

## POPE JOHN VIII AND THE VISIGOTHIC LAW \*

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Throughout his scholarly life, PEDRO LOMBARDÍA gave so much thought as a canonist to the analysis of the many forms and changing ways of the relationship between Church and State that it seems fitting to include in the volume of essays commemorating our departed friend a study that deals with the efforts of a remarkable pope in turbulent times toward a mutual assistance between secular law and ecclesiastical legislation. The pontificate of John VIII (872-873) was overshadowed by major political and ecclesial problems in every direction: the Sarazen hold on Southern Italy; the conflicting imperial ambitions of the West Franks hand the German kings who ruled the parts of what had once been Charlemagne's empire, now disintegrated; the power struggles of Italian princes; the Slavic missions; the rapprochement with Byzantium and the Byzantine patriarchate. Pope John's course of action in response to all such crises and pressures has, on the whole, commanded the chief attention of historians; one should not, however, underrate his ongoing preoccupation with pastoral concerns. The desire for assuring cooperation with secular law in matters of canonical discipline must be seen as part of this concern.

It found a particularly interesting expression in the decree enacted on the punishment of sacrilege in 878 at the Council of Troyes. After citing a *lex* of the Emperor Justinian imposing the penalty or fine (*compositio*) of five pounds of gold, the papal decree adopted (*precipimus tenendam*) the *lenior lex* of the *pius princeps* Charlemagne, where the fine is set at thirty pounds of silver, to wit, six-hundred silver *solidi*<sup>1</sup>. This *compensatio* was to be enforced by the threat of excommunication

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<sup>1</sup> The laws referred to are Cod. Just. 1.3.13 and probably Charlemagne's *Capitula legibus addita* of 803, c. 2 (ed. Boretius. *Monumenta Germaniae historica* [=MGH], *Capit.* 1.113).

and exclusion from Christian burial for an offender's obstinate refusal to make amends. Thus the papal decree promulgated on 18 August 878 in the form of an encyclical letter —the result, it seems, of several revisions during the council<sup>2</sup>. It was to enter the mainstream of canonistic tradition (with some variants in the papal greeting and the opening lines) through the *Decretum* of Ivo of Chartres, Book 3, ch. 98. A longer version, which had been discussed already in the thirteenth century by ANTONIO AGUSTÍN, has only recently been rediscovered, edited, and analyzed in detail. One should consider it the original papal draft of the final decree<sup>3</sup>.

Ravagings of ecclesiastical property by a reckless nobility plagued the Church ever since the Carolingian empire began to decline; the Frankish bishops had brought up the matter up at the council. But the main stimulus for the pope's action came from Archbishop Sigebut of Narbonne and his suffragans, who laid before the Council the *liber legis Gothicae* and argued in a formal complaint (*libellus*) that nothing could be done in *Hispania* and *Gothia* to restrain the invaders and robbers of church property because that code carried no provision against sacrilege and, on the other hand, strictly forbade judges to hear cases not covered by the domestic law<sup>4</sup>. (Indeed, Kings Recesvinth's *Liber iudicum* or *iudiciorum* of 654 contains the enormous penalty of thirty pounds of gold for anyone who invokes a book of law «praeter hunc librum qui nuper est editus» and for any judge who does not destroy such a *liber vetitus*)<sup>5</sup>. In response to Sigebut's plea Pope John took an unprecedented step: in the final clause of his encyclical he commanded «ut in fine codicis legis mundanae scribatur haec lex»; the papal law —here designated not as *decretum* but as *lex*— was to be entered in the Visigothic Code.

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<sup>2</sup> The best information, partly based on new source material, for the *acta* of the council is found H. Mordek and G. Schmitz, «Papst Johannes VIII. und das Konzil von Troyes (878), *Geschichtsschreibung und geistiges Leben im Mittelalter: Festschrift für Heinz Löwe zum 60. Geburtstag* (Köln-Wien 1978) 179-225; see also Mordek on MS HC 380/819 of the Hispanic Society New York, in *Bulletin of Medieval Canon Law* [=BMCL] 16 (1986) at pp. 11-12.

<sup>3</sup> S. Kuttner and W. Hartmann, «A new version of Pope John VIII's decree on sacrilege (Council of Troyes, 878)», *BMCL*, 17 (1987) 1-32, to which the reader is referred for more details and sources; see esp. pp. 23-25 for the matters discussed in the present paper.

<sup>4</sup> Ivo, *Decr.* 3.98: «... synodale concilium apud urbem Trecas, ubi sedentibus nobis in corona, venit ante praesentiam nostram filius noster Sineboldus [*sic*] sanctae primae sedis Narbonensis episcopus cum suis suffraganeis episcopis et detulit nobis librum Gothicae legis, ubi nihil habebatur de sacrilegiis, et in eisdem legibus scriptum ut causae quas illae leges non habent non audirentur a iudicibus illius patriae...», *Patrologia latina* [=PL] 161.218D. (As rendered above, the text is slightly expanded from clauses of the longer version. For possible instances of the pillages that may have prompted Sigebut's complaint, see R. d'Abadal i de Vinyals, *Els Primers comtes catalans* (3rd ed. Barcelona 1980) 61-64; cfr. Kuttner-Hartmann, art. cit. (n. 3 supra) 12-12.

<sup>5</sup> *Lex Visigothorum* 2.1.11, ed. Zeumer *MGH Leges* [4.º] 1 p. 58-19; also 2.1.10, 13. See Kuttner-Hartmann, art. cit. 12 and n. 7.

When Ivo of Chartres, more than two-hundred years after Troyes, retrieved our text from a source unknown, he inscribed it as «Iohannes octavus in libro Gothicae legis» (*Decr.* 3.98). Apparently he believed that the papal command, conveyed through the bishops from *Hispania* and *Gothia* who were present at the council, had been carried out. But no manuscript of the *Liber iudicum* or *iudiciorum* (*Lex Visigothorum*, *Fuero juzgo*) is known to exist that contains Pope John's *lex*. It is indeed difficult to see on whose authority in post-Visