-called Lex quoniam, most probably in the year 654. The Lex quoniam and some of the laws that follow it in Book II established that the Liber Iudiciorum was to be the only law in the land; forbade the use by the judges of any other codes in court; laid a fine on anyone who should present another code for his defense; ordered that judges refer cases not provided for in the code to the king himself; and established that only the king could add new provisions to it.
Although the *Liber Iudiciorum* was the last code in the Visigothic Kingdom, it underwent many changes before the Arab invasion of Spain at the beginning of the eighth century. King Erwig (680-687) revised the entire code, thus promulgating what is known as the *Lex Visigothorum Renovata*. He proposed the revision at the Eighth Council of Toledo, and the revised code was made public a few months later, in October, 681. Erwig left out a few laws from the *Liber Iudiciorum* and included in his revision new ones (*leges novellae*) from Receswinth himself and from King Wamba (672-680), besides adding some of his own. Most of Erwig's laws were the legalization of his anti-Jewish policy. However, his most important contribution to the code was his emendation of its greater part (*leges emendatae*). This profound modification of the code seems to have gone unnoticed by scholars until Karl Zeumer published his critical edition of the *Leges Visigothorum* at the turn of the century.

Erwig's successor, King Egica (637-702), proposed another thorough revision of the *Leges Visigothorum* to the Sixteenth Council of Toledo in 693. It was directed
toward modifying Erwig's legislation. Only a few laws from Egica have actually come down to us, and it is a matter of debate whether he really promulgated a revised edition of the code. Most scholars today are inclined to doubt he was able to carry out his plan.

The renowned *Forum Iudicum* is one of the various names for Erwig's *Lex Visigothorum Renovata* plus Egica's additions. It was the last official version of the *Leges Visigothorum*. After the Moorish invasion of Spain and the subsequent collapse of the Visigothic Kingdom the *Forum Iudicum* was used in the new kingdoms of the Reconquista. In the thirteenth century it was translated into Spanish as the Fuero Juzgo by order of Ferdinand III the Saint, king of Castile. His son, Alfonso X the Wise, incorporated it into his famous *Las Siete Partidas* later on in the century.

Despite royal discouragement of any extraneous intervention in the formation of the law, the jurists and copyists influenced the applied law by their private copies of the code intended for reference and as manuals for students. They used Erwig's *Lex Visigothorum*
Renovata and added to it laws enacted by later kings. They also corrected the text, wrote short comments and interpretations, and added a preliminary title on public law. This modification of the code is known as the Forma Vulgata of the Leges Visigothorum.

The Liber is divided into twelve books. The first one is a theoretical introduction and not a book of specific legislation. Therefore, the code actually begins with Book II. All the books are divided into titles, or tituli, ranging from two to seven in each book. These tituli are made up of the laws, or capitula, themselves. There are over five hundred in the Liber Iudiciorum, that is, in Receswinth's edition of the Leges Visigothorum.

The First Book of the Liber Iudiciorum is titled De Instrumentis Legalibus. This title seems to have been taken from Saint Isidore of Seville's Etymologiae, and does not quite fit the content of the book it introduces. This theoretical preface to the Leges Visigothorum is divided into two tituli, De Legislatore and De Legibus. The first deals with the legislator's
duties, and the second defines good laws and the ends they must seek.

The following book contains Receswinth's promulgation decree and several laws on the nature of kingship in the first titulus. The other five tituli are dedicated to judges, trials, attorneys, witnesses and legal documents. Hence the book's general heading, De Negotiiis Causarum. The Third Book, as its title, De Ordine Coniugali, suggests, is dedicated to marriage. It has six tituli. Book IV, De Ordine Naturali, gives the degrees of family relationship, and deals with inheritance and guardianship. The Fifth Book, De Transactionibus, is mostly concerned with legal transactions, that is, contracts. Its seventh, and last, title deals with manumission.

Book VI, VII and VIII are dedicated to criminal law. The first of these is translated in this thesis. It is titled De Isceleribus et Tortentis ("Crimes and Tortures"). The titulus with which Book VI begins, De Accusationibus Criminosorum, discusses the way charges are brought to court, by accusation and false accusation.
The following titulus is called De Maleficis et Consulentibus eos adque de Veneficis. It deals with divination, sorcery and poisoning. The third titulus comes under the heading De Excutientibus Partum Hominum. It has six antiquae laws devoted to abortion and one new one from Chindaswinth concerning infanticide.

The next titulus in Book VI, De Contumelio Vulnerae et Deliberatione Hominum, is dedicated to wounds and mutilation. And the last one, De Cede et Morte Hominum, deals with violent death by murder or accident. Book VII, De Furtis et Falsariis, concentrates on theft, forgery and counterfeiting. The first four tituli respectively discuss informers of robbers; thieves and stolen property; kidnapping freemen and slaves; and the custody and sentencing of thieves. The last two are on forgery and counterfeiting. Book VIII, De Inlatis Violentiis et Damnis, deals with damage and plunder of property. The tituli run as follows: invasion of property; setting fire to someone's property; damaging of gardens and planted crops of any type; injuries to animals, and damages to other kinds of goods; pasturage of hogs, and concerning stray animals; and, finally, bees.
The Ninth Book of the *Leges Visigothorum*, *De Fugitivis et Refugientibus*, is formed by three *tituli* on fugitive slaves and deserters from military service. Book X is concerned with the division of land, prescription and boundaries. It is divided into three parts and is titled *De Divisionibus Annorum Temporibus adque Limitibus*. The next to the last book brings together a variety of subjects and has a *titulus* for each: medical ethics, violation of graves and foreign trade. It is titled *De Egrotiis et Mortuis adque Transmarinis Negotiaribus*. The last book of the *Leges Visigothorum*, Book XII, has two *tituli*. The first is dedicated to protect the people against magistrates, and the second concerns the religious errors of heretics and Jews. The last book is titled *De Removendis Pressuris Omnium Hereticorum Sectis Extinctis*.

In the light of this brief outline it seems possible to conclude that, in general, the *Liber Iudiciorum* contains civil, criminal and procedural law. This code makes no distinction between Goths and Romans: it applies to everyone in the kingdom, including the king himself. All people are treated equally under the law,
but the law differs according to the rank and social status of the party involved. Sentences and punishments differ for slaves, freemen, and nobles. The greatest difference lies between slave and freeman.
NOTES TO CHAPTER I

1. **Leges Visigothorum**, ed. by Karl Zeumer, *Monumenta Germaniae Historica, Legum Sectio I, Legum Nationum Germanicarum Tomus I* (Hanover and Leipzig, 1902), II,1,5. The *Lex quoniam* receives its name from the first word in the law, "quoniam". The *Leges Visigothorum* is hereafter referred to as *L. V.* Zeumer's edition contains the Visigothic Code as it first appeared in King Receswinth's reign (*the Liber Iudiciorum*), plus all subsequent changes made to it by the different legislators. Consequently, in this thesis a distinction is made between laws in Book VI which belong to the *Liber Iudiciorum* (*L. I.*) and those found in the *L. V.*, depending on whether they remained in their original form, or were transformed or received a different number due to additions or removals of capitula from the code. References to the laws state the number of the book, the title and the law.


7. The date of Euric's Code is uncertain. Some scholars, such as Alvaro D'Ors, believe it to be almost simultaneous with the fall of Rome, while others prefer to think it was ten or fifteen years later (Sánchez-Albornoz). There is a resume of the basic differences of opinion between these two learned men further on in this thesis.

8. Leovigild's *Codex Revisus* is believed to have been promulgated some time between 572 and 586.

9. Book II of the *L. V.* has been translated and studied by Ralph Ewton in his unpublished Rice University master's thesis (1961).
CHAPTER II

Punishment in the Liber

It seems fitting that a short study of punishment in the *Leges Visigothorum* be based on its criminal law. Hence, let us examine some of the sentences provided in Book VI for those found guilty of criminal offences.

This book of the *Liber Iudiciorum* states that only a guilty person will be liable for punishment (*L. I. VI, 1,7*); that the severity of the punishment should be proportional to the seriousness of the crime (*L. V. VI, 5,15*); and the whole book goes to great lengths to ensure that punishment be inflicted according to the degree of culpability. The legislation in the Liber tries to take into account as many modifying circumstances concerning a crime as possible. Some extenuating factors in the determination of culpability are the following: obeying orders of a superior (*L. V. VI, 4,2; VI, 5,12; and others*); physical coercion (*L. V. VI, 5,3*); different kinds of accidents and carelessness (*L. V. VI, 5,6; VI, 5,7; VI, 5,8; etc.*); and sudden provocation.
Self defense seems to erase all responsibility and possible guilt, even in the case of death (L. V. VI, 4,6; VI, 5,19; etc.). Incriminating factors are pretending not to know what is illegal when taken to court for a crime (L. V. VI, 4,5); planning a crime or influencing someone else to commit one (L. V. VI, 5,12); familial relationship between the injured and the injuring parties (L. V. VI, 3,7; VI, 5,7; VI, 5,8; and others); breach of legal or social status (L. V. VI, 4,3 and VI, 4,7); etc.

The legislation in Book VI reveals some of the methods of punishing criminals which we can assume to have been common in the Visigothic Kingdom. As we noted in Chapter I, all people are treated equally before the law, but the law, and most especially its sentences, differ according to legal status and social position. For example, the death of a freeman merited a more severe sentence than the death of a slave. But both are punishable. Another common distinction is the tendency to inflict less physical punishment on a freeman than on slaves.
The sentences found most frequently in these laws are flogging and monetary fines to be paid to the injured party, not to the government. These two kinds of punishment are often interchangeable, in which case ten blows of the lash are considered equivalent to one gold solidus, the monetary unit of the kingdom. Provisions are usually made for people who are not financially able to make the settlement required in each case. A slave's master can assume the responsibility or have the slave scourged instead of making a monetary settlement. A freeman can be whipped or reduced to slavery, depending on the crime. In these laws fines are never payable in kind, but only in money. The one exception mentioned in Book VI is in the case of a slave who is injured or killed by someone other than his master. When anyone harms another's slave so that he is no longer useful, the man responsible for such an act can make retribution to the owner in solidi or by giving him another slave of the same value.

Other means of punishment in Book VI are decal-
oration, which will be considered later on; total loss of property to the Fisc or government (L. V. VI, 2,1), or to the criminal's heirs if he is sentenced to be exiled for life (L. V. VI, 5,12); temporary or permanent exile (L. V. VI, 5,13 for the former and L. V. VI, 5,18 for the latter); enslavement to the injured party (L. V. VI, 5,12; VI, 1,2; and others) or to the Fisc (L. V. VI, 2,1); maiming or blinding (L. V. VI, 1,2 for the first of these and L. V. VI, 3,7 for the second); and finally, death (L. V. VI, 5,6; VI, 5,11; and many others).

The manner of inflicting the death penalty is never specified in Book VI, but it is always made clear when it is to be performed and when it is forbidden. Imprisonment as such is only mentioned in two or three laws. Prison seems to be considered as a place to await the outcome of a trial (L. V. VI, 1,1; VI, 4,10; etc.) rather than one for serving a sentence. There is only one exception in this book. L. I. VI, 2,2 condemns sorcerers, who commit their crimes with assistance of evil spirits, to confinement for life in order
to prevent them from having another opportunity to cast spells. There also is a type of punishment alluded to in Book VI, but never actually used although it seems to have been common in the Visigothic Kingdom: loss of the civil right to testify in court (I. V. VI, 4, 2).

Visigothic criminal law made some allowances for offences to be punished out of court. However, the judge had to decide at a trial in court when this was to be permitted. The most frequent examples in Book VI concern the chastisement of slaves and the *lex talionis*, or system of retaliation. Slaves can be punished by their master's orders for minor offences, as in I. I. VI, 1, 4, where a slave owner is to have his slave flogged. When slaves wound their masters, the latter are granted permission to do anything they wish to the slaves. This particular capitulum (I. V. VI, 4, 3) does not seem to make it clear if this freedom does or does not include killing and mutilating, which otherwise are definitely against the law. On the other hand, in some cases of homicide when the judge feels it permissible, he may
put a slave's life in his master's hands, thus of-
ically pardoning someone who is found guilty (L. V. 
VI,5,12).

The lex talionis is that tradition from time im-
memorial known in English as "an eye for an eye." It 
is mentioned often in Book VI of the Liber Judiciorum. 
A number of laws establish that a criminal receive un-
to himself what he inflicted or contrived to inflict 
on others (L. V. VI,4,5; for an example). Some of these 
laws allow the injured party to carry out the revenge 
personally (L. V. VI,1,2). When an innocent man is 
tortured due to false accusation, the accuser is to 
receive the same tortures he caused another to undergo, 
including any loss of members to his body (L. V. VI,1,2). 
L. I. VI,2,4 establishes that sorcerers who harm men, 
animals or porperty of any kind by casting spells 
shall receive unto themselves and their estate the 
same damages they caused, including being struck dumb. 
L. I. VI,4,3 names many different types of physical 
suffering that can be punished in this manner, such as 
being kept tied up, deformation of the body, disfiguring
of the face, and maiming of the members. But this same law is careful to explain that retaliation is a punishment and is not meant to cause greater harm than the one it aims to punish. Hence, in order to stay on the safe side, it is forbidden in case of minor physical attacks, such as a slap or a punch, and flogging is substituted in its place.

In this legislation sentences are not only given as mere punishment of the guilty, but also as warning examples to other possible offenders. Thus King Chindaswinth states in L. V. VI, 4, 3:

The cruel rashness of certain people must be punished legally by rather harsh punishments so that when anyone fears to suffer unto himself what he has done, though unwilling, he might at any rate refrain from illegal acts...

In L. V. VI, 2, 3 the same monarch says:

Let sorcerers be flogged two hundred lashes and shorn in a degrading way, and let them be compelled, though unwilling, to make the rounds of ten estates nearby so that others may be set right by their example...

There are also quite a number of laws that specifically give instructions that the punishment in question be
inflicted publicly or before an assembly of the people (L. V. VI, 3, 7 regarding capital punishment, and L. V. VI, 4, 2 concerning flogging).

Corporal torture is used often in this legislation for the purpose of forcing someone to speak the truth. In fact, even the word *quaestio* is used interchangeably for both "torture" and "question." It seems as though this practice was very common because Book VI never goes into the nature of the torture. On the other hand, the laws are very precise in determining the occasions when it is permitted. Let us mention some of the general principles followed. Freemen are only allowed to be tortured when accused of very serious crimes either liable for capital punishment, or the assessment of three hundred *solidi* or more (L. V. VI, 1, 2). Freedmen can be tortured in a case estimated at half that of a freeman, which is to say, one hundred and fifty *solidi* (L. I. VI, 1, 4). There are various provisions concerning the torture of slaves. They can be tortured in an effort to force them to speak not only concerning themselves, but also with regard to their masters.
However, they can only be put to the question in an attempt to incriminate their masters when the latter are accused of the most grave crimes: adultery; attacks on the crown, the people or the native land; striking counterfeit money; homicide or witchcraft (L. I. VI, 1, 3).

Laws are also established against the abuse of torture. A number of them aim at protecting the innocent from being tortured on account of false accusation. Certain guarantees must be provided by the accuser before anyone is put to the question. In the case of a freeman, the plaintiff is required to submit a written accusation signed by three responsible witnesses. This document is to be held against him if the defendant is not found guilty. In the case of slaves, an oath must be taken. Other capitula deal with judges who order or permit that anyone be maimed or killed as a result of torture (L. V. VI, 1, 2; VI, 1, 4; etc.). They are punished severely and are forced to make retribution to the injured party, his family or, in the case of a slave, his master.
The most interesting punishment in the *Leges Visigothorum* is probably devalvation. Not only is it one of the punishments with the longest tradition, known in one form or another to most primitive peoples and still practiced today in some countries of the Western World, but its precise nature in the Visigothic Kingdom is a matter of debate among scholars. In his *Treason in Roman and Germanic Law* Floyd S. Lear explains the problem. He points out that some scholars believe it meant scalping, while others incline to think it was merely shaving of the head. In the latter case, the effect sought would have been to identify clearly and humiliate the criminal, not to deform him or cause him physical pain.

The text of the *Leges Visigothorum* does not offer enough evidence to permit more than a guess. L. V. VI, 5,12 speaks of "turpiter decalvandi." This adjective is of no help since it means "unsightly," "ugly," or "base." Neither does L. I. VI, 2,3 add any light when it says "decalvati deformiter," since, as Dr. Lear points out, *deformiter* can be understood as either
"disfigured" or "disgraced." L. V. VI, 4, 5 assigns that a certain culprit be "ad perennem infamiam deformiter decalvatur" or "shorn in a degrading manner to his eternal infamy." This "eternal infamy" suggests decalvation was more than a temporary shaving but is really not enough to determine with certainty. The Sixth Council of Toledo established the necessary prerequisites for a Visigothic king, among which were "nullus sub religionis habitu detonsus aut turpiter decalvatus." This phrase suggests a distinction between tonsure and decalvation, but again, does not illustrate the exact nature of decalvation.

Before bringing this chapter on punishment in the *Leges Visigothorum* to a close, it might be of value to dwell a moment on the influence of the Church on Visigothic criminal law. The renowned Councils of Toledo, at which both ecclesiastical and secular hierarchies collaborated to watch over the welfare of their people, seem to have been of great importance for the Visigothic Kingdom and to have assured that its final legal code is one of the most respected of the *Leges*
barbarorum. Fr. Aloysius K. Ziegler's last general comment on the *Leges Visigothorum* is one of praise. He says it is:

... a glory to Visigothic civilization that this code moulded on Christian principles to suit a Germano-Roman people incomparably surpassed in excellence the codifications of the other barbarian peoples.5

The punishments in Book VI may seem very cruel to the reader of the twentieth century, but it cannot be denied that they are by no means unsystematic or illogical. The sentences are always correlative to the offence in question. And the didactive quality of the code brings to light for us many of the fine principles underlying the laws in the same way as it must have instructed the Visigothic *judices* so many centuries ago. To quote Ziegler again: "... beneath nearly all those laws lie sterling legal principles."6 But, in fact, there are also provisions made against the abuse of both torture and punishment; the right of asylum is insisted upon and such a practice mitigated punishments (*L. V. VI*, 5, 16 and 18). Furthermore, King Chindaswinth introduced a new law on the sovereign's right to be
merciful and pardon criminals who offend the Crown (L. I. VI,1,6).

The influence of the Church is also discernible in the fierce laws against divination and sorcery. These offences are considered as outrageous crimes. The reason presumably is that they call upon occult powers and seek to master spheres forbidden to man by the Church. The three capitula on these crimes have unusually strict sentences. Divination with regard to anyone's future health or coming death merits enslavement, loss of property and exile for life (L. V. VI,2,1). Sorcery is punished with life imprisonment in L. I. VI,2,3, and with retaliation in L. I. VI,2,4.

Christian principles prevail wherever the very nature of man comes into focus. Thus the title against abortion (title III), applicable to freeman and slave alike, has something in it very familiar to all Christians: respect for the soul. The law against killing slaves without a trial (L. V. VI,5,12), and the capitulum which states that slaves are not to be mutilated
because the human body is made in God's image (L. V. VI,5,13) are among others that reflect the teachings of the Church.
NOTES TO CHAPTER II

1. Shaving the head is currently used as a punishment in the Spanish Armed Forces.


4. As an example of how closely knit were the political and religious spheres in the Visigothic Kingdom, let us cite L. V. 5,13. In this law a civil offence is punished with a religious penance to be given by the bishop of the district where the crime was committed.


6. Ibid., p. 16.
CHAPTER III

The Germanist-Romanist Controversy concerning Visigothic Law

During the past twenty-five years the scholarship in the field of Visigothic law has taken a new shape. Until the 1940's all research and investigation was done within a general framework of accepted views, or at least based on common assumptions concerning the nature of Visigothic law and juridical practices. This is no longer true. The very essence of that framework has been challenged and now Visigothic scholarship has, more or less, divided itself into two wide and numerically unbalanced positions. Most contemporary writers continue to adhere to the traditional view which declares that Visigothic law was a personal law. For reasons soon to be seen these opinions might also be called respectively the Germanist and the Romanist schools.

The Germanist views crystallized at the turn of the century in the figure of the Spaniard Eduardo de
Hinojosa. For thirty or forty years Spanish and German medievalists worked within the framework he set forth. Its fundamental characteristics can be outlined after we introduce the Visigoths themselves.

When Constantine the Great ruled the Roman Empire he made a treaty with the Visigothic nation, which lived at that time just beyond the limits of the Empire in Dacia. In return for annual subsidies the Visigoths became foederati of Rome and were under obligation to defend her frontiers. Some forty years later, during the rule of Valentinian and Valens, the Visigoths were admitted inside the confines of the Empire and their request for land was granted. But the Visigoths immediately clashed with the Roman troops over the shortage of victuals. In 378 they defeated the Romans and killed the Emperor Valens at the famous battle of Adrianople. Peace was restored four years later by the Emperor Theodosius I. The Visigoths remained as foederati but, henceforth, were allowed to reside inside the imperial provinces in Lower Moesia. This was the first time such an agreement was made between the Empire and the invading nations. Less than
two decades later the Visigoths set out on their journey westward under the leadership of King Alaric, a member of the Balt family. By 408 they had crossed the Alps and were laying waste the Italian peninsula. By 410 they made their way to Rome and the mighty city herself was sacked for the first time in over half a millennium.

In 415 the Visigoths invaded Spain, which had just been ravaged by Sueves, Vandals and Alans, and conquered the northeastern province of Tarraconensis. In order to save Hispania from further devastation, the Emperor Honorius offered them Aquitania Secunda in Gaul. Thus in 418 the Visigoths retreated north of the Pyrenees and took possession of their newly acquired territory. They founded the Kingdom of Toulouse and lived there until the turn of the century. In 429 the Sueves, Vandals and Alans left the Hispanic peninsula and settled in northern Africa. Hence Spain was again in the hands of the Roman provincials.

Toward the end of the fifth century Frankish pressure forced King Alaric II to migrate south and
according to the principle of personal law. The newcomers were not to be subjected to Roman law but were free to govern themselves according to their own law or customs.

B.) As time passed Visigothic legal traditions were influenced by Roman law. This was due to the fascination the splendours of Rome had exercised upon the Visigothic kings. These leaders were so impressed by the glory of the Empire that they tried to impart some of it to their own people. They even aspired at times to consider themselves as heirs of Rome. One of the ways by which they tried to pass on part of her greatness to their nation was by imposing some form of Roman law on their followers. Hence soon after the fall of the Empire, King Euric promulgated a heavily romanized code, the Codex Euricianus, for the Visigoths. The Germanist position emphasizes that as the Visigothic Kingdom was being romanized, the Visigothic people, on the other hand, was very reluctant to give up its old traditions and institutions. Thus a great divorce between the official promulgated legislation and actual
lead a great many of his people into Spain again. In 507 those Visigoths who had remained in Gaul were defeated by Clovis at the battle of Vouglé and retreated southward to join the other Visigoths in Spain. The Visigoths lost the Kingdom of Toulouse with the exception of Septimania. From then on they called Spain their home.

The Visigoths remained as foederati as long as the Empire was an official entity. When Rome fell in 476 the Visigothic kings came to consider themselves not only as kings of the Visigoths who elected them, but also as rulers of the Roman population which, de facto, they had been governing for decades and with whom they shared the soil upon which they lived.

With this brief introduction to the Visigoths, we can now pass on to the three main points in the Germanist position:

A.) It holds that when the Visigoths entered the Empire as foederati they made an agreement with Rome
C.). These Germanic customs managed to subsist latent throughout the whole Visigothic period. When the kingdom fell to the Moors at the beginning of the eighth century and the official Roman pressure ceased, the Germanic elements were free to emerge and flourish openly. They became the social *milieu* and the legal backbone during the Spanish Reconquista.2

These three basic ideas were the nucleus for a whole series of problems and a vast network of answers or opinions. Let us mention a few of the topics as a means of illustration:

A.) The principle of the personal nature of law led to the following series of questions, among many others: How long did Visigothic law remain personal? Given this personal nature, which of the successive codes promulgated by the kings after the fall of the Empire were intended for Visigoths and which for Romans? By what law were the Romans governed before the Visigothic kings issued special laws for them? How Roman
were the laws intended for the Romans? Which code united the two peoples by making the law territorial and thus applicable to everyone within the kingdom? In what way did each new code affect those that had gone before it? Did they restrict the use of the preceding ones, or might some of them have been complementary appendixes?

B.) Some of the most important problems attached to the assumption that Germanic traditions were maintained on the popular level can be summed up as follows: What is known about Germanic customs practiced by the Visigoths before they came into contact with Rome? How did they change as the Visigoths migrated west throughout the Empire? How did they change after the Visigoths settled in Spain? Are any of these Germanic institutions reflected in the Visigothic legislation?

C.) The persuasion that Germanic culture re-emerged during the Reconquista brought forth a stream of questions to be looked into: With what institutions of this period are we familiar? Which ones were really Germanic or of Germanic origin? Did these institutions
and customs appear all over Spain or only in the parts of the peninsula believed to have been most densely populated by the Goths? Does the Spanish epic poetry (canciones de gesta and later romances) portray a true picture of the social and juridical customs of the times? What other influence might have left its mark on the Spanish heroic epics?

These different topics were approached from many diverse angles by various generations of German and Spanish scholars. But the three basic suppositions outlined above were never matters of debate. Only on one or two occasions was a faint voice raised to suggest that possibly one of them could be unsound. When Alfonso García Gallo broke with this traditional scholarship he questioned the whole foundation upon which it rested. He challenged each of these three concepts, denied their validity, and ventured to offer new maxims. Let us glance briefly at his ideas concerning the three established pillars of the German--
A.) Professor García Gallo does not seem to be too sure about the juridical practices among the Visigoths when they were granted land within the Empire. On the one hand he cites a passage from Jordanes' De Rebus Geticis that says they promised to adhere to Roman law if admitted into the Empire. On the other hand, he says that when they reached Gaul they governed themselves according to their own customs while the Romans went on living by Roman law.

However, García Gallo's innovation was to declare that all Visigothic legislation was territorial. He completely rejects the personal nature of Visigothic law from the Codex Euricianus on. In his opinion, when Rome fell and the Visigoths formed an independent kingdom their rulers promulgated territorial laws for all their subjects alike. He also suggests that some decrees may have had territorial application even before then, such as the ones Theodoric II issued concerning the division of land between Goths and Romans.

B.) This Spanish scholar credits the Visigothic state with more effectiveness than most of his colleagues,
who believe the legislation remained purely theoretical with the exception of a few cities under direct royal control. García Gallo thinks the State was able to enforce its laws to quite an extent. Hence, for him, the divorce between official legislation and actual applied law has been very much exaggerated. He relents it to the northern parts of the peninsula which never came under Visigothic political control.

C.) It is possible that García Gallo's most important contribution to the study of the early middle ages concerns the nature of the Germanic institutions inherited from antiquity. He asks, first of all, if we know what is Germanic, and secondly, if Visigothic customs were actually Germanic. He seems to feel that the term is used too freely and has not been well defined. He questions the use scholars make of the term "Germanic element." With regard to the second idea, he says it is only a hypothesis that the Visigoths preserved any Germanic juridical institutions. He finds it very doubtful that Visigothic customs could have remained essentially unaltered during the two hundred years between the time that the Visigoths first came
in contact with Rome, about a century before they entered the Empire, and the date of their first written laws. Perhaps this is the reason that accounts for his seeming to attach little importance to the official agreement between Rome and the Visigothic nation as it migrated throughout the imperial provinces. Unlike his colleagues, he thinks the Visigoths had been profoundly transformed when they arrived in Spain at the close of the fifth century. Hence it really is of little importance whether they might have been able to preserve their customs during the succeeding two hundred years. It would have had little to do with the flourishing of Germanic practices after the Moors invaded Spain.

But García Gallo questions the very possibility that such a small minority of the population inhabiting Spain (less than three per cent) could have preserved and practiced a body of outlawed juridical customs for over two centuries. He alleges that one of the most important explanations presented for such a position is the conviction that the Goths did not disperse all over Spain but tended to congregate in the so called "campos góticos" in the Meseta del Duero area. He is
careful to emphasize that this is only an unproved assumption. He himself does not think the Visigothic kings were opposed by their people in general or encountered great difficulty in their Romanist policies because when they arrived in Spain they were already following Roman juridical practices of some sort or another. Indeed, this is why he states there was no necessity for the kings to adhere to the principle of personal law and no need for two different legal systems at all.

Given that Professor García Gallo almost completely denies the Germanic element in the Spanish Visigoths, it naturally follows that when he looks at the Reconquista he finds no Germanic institutions inherited from the Visigothic Kingdom. In fact, he does not admit the existence of any Germanic element of importance in the first centuries of the Reconquest. He presents another interpretation of the non-Roman characteristics in the social milieu and juridical practices of the times. He claims that what has been taken for Germanic is actually Celtic. These Celtic influences would have come from the northern parts of Spain which had never been
brought under effect Roman or Visigothic control nor entered their cultural orbit: Asturias, Cantabria, and most especially, Vasconia. He points out that in the eighth century Vasconia had come into such little contact with these cultured peoples that the Basques were still pagan and still spoke their ancient pre-Latin language. Hence these and other primitive customs, as well as some rudimentary aspects of vulgar Roman law very much akin to them, would have spread throughout central Spain during the first stages of the Ressettlement of the Duero region in the ninth century.

Let us look at the Germanic-Romanist controversy concerning Germanic institutions and practices in connection with Book VI of the *Leges Visigothorum*.

A.) One of the most learned scholars in the early Spanish medieval period and also a leading spokesman for the Germanist school is Claudio Sánchez-Albornoz y Menduíña. In his book *En Torno a los Orígenes del Feudalismo* he studies what he likes to call "Visigothic pre-feudal institutions." The first volume is titled *Fideles y Gardingos en la Monarquía Visigoda—Raíces*
del Vasallaje y del Beneficio Hispano. In it he examines a Germanic institution found in the laws of other Germanic peoples, and which he believes was inherited from the Visigoths by the Kingdom of Asturias-León during the Reconquista. Sánchez-Albornoz says the Visigothic king was surrounded by a small group of men who were united to him by a closer bond than the loyalty oath to the monarch taken by all his subjects. These men would have taken some special oath. The author goes to great trouble in his attempt to support his thesis that these fideles regis were not of Roman origin, but Germanic. He divides them, at least during the Visigothic period, into seniores palatii and gardingos (an armed guard that accompanied the king everywhere he went).

The fideles regis are mentioned in Book VI of the Leges Visigothorum in one place alone, in a law from Receswinth titled "Qualiter ad Regem Accusatio Deferatur" ("How an Accusation Shall Be Brought before the King"). The part concerning the problem in question reads as follows:
...Ita ut ille qui aliusc scire se dicit, quod ad cognitionem Principis possit deduci, et in eo loco fuerit ubi tunc regiam potestatem esse continget, aut per se statim suggerat omnne quod novit, aut per fidelem Regis eius auditioibus demunitionum procusat.12

In order to bolster his theory that these fideles regis referred to in the Leges Visigothorum are not just the general citizenry, but men linked to their sovereign by a private bond, Sánchez-Albornoz calls to mind what Manuel Torres has pointed out about the use of the term "fideles regis" in the Leges Visigothorum. Torres says that the genitives regis, regum, principis and principum never seem to be used in this code for public matters, but only for private affairs, such as the king's property, servants, personal virtues, etc. Therefore, the relationship between the fideles regis and the king would have been a private one as in the old Germanic comitatus.

B.) The next law in Book VI which has entered the controversy concerning possible Germanic institutions in Visigothic law is an antiqua attributed by Zeumer to Euric. The reason for being included reveals
itself in its very title, "Quod Ille Solus Culpabilis Erit, qui Culpanda Committerit" ("Only that Person who Has Committed a Crime Will Be Considered Guilty"). Sánchez-Albornoz refers to this law in his book Estudios sobre las Instituciones Medievales Españolas, where he says this law which limits familial responsibility for a crime committed by one of its members implies that this Germanic custom was still being practiced when the Visigoths reached Spain.

García Gallo, on the other hand, alleges that this custom of collective responsibility has been called Germanic erroneously. In an essay titled "El Carácter Germánico de la Épica y del Derecho de la Edad Media Española" he attempts to refute certain statements about institutions of supposed Germanic origin made by the renowned historian of Spanish medieval language and literature, Ramón Menéndez Pidal. In his essay García Gallo says that collective responsibility was not exclusively Germanic, but was common to every primitive gens. He cites sources he believes prove it existed in pre-Roman Spain. He also points out that the Roman emperors legislated against it and quotes some of their
laws. One reads: "Crimen vel poena paterna nullam maculam filio infligere potest."\(^{16}\)

C.) Another law in Book VI of the *Leges Visigo-thorum* is titled "Si quis Hominem, dum non Videt, Occi-derit" or "When Someone Kills a Man without Seeing Him".\(^ {17}\) It states that:

\[
\text{Si quis hominem, dum eum non videt, stantem, venientem, vel praetereuntem ignoro}\non\text{ndo occi-derit: si nulla occasio inimicitiae antea cum eo fuerit, et ille nollens homicidium ad-}
\text{miserit, atque ante iudicem hoc potuerit approbare, securus abscedat.}
\]

Sánchez-Albornoz refers to this *antiqua* law, along with the previous one, in his *Instituciones Medievales Españolas*. He dedicates some thirty pages\(^ {18}\) to study the work on the *Codex Euricianus* done by the Romanist scholar Álvaro D'Ors. Sánchez-Albornoz says D'Ors denies all Germanic elements in *Euric's Code*, although he admits the existence of Germanic customs in later codes which he believes to have been the result of later influence. The Germanist scholar says this law which states that accidental death caused by another is not to be considered as homicide, is unquestionably the refutation of an old Germanic principle that had
undoubtedly been practiced by the Visigoths without interruption.

D.) In a discussion concerning the gradual differentiation between social classes of Visigothic society in his volume on *Fideles* and *Gardingos*, Sánchez-Albornoz mentions four laws in Book VI, among others, which establish that a certain number of *solidi* shall be paid to an injured party for different offences depending on the social condition of the injured and the injurer. The Spanish author calls this custom that of punishing by "composición" or "wergeld." By using the Germanic term *wergeld* he implies he considers the custom set forth in the *Leges Visigothorum* to be of Germanic stock.

E.) García Gallo quotes the late Menéndez Pidal in the essay mentioned above with reference to the system of blood revenge. In his book *Los Godos y el Origen de la Epopeya Española* Menéndez Pidal is alleged to have said blood revenge was part of the Germanic tradition, contrary to Roman law, and "una de esas costumbres bárbaras que ahora surgen como de la nada."
García Gallo answers that, although this custom was indeed practiced amongst Germanic nations, it did not enter Spain with the Visigoths, but had already existed there for centuries. He reminds his readers that Hasdrubal, the Carthaginian general, was murdered out of revenge;\textsuperscript{21} that when Spain was under Roman domination blood revenge was customary in the case of a father's violent death at the hands of another;\textsuperscript{22} and says that both the Romans themselves, as well as the Arabs who invaded Spain, had recourse to it under certain circumstances. García Gallo does not mention the \textit{Leges Visigothorum} in his discussion, but a modified version of the vendetta does seem to appear several times in Book VI. In these laws it appears toned down and channelled legally. In order that criminals not go unpunished, the family and relatives of an injured party are often encouraged to find the culprit and accuse him in court. This is to say, although they are not to perform the act themselves, they are to see that it is carried out by the proper authorities.

Before closing this chapter, it might be of interest to mention what seems to be one of the most cited laws
from the _Leges Visigothorum_ in the whole Germanist-Romanist controversy, despite the fact that it does not belong to Book VI. *Antiqua* III,1,1 reads as follows:

_Sollicita cura in Principe esse dinoscitur, cum pro futuris utilitatis beneficia populorum providentur. Nec parum exultare debet libertas ingenita, cum fractas vires habuerit priscæ legis abolit sententia; quae inonguae dividere maluit personas in coniuges, quas dignitas comparès aequaverit in generœ. Ob hoc meliori proposito salubriter consentes, priscæ legis remota sententia, hac in perpetuum valitura lege santis mus: ut tam Gothus Romanam, quam etiam Gotham Romanus, si sibi coniugem habere voluerit, praemissa petitione dignissima, facultas eis nubiendi subiaceat: liberumque sit libero, liberam quam voluerit, honesta coniuctione consulta perquirendo prosapiae solemniter consensu, Comite permittente, per cipere coniugem._

In an essay titled "La Territorialidad del Derecho Visigodo" Álvaro D'Ors says that one of the factors that has led scholars to believe Visigothic law was personal and not territorial was the social separation implied in this law which seems to do away with the prohibition of mixed marriages between Romans and Goths. In D'Ors' opinion social separation does not necessarily imply a legal difference. Moreover, he
does not believe the old *prisca lex* to have been in effect in the light of the inscriptions found on tombstones, and given the example of the Visigothic kings themselves. He answers the question which naturally follows, why bother to repudiate an unapplied law, by saying that this *antiqua* actually came from King Leovigild, not Euric, and was probably enacted as a political move more than for actual judicial purposes.

Sánchez-Albornoz maintains, on the other hand, that if Visigothic legislation had been intended for territorial application, it would have been essential for Euric to have done away with the prohibition of mixed marriages as soon as possible. This is to say, he leads us right back to Hinojosa, who taught his students that Visigothic law was personal up to the time of Leovigild, and that only then did a mere tendency toward territoriality appear.
NOTES TO CHAPTER III


2. All the juridical principles mentioned here are taken from: Claudio Sánchez-Albornoz y Menduña, *Estudios sobre las Instituciones Medievales Españolas* (Mexico City: Universidad Nacional Autónoma de México, 1965), chapter VIII, part III.


4. In his first textbook on the history of Spanish law García Gallo only begins to break away from the traditional theories. The book is: Román Riaza and Alfonso García Gallo, *Manual de Historia del Derecho Español* (Madrid: Librería General de Victoriano Suárez, 1934). In his most recent textbook (already mentioned) he sums up all his new ideas presented since the 1934 publication.


6. The term "Germanic element" was coined by Eduardo de Hinojosa in the title of his famous book *Das Germanische Element in Spanischen Rechte* (1910). This book was translated into Spanish in 1915 as *El Elemento Germánico en el Derecho Español*. 

8. Ibid., chapter II.

9. Ibid., chapter IV.

10. Ibid., chapter I.

11. L. V. VI,1,6 or L. I. VI,1,5.

12. Underscoring is mine.

13. L. V. VI,1,8 or L. I. VI,1,7.


17. L. V. VI,5,2.


20. García Gallo quotes Menéndez Pidal on page 53 in his essay "El Carácter Germánico de la Épica y del Derecho de la Edad Media Española."
21. Ibid., p. 52. García Gallo refers to the two different versions of Hasdrubal's death that have come down to us from antiquity. They both report he was murdered out of revenge, but each gives different reasons and mentions different authors of the crime. The one is contained in Polybius and the second in a number of other Classical writers: Livy, Appian, Justin, Valerius Maximus and Justinian.

22. Ibid., p. 13. He quotes Valerius Maximus in footnote 23.

23. D'Ors, op. cit. p. 373.


25. Sánchez-Albornoz, Estudios sobre las Instituciones Medievales Españolas, chapter VIII.
CHAPTER IV

The Latin Style of the Code

Zeumer edited the *Ledes Visigothorum* twice, in 1894 and in 1902. The first time he edited Receswinth's *Liber Iudiciorum*, also known as the *Liber Iudicum* or *Liber Iudicis*. He called the code *Lex Visigothorum Reccesswindiana* and published it in the *Fontes Iuricis Germanici Antiquae* series under the title *Ledes Visigothorum Antiquae*. In the preface he says this edition is based on two manuscripts: the *Codex Vaticanus Regiae Christinae* 1024, dating from the eighth century, and the *Codex Parisinus Latinus* 4668, from the ninth century.

In his preface to the second edition Zeumer says that it was while working on this edition that he became aware that the disparity between the *Liber Iudiciorum* and the later versions of the code is much greater than was generally believed at the time. Therefore, his second edition is not based on any specific version or phase of the code, but presents it as
it developed historically. His text includes Receswinth's original version and all variations, omissions and additions to it. This critical edition is found under the title of *Leges Visigothorum* in the section of the *Monumenta Germaniae Historica* titled *Leges Nationum Germanicarum*. Since its publication in 1902 it has become the standard text used by most scholars.

It is interesting to note that for his text Zeumer made use of twenty-eight manuscripts, ranging from the eighth to the sixteenth century. This is to say, they all date after the collapse of the Visigothic Kingdom. Four of these manuscripts are copies of Receswinth's version of the *Leges Visigothorum*, the two mentioned above for Zeumer's first edition and two others. They both have the same name, *Codex San Laurentii Escurialensis*. The oldest dates from 972 and is also known as the *Albedrense Code* because it originated at the monastery of San Martin Albedrense, or the *Códice Vigiliano*, referring to Vigil, its medieval copyist. In his preface Zeumer says the other manuscript is actually almost identical to its namesake. It dates from 992. This
manuscript is also known as the Códice Emiliano, and was formerly kept at the monastery of San Millán de la Cogolla.

In this thesis I have translated Book VI of the Liber Iudiciorum, that is, of Receswinth's version of the Leges Visigothorum. I have followed the text in Zeumer's critical edition, and have not translated the minor variants between the four manuscripts, which he places in the footnotes. In this translation I have included the individual title of each law besides numbering them according to Receswinth's code as well as to Zeumer's edition (in parenthesis).

In order to see the difference between the Liber Iudiciorum and the Forum Iudicium, let us compare the material in Book VI in each of them. Title I has seven laws in Receswinth's and eight in the later version. Its new law is attributed by Zeumer to Egica, although he points out that one editor believes its author to have been King Witiza (701-709). There are also two laws that are altered (L. I. VI, 1, 2 and 4 or F. I. VI, 1, 2 and 5). Egica's new law is titled
Quomodo Iudex per Examen Caldarie Causam Perquirat.

It is very interesting because it is the only example, at least in Book VI, of the ordeal by boiling water. As could be easily expected, this law has entered the Germanist-Romanist controversy. Title II has four laws in the first version and five in the second. The new capitulum is from Erwig, and is inserted after the first law. It is titled De Personis Iudicum sive etiam Ceterorum, qui aut Divinis Consulunt aut Auguriis Intendunt. There are no major differences in the next title. Just one antiqua is emended (L. V. VI,3,5). Title IV, which has eleven laws, also remains almost intact. There is just one law from Chindaswinth that has been altered (L. V. VI,4,3). The last title has twenty laws in Receswinth's version and twenty-one in the Forum Iudicum. A capitulum titled De Homicidiis and attributed to King Wamba is added at the end of the titulus. In the first version of the code the thirteenth law is from Receswinth and is titled Ne Liceat Quemcumque Servum vel Ancillam quacumque Corporis Parte Truncare. This capitulum is left out in the Forum Iudicum and replaced by one from Egica under the same title, or better yet, it is heavily modified by the
latter king. There are also three laws from Chindas-winth which are altered (L. V. VI, 5, 16 and 17), and one *antiqua* (L. V. VI, 5, 18). Thus there are a total of fifty-one *capitula* in Book VI of the *Liber Iudiciorum* and fifty-three in the *Forum Iudicium*. Of the latter, four are new, one from the *Liber* has been omitted, and eight are modified laws.

The *Leges Visigothorum* was specifically intended by its promoters to be a collection of enactments for the use of judges. Hence the word *iudex* found in every form of its title (*iudiciorum*, *iudicis* and *iudicum*). This may be one of the reasons that many of the *leges novellae* are written in a didactic manner. The kings can be considered to have been instructing their judicial officials how to act in different circumstances, and also teaching them why. The *antiquae* laws tend to be written in a different style. There seems to be little or no didactic intention in them. They state what is to be done and give instructions on how to do it.

This didactic quality was not common among the
legislators of the newly created kingdoms in Europe, and the Visigothic example was an exception to the norm. The laws of most of the _leges barbarorum_ are much shorter than the ones in the _Leges Visigothorum_. With the exception of Book I, which we have noted to be a theoretical essay and an admonition to the king, the didactic nature of the code presents itself inserted throughout the text. This is to say, there are no prefaces or explanatory comments on the laws as such.

If Book VI can be taken as typical of the whole code, it seems possible to divide these theoretical principles of the _Liber Iudiciorum_ into three main categories: moral, legal, and simply explanatory. The best way to illustrate them is by means of quotation.

Let us look at some examples of moral principles stated or directly implied in Book VI. L. V. VI, 5, 15 states that punishments must be assigned according to the seriousness of the crime, and that murder is one of the worst crimes. King Chindaswinth says:
Since it is fitting that those guilty of different crimes always receive the punishment they deserve, it will be considered a wicked thing that homicides, whom it is more fitting to punish with great severity, go unpunished at any time...

L. V. VI, 5, 1 implies that accidents are not to be considered in the same category as premeditated evil deeds. King Receswinth's law runs as follows:

According to God's will, whoever unknowingly kills a man toward whom he felt no hatred, shall not be accused of his death. Indeed, it is not just that he who is not stained with blood by the desire for homicide suffer the losses or punishments for murder.

L. V. VI, 5, 14 is a most interesting law. It is concerned with homicides who go unpunished because not brought to court and charged with their crime. The legislator encourages the family of the person who was killed to look for the culprit and bring him to court. In this passage King Chindaswinth implies, among other things, that rights and duties are correlative, that rights imply certain obligations. He says:

...If husband and wife die while they hold such an intention toward the accused /i.e. to track him down and take him to court/, and hand the unfinished cause to their children or relatives whom the legitimate succession entitles to take the inheritance, they shall immediately have the power to accuse the guilty person or homicide as the parents would have. It is not right that the
family or relatives have the estate if the guilty person or homicide does not receive the sentence of condemnation...

We have seen in an earlier chapter that the custom of blood revenge is toned down in the *Leges Visigothorum*. One of the laws that does this states in legal terms that the courts will be firm and see that justice is done. Hence, a person's life cannot be threatened extralegally, but must be entrusted to the judges. L. V. VI,1,2 outlines the procedure for bringing a man to court and then states "Thus, another man's life shall only be threatened in this way."

A very good example of an explanation of an order or of the reason why a specific sentence is being laid down is to be found in L. V. VI,5,4. After assigning certain punishments King Receswinth closes his capitulum saying:

...Thus in this fashion both will be fined: the man who willingly caused a death and the man who unwillingly killed someone

By making this statement Receswinth brings to bear the point that in this code a distinction is always drawn between a person who actually does something illegal
and a person who causes, plans or orders another to do it.

We have seen that most of the antiquae laws in the *Leges Visigothorum* came from Euric's *Codex Euri-cianus* and from Leovigild's revision of the code, the *Codex Revisus*. In his *El Código de Eurico*, where Álvaro D'Ors reconstructs the code, he studies these laws and also certain capitula from Chindaswinth and Receswinth which he believes to have been based on laws or tituli in Euric's Code. He points out that there is a stylistic difference between the antiquae from the two kings, Euric and Leovigild, and presents a complete vocabulary of words used in the laws he attributes to each of them. He gives examples of laws from Euric as they appeared in Leovigild's code, either reformed or just slightly modified. He also shows the reader that Leovigild's legislation itself was not all written in the same style. D'Ors presents samples of this legislation and points out three styles: *ampuloso* or pompous, "middle" and "brief." He says this brief style is very similar to Euric's simple laws and therefore has misled many scholars to attribute some of
Leovigild's capitula to the former king.

The most interesting characteristics of the Latin structure in the Leges Visigothorum probably are the use of verbs and of parenthetical phrases. As in all legal material the subjunctive is heavily relied upon to portray the idea of future eventuality. There are four verbal forms found most frequently in the text: the jussive subjunctive, the present subjunctive, the gerundive with esse and the future indicative (used interchangeably with the present subjunctive). These forms are used to construct long and complicated sentences in order to cover multiple qualifying circumstances. These syntactical devices seem very strange to the English reader, but, on the other hand, are quite familiar and natural to languages that are closer to Latin than ours. Thus, for an example, it is much easier to translate these laws into Spanish than into English. The Spanish language has verbal forms correlative to the ones in the Latin of the text, and it also makes frequent use of the same kind of parenthetical phrases within long sentences. Indeed, the Fuero Juzgo preserves much more of the
style and rhythm of the *Leyes Visigothorum* than an English translation could ever hope for.
NOTES TO CHAPTER IV


2. Zeumer, L. V. p. 250. Zeumer points out that Peter Pithou, a sixteenth century editor of the laws, attributed L. V. VI,1,3 to Witiza.

3. D'Ors, *El Código de Eurico*, Part Three. Index I contains a vocabulary for Euric's laws, and Index III has one for Leovigild.

4. *Ibid.*, Index II.
I. Ancient Law.

In what cases a slave accused of a crime may be taken from his master or the lords of the district.

When a slave is accused of a crime, the first thing the judge shall do is require the accused slave's master, superintendent, or manager in the district to present him in court. If the master, superintendent, or manager should refuse to present the accused slave, said master, superintendent, or manager shall be placed under arrest by the comes of the city of the judge until he presents him. In any event, if the slave's master or his custodians have difficulty reaching the court, the slave shall be arrested and questioned by the judge.
II. King Flavius Chindaswinth (VI, 1, 2)

For what offences and how free men may be put to torture.

If the use of discretion is lost in criminal cases, the malice of incriminators will not be restrained at all. Therefore, in cases of murder or adultery involving the power of the king, the people or the native land, if anyone believes that a person equal to himself in nobility or honor of palatine position should be accused, let him first have an opportunity to prove what he alleges. Thus, another man's life shall only be threatened in this way. If the plaintiff cannot prove what he says in the king's presence or in the presence of those whom he has delegated by his authority, let a written accusation confirmed by the signature of three witnesses be made, and thus let the examination by torture begin. And subsequently, if the person put to torture endures it, though innocent, let the accuser immediately be handed over to him as his slave so that it may rest in the innocent man's power to inflict what he wishes on him or judge as he pleases concerning the accuser's status, on the condition that his life not be taken. Nevertheless,
the judge must observe the following precaution: He must see to it that the accuser sets forth in writing a detailed account of the offence and that he himself proceed with the questioning after the document has been presented privately to him. If the confession of the man who is subjected to torture coincides with the accuser's word, he shall be held guilty of the crime without delay. Undoubtedly, if the accuser's statement alleges one thing and the confession of the man who is subjected to torture another, since it cannot be doubted that he imposes the crime on himself because of torture, it is fitting that the accuser be subjected to the provisions of the law stated above. But on the other hand, if the accuser informs the party in due order of whatever he is being accused, either personally or through someone else, before he brings the charge in secrecy to the judge, the judge shall not be permitted to put the accused to torture since the matter has been revealed and made public by the evidence the accuser has brought forth. The same rule shall be observed concerning all other freeborn people. If charges of capital offences (which are outlined above)
have not been made but it is said that theft or any other illicit deed involving the sum of three hundred solidi or more was committed, and if a written accusation has been made, then the accused man must be put to torture. On the other hand, if the theft is estimated at less than three hundred solidi and the accused is convicted due to proof, let him be forced to make the settlement according to other laws. If the accused cannot be convicted, let him atone by oath and accept the settlement contained in the laws concerning false accusation. However, by a special statute we decree that a lowborn person shall not have the audacity to bring a charge against anyone of higher rank or more powerful than himself. If he should think some deed ought to be presented in a lawsuit and the proof should turn out to be sufficient to sustain a conviction, that noble or powerful man shall not delay in clearing his conscience by oaths to the effect that he neither lost, has with him nor is retaining in his own possession the stolen goods for which he has been brought to trial. After the oath has been taken, let him who makes a false charge not delay in making a
settlement as a former law provides. Nevertheless, if the man, whether he be noble, of low birth or a free-man, shall have been subjected to torture in the presence of the judge, let the accuser be subject to severe penalties, and suffer whatever loss of members was incurred by him who was subjected to torture, provided only that he shall not lose his life. Due to the fact that torturing must be done within the course of three days, if, by mischance, the person subjected to torture shall die due to the judge's malice, evil intent of some kind, or if the judge has been corrupted by the bribe of an adversary of the accused and did not forbid that the tortures which caused the man's death be performed, let the evil judge be handed over to the dead man's close relatives to be punished in a similar way. Undoubtedly, if he swears innocence and the eyewitness swears that this death was caused by the tortures alone and not be the judge's maliciousness, evil intent or corruption due to bribes, as a consequence, the imprudent judge shall be compelled to pay three hundred solidi to the deceased's heirs for not having forbidden the excesses. As to the accuser, after having been handed over to the close
relatives of the deceased, he shall be punished by the same penalty of death which that man suffered who perished condemned to death as a result of false accusation.

III. Ancient Law. (VI, 1, 4)

For what offences and how slaves of either sex may be tortured in cases involving the life or death of their masters.

Neither male nor female slaves shall be put to torture on account of anything other than cases involving the life or death of their master or mistress except when the following cases have been established: adultery, attacks by word or deed against the crown, the people or the native land, striking counterfeit money, homicide or witchcraft. And if male or female slaves tortured for such crimes are found to be cognizant of their master's guilt and to be covering up for them, they shall be punished equally with their masters. No doubt, if they were to give evidence of their truthfulness voluntarily, as far as they are concerned, it will be sufficient that they endured torture when questioned in the search of truth.
However, they shall not fear death. On the other hand, if a male or female slave is put to torture and questioned about himself and also implicates his master in his confession and a capital offence should be revealed by clear and positive evidence, the judgement shall be that he suffer the same punishment of death by which his masters are condemned.

IV. King Flavius Chindaswinth. (VI,1,5)

For what offences and how a slave or a freedman will be tortured.

If a slave is accused of a crime he will not be tortured until the accuser swears that if the slave should endure the torture and be found innocent, the accuser who handed the innocent person over to be tortured shall be forced to give the slave's master another slave of the same value. On the other hand, if an innocent slave should die or be maimed as the result of being put to torture, let the accuser immediately give his master two slaves of the same value as the innocent one. Furthermore, let the disabled
slave remain under the protection of his master as a free man. As to the judge who showed no moderation in the application of torture, and hence exceeded the purpose of the law by the resulting death of the man who was tortured, he shall also give the master a slave of the same value as the dead one. However, in order that the uncertainty in the method of assessing the value of the slaves cease, let no defense be based on grounds of the degree of skill but let comparison of age and general usefulness be established by examining the slaves. This way, if the disabled slave had a certain skill and the person responsible for his being maimed does not a slave of the same skill, let him be forced to give the master a slave of other skills according to the scale of values mentioned above. If he does not have a slave trained in the same skill and the person whose slave was tortured does not want to accept another one in his stead, let the master be paid the monetary value of the skilled slave who was put to torture. This is to say, he shall receive the amount the skill itself is reasonably deemed to have been worth by the judge or the responsible men of the district.
It must be observed that no one presume to subject a freeman or a slave to torture unless he first takes a rigid oath before a judge or his executive official (saio) in the presence of the master of the slave or the manager to the effect that he makes the innocent slave subject to torture through no evil intent, fraud or maliciousness. And, if having been subject to torture, he shall have died and that one who had him put to torture does not have the means to make a settlement, he himself who caused an innocent man to die shall be subject to slavery. However, if anyone has another's slave tortured with an ulterior purpose in mind and the master of the accused slave shall be able to establish the slave's innocence by presenting proof against the criminal charges, let the accuser be forced to give the master another slave of the same value and the amount he spent in proving his slave's innocence shall be restored in exact amount accordingly as the judge shall determine on the basis of a reasonable evaluation. If a minor offence committed by a slave is discovered, his master may make a settlement if he wishes, but only on the condition that each thief be scouraged according to the nature of his crime. But
for a major crime, if the master prefers not to make a settlement by paying a certain amount of money as an indemnity, he shall not delay in handing the slave over to be punished for his crime. On the other hand, when a freeborn person hands a freedman over to be put to torture, either for a crime deserving capital punishment or one involving the amount of one hundred and fifty solidi and then the man suffering any kind of torture is found innocent, his plaintiff shall be compelled to give one hundred and fifty solidi to him.

V. King Flavius Chindaswinth. (VI,1,5)

How an accusation shall be brought before the king.

If anyone falsely accuses someone else in the king's presence alleging that he had done, was doing or planned to do something harmful to the crown, the people of his native land; had fraudulently altered, made or published forged documents in instances involving the authority or decrees of the king or those who exercise judicial functions; had struck counterfeit money; but if he also charges him with poisoning, sorcery or adultery, and it is discovered that he told
the truth about these crimes which involve the possibility of loss of life and property, he shall not be accused of false accusation. On the other hand, if what the accuser asserts is proven false and it is discovered that he made the false accusation out of envy in order that the accused be sentenced to death, be injured or have his property damaged, he who wanted an innocent person to suffer such shall be handed over to the power of the accused and receive these punishments to himself and his property. Hence, anyone who says he has information which should be brought to the king's attention, shall immediately report his knowledge to the king by himself, or arrange that it be taken to him through a person loyal to the king if the informant shall be in the vicinity of the place where the king is holding court at that time. But if he is too far from the king to go there and believes the information should be sent in writing and given to a messenger, he should compose a letter in the presence of the messenger in which he clearly explains his purpose. Then three witnesses whom he knows to be loyal shall confirm the validity of said letter by their
manifest seals or signatures along with him so that later on he will not be able to deny his declaration.

VI. King Flavius Chindaswinth. (VI, 1, 7)
Concerning the mercy of pardon reserved to princes.

However often supplication is made to us on behalf of people implicated in a case concerning us, we grant them the opportunity of appealing to us, and out of pious compassion for the delinquents, we reserve for ourselves the authority to disregard their offences. But on the other hand, we deny this freedom in cases involving the people or the native land. However, if divine compassion compels the heart of the king to have mercy on such wicked people, with the assent of the ecclesiastics and major officials of the palace, he will have full freedom to be merciful if he so desires.

VII. King Flavius Chindaswinth. (VI, 1, 8)
Only that person who has committed a crime will be considered guilty.

Let all crimes follow their authors. A father
shall not fear persecution on account of his son, nor
a son on account of his father; nor a wife on account
of her husband, nor a husband on account of his wife;
nor a relative on account of a relative; nor a neighbor
on account of a neighbor. Let only the one who com-
mitted a crime be judged guilty of it and let the crime
die with the person who committed it. Successors or
heirs shall not fear danger on account of their
parents' misdeeds.
SECOND TITLE. CONCERNING SORCERERS, THOSE CONSULTING THEM AND CONCERNING POISONERS

I. King Flavius Chindaswinth. (VI, 2, 1)

When a freeborn man consults soothsayers concerning the health or death of a man.

Freeborn people who consult diviners, enchanters or soothsayers about the health or death of the king or of any other man, together with those who give replies to people consulting them, shall be scourged, handed over to serve the Fisc with all their property and be assigned in eternal servitute to whomever the king orders. Let children who help their parents in such crimes be condemned to similar punishments. But on the other hand, if the children are not held guilty by the judge of having been involved in their parents' crime, they will fully retain possession of the status and material belongings their parents lost. If slaves are found guilty of such crimes, after having been subjected to all kinds of tortures, they shall be put up for sale and transported to places
across the sea since even a severe punishment does not expiate those whom the excesses of their own will make guilty of wicked dereliction.

II. King Flavius Chindaswinth. (VI, 2, 3)

Concerning poisoners.

Those guilty of different crimes should suffer different punishments. First of all, let punishment immediately befall those who prepare poison, whether freeborn or slave, so that if they were to give a poisoned drink to anyone and cause him to die, they shall be killed in the most humiliating way after having been subjected to immediate punishment. If someone should drink from a poisoned cup and escape death, let the poisoner be handed over to him without delay so that he may do with him as he wishes.

III. King Flavius Chindaswinth. (VI, 2, 4)

Concerning sorcerers and those who consult them.

Let sorcerers be flogged two hundred lashes and, shorn in a degrading way, let them be compelled, though unwilling, to make the rounds of ten estates nearby so
that others may be set right by their example. This applies to sorcerers, either inciters of tempests who are said to cause hailstorms to fall upon vineyards and crops by certain incantations, or those who disturb men's minds by invocations to devils; those who celebrate nocturnal sacrifices to the devils and who wickedly call upon them through abominable invocations, whether they have been discovered or exposed by a judge, an agent (actor) or a procurator (procurator) of the district. However, in order that these people not be permitted to repeat these misdeeds in other places, let the judge either place them in seclusion, so that, having there received food and clothing, they may live without opportunity of doing harm to the living; or otherwise, let the judge bring the matter to the king's attention so that he may determine as he pleases what to do with them. Moreover, let those who are convicted of consulting such receive two hundred blows of the lash before an assemblage of the people, so that those whom the accused charge with similar guilt may not remain unpunished.
Concerning those who cast any sort of spell or do any harm to man, animal or any kind of property.

In accordance with the opinion of the law in effect, we order that any free person or slave of either sex be condemned if he has planned or succeeded in performing witchcraft or casting various spells on men, animals or anything movable in the fields, vineyards or orchards, or in performing incantations by which he wishes to injure, kill or strike dumb another person. This condemnation shall be given with the result that when he is found guilty of causing damages he shall suffer the same damages to his person and possessions.
THIRD TITLE. ABORTION

I. Ancient Law. (VI, 3, 1)

Concerning those who administer drugs to cause an abortion.

When anyone gives a drug to a pregnant woman in order to produce an abortion or to kill an infant and succeeds, if the woman who had the drug made is a slave, let her be given two hundred lashes and if she is freeborn, let he be deprived of his status and be handed over as a slave to anyone we determine.

II. Ancient Law. (VI, 3, 2)

When a freeborn man causes a freeborn woman to abort.

If anyone strikes a pregnant woman a blow or causes a freeborn woman to abort by any means, and she dies as a result, let him be punished for homicide. But if a freeborn male is known to have been the cause when the woman herself was not hurt but only aborted, if he shall have destroyed a child who was already physically
formed, let him pay one hundred and fifty solidi, but if it were not formed, let him pay one hundred solidi for his crime.

III. Ancient Law.  
(VI, 3, 3)

When a freeborn woman causes another freeborn woman to abort.

When a freeborn woman causes another freeborn woman to abort by violently injuring her or by other means, or when she causes the woman herself to be injured, let her be punished according to the aforesaid penalties for a freeborn male.

IV. Ancient Law.  
(VI, 3, 4)

When a freeborn male causes a female slave to abort.

When a freeborn male causes a slave to undergo an abortion, let him be compelled to give two hundred solidi to the slave's master.
V. Ancient Law. (VI,3,5)

When a slave causes a freeborn woman to abort.
When a slave causes a freeborn woman to abort, let him be flogged two hundred lashes in public and handed over to the freeborn woman in servitude.

VI. Ancient Law. (VI,3,6)

When a slave causes a female slave to abort.
When a slave causes a female slave to abort, let his master be compelled to give ten solidi to the female slave's master and, in addition, let the slave himself receive two hundred lashes.

VII. King Flavius Chindaswinth. (VI,3,7)

Concerning those who kill their children, either born or unborn.

Nothing is worse than the depravity of those who, unmindful of their parental duty, become their children's murderers. It is said that this crime has increased throughout the provinces of our realm to the extent that, not only men, but women also are found to be authors of these crimes. Therefore, prohibiting
such lawless conduct, we decree that as soon as the judge of the province or territory discovers that a free woman or a female slave is guilty of killing a son or daughter, born or still unborn, of accepting a potion to cause an abortion or of daring to try to end her child's life in any way whatsoever, let him order the authoress of the crime to public death, or if he should wish to save her life, let him not delay in blinding her. If it is revealed that her husband ordered or permitted such an act, let the judge not refuse to subject him also to a similar punishment.
Concerning audacious people and their misdeeds.

If anyone breaks into another person's house in an insolent way with sword unsheathed or armed with any other weapon with the intention of killing the master of the house, and if he himself is killed, his death shall not render anyone liable in any way. On the other hand, if the man who enters another's house kills someone, let him be put to death immediately.

But if he does not commit a criminal deed, let him at once make a settlement for an amount equal to the damages he shall have caused in that house according to rule of law. If the man who breaks into another's house steals anything from it, let him be compelled to pay in satisfaction eleven times what he took. If he does not have the means for settling, he shall be handed over in servitude without hesitation. But if he does not cause any damages in the house which he enters, let him be compelled to pay ten solidi and be publicly flogged one hundred lashes. If he shall not have the means to make the settlement, let him receive two hundred lashes. If any other freeborn people break into the house with him of their own free will and are
neither placed in his service (obsequium) nor under his protection (patrocinium), but were of the same mind and in agreement with the audacious man, let all of them be subject to similar fines and penalties. If they shall not have the means to make the settlement, let them receive one hundred and fifty lashes, but the right to testify shall not be taken from them. But if they shall have been under the protection or in the service of the daring person and he ordered them to do this, or it has been established that they did this with him, let the master alone be held liable to make full satisfaction of penalties and fines, for those were not blameworthy who seemed to be fulfilling the orders of their patron. However, if a slave commits this while his master does not know it, let him receive two hundred lashes and restore whatever he robbed. But if he does it with the master's knowledge, let the master himself make a settlement for this as is explained above concerning freeborn people.
Concerning retaliation and the sum to be paid as a settlement in place of it.

The cruel rashness of certain people must be punished legally by rather harsh punishments so that when anyone fears to suffer himself what he has done, though unwilling, he might at any rate refrain from illegal acts. Therefore, whatever freeman persistently dares shave another freeman's head; deform his face or the rest of his body with unsightly marks by striking him with a whip, club or any other kind of blow or by maliciously dragging him; has the audacity to defile or maim any other part of his body; or binds him up; or keeps him in custody or in any other kind of bond or orders him to be placed in bonds by another or kept in custody or sold into captivity, said freeman, having been tried by the judge for what he inflicted on others or ordered to be inflicted, shall himself receive what he tried or succeeded in doing to others. This will be done so that the person who is known to have unfortunately suffered or endured physical violence can, if he wishes, force the culprit to make a settlement
on account of such injuries for the sum he estimates. We forbid retaliation in the case of a slap, a punch, a kick or a blow on the head lest greater harm be caused through retaliation. If the aggressor should do any of these things without injury to the person's limbs, let him receive from the man whom he struck ten lashes for a slap, twenty for a punch or a kick, and thirty for a blow on the head if it caused bleeding. Certainly, if the person who caused the injury or is said to have instigated it can prove it was not premeditated but occurred spontaneously due to a sudden quarrel and was committed unwillingly by some misfortune, let him pay one hundred solidi for the loss of an eye. But if it so happens that the injured person is only partially blinded in the eye that was struck, let him accept a pound of gold from the striker as a settlement. If he was struck on the nose so that it is totally destroyed, let the striker pay one hundred solidi. But if his nose is injured so that it is cut in two, let the judge not delay to condemn the striker according to the extent of the injury which he determines on inspection. We also decree that the same be applied concerning lips and ears. One hundred solidi shall be paid in settlement
to the person who is caused to suffer a hernia. Whoever cuts a person's hand off entirely or injures it so that it is useless shall pay one hundred solidi as a settlement. Moreover, let him pay as a settlement fifty solidi for a thumb made useless, forty for a forefinger, thirty for the third finger, twenty for the fourth and ten for the fifth. The same sums shall also be paid for injuries of the feet. Twelve solidi shall be paid for each tooth knocked out. Whoever breaks another's ribs and, as a result, disables the injured person shall manage to make a settlement of a pound of gold. All of these things must be observed and carried out amongst freemen. If a slave shall have done these things to a freeborn person or shaved his head, he shall be handed over to that freeman so he may have the authority to do with said slave whatever he wishes. In the case that a freeborn person shaves the head of another's slave or orders a peasant to do it, let him give the slave's master ten solidi. And if it appears fitting, let the free man receive one hundred lashes besides paying the aforesaid amount of money. If he mutilates any part of a slave's body or orders someone else to do it, he shall be flogged
two hundred blows of the lash and be compelled to return the slave to his master and give him another one of the same abilities and merits. In the case that a freedman dares inflict any of the things mentioned in the law above on a freeborn person, let him receive unto himself the deed which he did and, having been stretched out, let him receive one hundred blows of the whip due to the fact that he injured someone of superior rank. In the case where a freeborn person does any of these things to a freedman, let him pay in settlement a third of the sum applied to a freeman. When a slave has the audacity to shave another slave's head or mutilate him without his master's knowledge, he himself shall suffer what he did and publicly receive one hundred lashes. When a slave dares seize or bind up a freeborn person without his master's consent, let him receive two hundred lashes in public. But if the slave shall have done this at his master's will, let the master himself receive all the penalties and fines which are applied in this law in the case of freemen. If a freeborn person binds another's innocent slave by force, let him give three solidi to the slave's master. When a slave binds another slave by
force without his master's approval he shall be beaten one hundred lashes in public. But if the slave commits this with his master's knowledge, the master shall be compelled to pay the wronged slave's master three solidi. On the other hand, if a freeborn person detains the innocent slave of another in custody for a day and a night or shall have had him detained by someone else, let him repay the slave's master three solidi for each day and three for each night. If it is proven that said slave suffered for several days on account of the freeman, let the freeman be compelled to pay the slave's master the same amount of three solidi for each day and for each night. To be sure, if without cause a freeborn person strikes another's slave with a club, a lash or any other kind of blow and causes him to bruise or bleed, let him pay the slave's master one solidus for each blow. If, by chance, the blow reveals itself to be serious and the person who is struck is seen to die or suffer mutilation, let the culprit pay the amount the judges assess after complete inspection. Indeed, if a slave should inflict such things upon another slave, let the judge likewise estimate and declare the amount owed either by the slave or his master according
to the nature of the bruises and wounds; namely, he shall pay one half the amount demanded in cases concerning a freeman. Nevertheless, the slave, having been stretched out, shall receive fifty blows of the lash for his audacity. The sentences of this law must be applied to both men and women in order that the provisions reserved to the judge's decision in this and other laws may be carried out quickly. If the judge, corrupted by friendship or bribes, should neglect to set someone free following the decision of a case, or likewise should not immediately institute proceedings for punishing someone, let him be deprived at once of his judicial powers and be punished. The bishop or the dux of the district shall pay a solidus to that man whom he refused to free though warned, and according to what they have decided on the basis of their observation, let him likewise be compelled to pay in settlement from his own resources, in order that he who voluntarily refused to repulse the injustice of a disturber may suffer a loss to his own belongings.
When someone uses force to detain a passerby against his will.

If anyone wrongfully detains a passerby without his consent and the passerby is in no way indebted to him, let the person who is held receive five solidi as a compensation for the harm done him. If the assailant shall not have the means to make a settlement, let him receive fifty lashes. But if the man who is detained should be a debtor to the other one and refuses to pay his debt, let the creditor take him to the judge of the territory without doing him injury and let the judge order what is just in his case. But if a slave does this without being ordered to do so by his master, let him be stretched out and receive one hundred blows of the whip. On the other hand, if he did it following his master's orders, let the master be liable to make the settlement above.
When someone does something forbidden by the law to another, let him suffer that which he is convicted of having done.

Ignorance of the law is no excuse for committing wicked acts. Therefore, here after, whatever presumptuous person says he did not know the law concerning something illegal he has done or dared plot to do, or says that the deed in question is not contained in the laws and therefore is not liable for accusation, shall be convicted of his act and be immediately subject to the dangers, ignominy, suffering, tortures and fines that he inflicted or contrived to inflict on others. And besides this, let him be shorn in a degrading manner to his eternal infamy after receiving one hundred lashes in public.

Let him who strikes another intending to strike him not be punished.

Resistance must not be considered wrong where the rash violence of an attacker is shown. Therefore, if any person, insolent and angry, recklessly wishes to
strike or shall have struck anyone with a club, a sword or any other sort of blow, and if then that presumptuous person shall have been struck by him whom he wishes to strike in such a way that he die, such a death shall not be considered a homicide, nor he who struck the attacker liable for accusation because it is better to offer an angry person resistance while alive than to leave one's death to be avenged when gone. It is reasonable that the person who first drew a sword in anger against another, although he did not strike him, be forced to give ten solidi to him whom he wanted to strike for the mere act of presumption.

VII. King Flavius Chindaswinth. (VI,4,7)

When a slave insults a freeborn person.

No slave, regardless of his position, shall in any way unduly dare be obtrusive or disloyal to a nobleman or any illustrious person. If he should be such, he shall be subject to forty lashes. Slaves of lower ranks shall be punished with fifty blows of the whip. However, if the same person provoked another's slave first so that the slave then insults him, let him attribute the insults to his own carelessness because he
received what he deserved since he forgot honor and forebearance.

VIII. Ancient Law. 

When a freeborn person strikes another freeborn person.

If any freeborn person wounds another freeborn person who then dies as a result, let the striker be punished for homicide. If the person who was struck does not die immediately, the striker shall be cast into prison or, at least, be kept under bail to await the outcome. If the wounded person escapes death, let the culprit give him twenty solidi for the mere act of presumption. If he should not have wherewith to make a settlement, having been stretched out, let him receive two hundred blows of the whip in public and let him also make a settlement for the wounds according to what the judges estimate.
IX. Ancient Law. (VI, 4, 9)

When a slave of another is injured by a freeborn person.

If any freeborn person deliberately hurts another's slave, let him not delay in giving his master another slave of equal merit. The culprit shall keep the injured slave and care for him with zeal at his own expense until he regains his health. If the slave is able to get well, a settlement shall be made for the wound the freeman caused as seems just to the one judging. When the slave who was hurt is given back to his master unharmed, let the other master's slave also be returned to him. Moreover, despite the fact that he avoided murder, he shall pay ten solidi to the injured slave's master for having dared wound another's slave.

X. Ancient Law. (VI, 4, 10)

When a slave strikes a freeborn person.

When a slave strikes a freeborn person of his own accord and the freeman dies as a result from the blow, let the attacker be punished for homicide. If the person who was struck does not die immediately, the slave
shall be cast into prison at once to await the outcome. If the wounded man should survive, let the slave be given two hundred blows of the lash. And if his master is willing, let him pay in settlement the sum estimated by the judges. If unwilling, he shall not delay in handing the slave over to the injured man on account of his crime.

XI. Ancient Law. (VI, 4, 11)

When a slave injures someone else's slave.

When a slave wounds another man's slave, let him receive one hundred lashes in addition to the settlement made for the wound. If the slave is seen to be maimed as a result of the injury, the judge shall estimate the physical harm suffered. If the master should not wish to accept a settlement for the harm done his slave, let him accept a similar slave or the monetary value of one from the man whose slave did the injuring and let him keep the wounded slave. We decree that this rule also be observed for female slaves.
FIFTH TITLE. MURDERS AND DEATHS OF MEN

I. Glorious King Flavius Receswinth. (VI,5,1)

When someone kills a man without knowing it.

According to God's will, whoever unknowingly kills a man toward whom he felt no hatred shall not be accused of his death. Indeed, it is not just that he who is not stained with blood by the desire for homicide suffer the losses or punishments for murder.

II. Ancient Law. (VI,5,2)

When someone kills a man without seeing him.

If a man can prove the following before a judge he shall depart in safety: that he killed someone unknowingly and without seeing him while standing by, approaching or passing by and that previously there was no occasion for enmity between them.

III. Glorious King Flavius Receswinth. (VI,5,3)

When someone kills a man owing to physical coercion.

If anyone who is pushed or cast against another, either by accident or any other reason, knocks him down
or kills him, he shall not be liable for the punishments or fines for homicide. But certainly, if a man pushes another who then, dashed against a third man by that shove, kills him, the person who pushed another shall pay one pound of gold on account of neglecting to avoid an injury if it was done on purpose.

IV. Glorious King Flavius Receswinth. (VI, 5, 4)

When someone trying to strike a man kills someone else.

Whenever someone unwillingly kills another while the man with whom he is fighting seeks to strike him, it must be decided who is the remote cause of the murder. If it is determined that the murder was caused by the person whom the striker wished to strike, that man who started the quarrel shall pay one hundred gold solidi even if he did not do the actual killing, and the person who did the striking shall pay fifty solidi. This money will go to the dead man's kin. Thus, in this fashion both will be fined: the man who willingly caused a death and the man who unwillingly killed someone.
V. Glorious King Flavius Chindaswinth. (VI, 5, 5)

When a man is killed in a fight.

When any freeman interferes in a quarrel for the purpose of peacemaking and is then killed by a blow in the fight, his death shall not go unpunished. If the person who struck is able to prove by an oath or by a sufficient number of honorable witnesses that what happened was an accident since he had no intention of striking or killing, he only shall pay the dead man's relatives one pound of gold. Likewise, let him pay a third of this settlement for any wound caused by the accident because the death of a person trying to bring the gift of peace should not go unavenged.

VI. Ancient Law. (VI, 5, 6)

When death is caused while a slight injury is being inflicted on someone.

If a death occurs while someone attempts to injure another by a kick, a punch or any other kind of blow, let him be punished for homicide.
VII. Glorious King Flavius Receswinth. (VI, 5, 7)

When anyone kills another owing to jesting or lack of prudence.

If anyone strikes and kills another person owing to lack of caution or prudence, owing to jesting, being in a crowd or any other circumstances, he shall not be disgraced on account of murder or liable to capital punishment even if convicted by oath or witnesses because he meant no harm or malice to the man he killed by accident. Nevertheless, since he incautiously struck and did not try to prevent the accident, he will have to pay the dead person's relatives one pound of gold and will be flogged fifty times.

VIII. Glorious King Flavius Receswinth. (VI, 5, 8)

When someone kills a man while inflicting restrained and disciplinary measures on him.

If any apprentice or slave placed in the status of patronage (patrocinium) or service (servitium) is struck by his master, patron or lord in competent and restrained disciplining and should, by any chance, die of the beating, and if he who trained and rebuked him had no envy or malice toward him, then the person who committed
homicide will neither be considered infamous nor in¬
jured. This principle comes from God's Sacred Scripture
which says "he who rejects discipline will be unhappy."\(^4\)

IX. Glorious King Flavius Receswinth. (VI, 5, 9)

When a freeman kills a slave by the aforesaid accidents.

When a freeman kills a slave as the result of the different mischances written above and not voluntarily, the striker will give the slave's master half the settle¬ment expected in the case of a freeman.

X. Glorious King Flavius Receswinth. (VI, 5, 10)

When a slave kills a freeman by the aforesaid accidents.

When a slave kills a freeman involuntarily by any of the different mischances written above, let his master make the same settlement that the law establishes in the case of freeborn people who accidentally kill someone. If the slave's master does not want to make the settlement for him, he shall presently hand the slave over.
XI. Ancient Law. 

When a man is killed on purpose.

Every man who kills someone voluntarily and not by accident shall be punished for homicide.

XII. King Flavius Chindaswinth.

Masters shall not kill their own slaves without a trial, and concerning freeborn people who kill other freemen.

If each party to a crime or partner in evil counsel ought not be left unpunished, how much more ought he not go unpunished who is known to have committed a homicide with malicious zeal and without cause? Thus, since slaves are often put to death without a public trial due to their master's cruel audacity, it is fitting that this licence be entirely taken away and the enforcement of the following law be perpetually performed by all: No master or mistress may kill their male or female slaves or any other persons whatsoever without a public trial. Instead, if a slave of either sex commits a crime for which he can be sentenced to death, his master or accuser should immediately go to the judge of the district where the murder was committed.
The judge shall not delay in informing the count or the duke. If the slave's guilt is proven in a public trial, let either the judge or his master inflict on him the punishment which he deserves. If the judge should not want to kill the accused person, let him give the death sentence in writing so that it will then be up to the master to kill or preserve his life. Indeed, if a male or female slave, while resisting an annoying act of a master, strikes or attempts to strike the master or mistress with a sword, a rock or any other kind of a blow and the master, in self-defense forthwith kills the male or female slave in his fury, he shall not be held for satisfaction for homicide provided the matter can be proved by the oaths of the male and female slaves who were present and by the oath of the man who committed such an act. For if anyone whatsoever, out of malice, is known to have dared extralegally kill a male or female slave himself or through someone else, let him be driven into exile so that the rashness of this act may be repressed. He shall remain there as long as he lives and his belongings will profit those of the nearest degree of succession whom the law allows to be his heirs. But
when someone intentionally kills or attempts to kill a slave of either sex after deliberation, his master shall receive from the assassin's estate two slaves, either male or female, of the same value as the one who was killed. In addition, a homicide shall certainly receive the penalty of life-long exile according to the order above. On the other hand, if a master or mistress should happen to become over-excited by anger while punishing a slave of either sex, whether his own or someone else's, and causes a death by striking any kind of a blow, according to the provisions of this law, he cannot be held if he is able to prove by witnesses that he committed such a homicide involuntarily and satisfies his conscience by an oath to that effect. Nevertheless, if male or female slaves claim that they killed a fellow slave or anyone else by their master's instructions or consent and, having been put to torture, accuse their masters of arranging it for their own benefit, they shall be punished. Indeed, let that male or female slave who does such a thing be publicly shorn in a degrading manner and scourged one hundred lashes and let his master suffer according to
the sentence above. Moreover, if it is discovered that any freeborn person whatsoever, when committing theft because of greed, ambushed and killed someone who was at home or on a trip, the homicide shall be punished for murder at once. And since each person who by counsel or command insists a murder be committed, is considered worse than that one who actually carries out the assassination, it is fitting that the following be established: Except in the case of slaves, who are discussed above, if a slave's master or mistress should instruct a slave of either sex to kill a free man or woman, and if through an arduous and public investigation by torture in the presence of the judge, the slave makes a clear confession implicating his masters, they will be punished without doubt. The slave doing such evil shall be scourged two hundred blows of the lash and be shorn in a degrading manner. And let the masters by whose order such evil was committed know they shall die by capital punishment because if any freeborn people decide by common consent to assassinate someone, those who happen to strike the blow or who kill the man with a blow shall be condemned to death. Those who are found to have taken counsel with them,
having been stretched out, shall be given two hundred
blows of the lash and shorn in an unsightly manner on
account of the wicked counsel even though they them¬
selves did not strike. In addition, they shall be
compelled to pay fifty solidi to the deceased's family.
If they should not have wherewith to make a settlement,
let them be handed over in perpetual servitude.

XIII. Glorious King Flavius Receswinth. (VI,5,13)

Mutilation of male or female slaves in any part
of their bodies is forbidden.

By a previous law we prevent slaves from being
killed by their master's savage lack of caution. And
now, in order that they not defile that which is created
in God's image, masters must be forbidden to disable
the body while they inflict cruelties on their subordinates.
Therefore, we decree that any master or mistress who
should openly do any of the following crimes to a male
or female slave without an examination before a judge,
shall be exiled for three years as a penance by the
bishop in whose territory he lives or in which the
crime is known to have been committed: cut off a hand,
nose, lip, tongue, ear or foot, pluck an eye out or cut
any other part of a slave's or order a part amputated or an eye plucked out. If the culprit should have children who, nonetheless, did not participate in his crime, let them keep his estate, govern it and give the lord an account of their administration of the property when he returns. If he should have no legitimate children, the judge will designate the custody of the estate to other relatives. Likewise, when the exile returns, an account of his belongings shall be given him. If there should be no relatives, the judge himself shall take charge in the same way, govern and preserve all the estate and give an account concerning it later on.

XIV. King Flavius Chindaswinth. (VI,5,14)

All shall have the right to accuse a homicide.

If a homicide goes unaccused, as soon as the judge learns a crime has been committed, he shall have the right to arrest the criminal, so that the guilty person receive the punishment he deserves. Indeed, the punishment of a crime should not be delayed on account of lack of accusers or perhaps by some collusion in the crime. A wife has as much right to inquire into
her husband's death if he should have suffered any harm as he does if something similar befalls his wife. She also has as much right to insist that her spouse be avenged legally according to the type of crime. If husband and wife die while they hold such an intention toward the accused, and hand down the unfinished cause to their children or relatives whom the legitimate succession entitles to take the inheritance, they shall immediately have the power to accuse the guilty person or homicide and to prosecute as the parents would have. It is not right that the family or relatives have the estate if the guilty person or homicide does not receive the sentence of condemnation. If the judge, having been notified about this matter, refuses to avenge the matter putting off those accusing, and this problem reaches the king's knowledge, let him who did not want to avenge a death know that he will pay one half the settlement for homicide; that is, one hundred and fifty solidi. Indeed, no one will be allowed to usurp the estate of someone who ought to be punished for his crime unless the sentence is given legally in accordance with the right of revenge.
XV. King Flavius Chindaswinth.  

_Relatives and unrelated people shall have the right to accuse of homicide._

Since it is fitting that those guilty of different crimes always receive the punishment they deserve, it shall be considered a wicked thing that homicides, whom it is more fitting to punish with great severity, go unpunished at any time. Accordingly, the right to accuse is given, first of all, to the family of the man who was killed in order that a homicide not get away with what he did or that anyone not dare conceal his crime by making up excuses. If the family shows little enthusiasm or happens to be dilatory in looking into the man's death, then we generally extend the right to accuse a homicide to all other relatives and also to unrelated people. Thus, a person who fraudulently tries to excuse or defend a homicide, at a suitable time, shall be compelled to pay the accuser twice the amount of the bribe he accepted on that account. For a person accused of murder never can be really secure when no one is denied the right to bring a charge against him.
When a homicide flees to a church.

We have not forgotten that, so far, the opinions of the laws concerning murder and other evil acts have preceded these acts and, likewise, that punishments have been proposed according to the nature of each crime. Nevertheless, to the same degree that the authors of this evil are very prompt in doing such evil, they often find opportunities for evading punishment. These people who are not afraid to perform crimes against the Divine precepts commonly entrust themselves to God's churches for defense. Consequently, since this crime ought never be left unpunished because it destroys life and frequently induces certain people to do more evil, we promulgate the following edict to endure for all times: the law admonishes that every homicide or evildoer whatsoever shall be punished and that no pretext and no power will ever excuse from this opinion him who commits such a wicked act of his own free will or evil intent. If it happens that he should seek refuge at a holy altar, his pursuer shall not seize him without consulting a priest. However, once the priest is consulted and an oath given by the pursuer to the effect
that he is not condemning the criminal to the public punishment of death, the priest himself shall drive him from the altar and expel him from the choir personally and the pursuer shall take him into custody. A person who is expelled from a church shall not be condemned to death, but shall be blinded instead and sent forth to live unhappily to the terror of others. Thus, when depraved evildoers, terrified by fear, perceive that they cannot escape the punishments established for them, then they may refrain from evil deeds since these are men whom the purpose of an evil will often flings headlong into illicit crime.

XVIII. King Flavius Chindaswinth. (VI, 5, 17)

Concerning parricides and their belongings.

Since no homicide committed on purpose is left unpunished in our laws, and since it is more fitting that those who dare kill a blood relative receive the death penalty, we therefore promulgate the following edict to endure for all times: Whoever, by a wicked plan or evil intent, voluntarily commits parricide, that is, kills his father, mother, brother, sister or any other relative shall be arrested immediately. He
who dares kill someone shall be punished by the same sort of death that he dared inflict on his victim. Whether it be a man or a woman who commits a crime of parricide, if the culprit has no children, all of his inheritance shall go to the nearest heirs of the man who was killed. If he should have children from another marriage, half the estate shall be given to the children of the man who was killed and half to the parricide's children if it is proved they were not accomplices in their father's or mother's crime. But if they knew about their parent's crime, all the inheritance shall go to the deceased's children. If neither the parricide nor the man who was killed leave any children behind, the family or relatives will lay claim to all the property themselves. The relatives who undertake the task of avenging his death shall also exercise their right without hesitation.

XVIII. Ancient Law. (VI, 5, 18)

Concerning those who kill their blood relatives.

Let the following be condemned to death: a son who kills his father or a father his son, a husband his wife or a wife her husband, a mother her daughter
or a daughter her mother, a brother his brother or a sister her sister, a father-in-law his son-in-law or a son-in-law his father-in-law, a mother-in-law her daughter-in-law or a daughter-in-law her mother-in-law, or any other person related to him by blood or marriage. If the culprit of one of these homicides should be saved by the king's mercy or the judges' because he sought refuge in a church or at a holy altar, let him be released but bound to remain in eternal exile. And according to the decree of the law above, we order all the dead man's fortune be given to his heirs. If he leaves no relatives as heirs, it should be added to the Fisc. This will be done because a homicide shall not be granted the usufruct of his estate even if he has been set free and merits to escape the death penalty.

XIX. Ancient Law. (VI,5,19)

When a person kills a blood relative by accident.

None of the following shall be punished: a father who kills his son when compelled to do so by serious injury or while he holds off an attack from the son, or a mother who kills her daughter under the same circumstances, a son his father, or a brother his brother,
or any other person related to him, if it can be proved, in the presence of a judge by suitable witnesses who can rightfully be trusted for the purpose, that parricide was committed in self-defense. Let the defendant depart in safety and not fear danger to his life, losses to his estate or torture, provided those conditions are observed which have been established in all instances involving homicide.

XX. Glorious King Flavius Receswinth. (VI, 5, 20)

When a slave kills another slave by accident.

If it is discovered that a slave has killed another slave under any of the conditions described above, the slave's master shall pay the dead slave's master half the sum established on the occasion of such an occurrence. If the master should refuse to make satisfaction for his slave, let him hand the slave over without hesitation.
NOTES TO THE TRANSLATION

1. I have translated "comes" as "count" throughout the whole book.

2. I have used "king" for both princeps and rex.

3. Dux has been translated as "duke" throughout the whole translation.

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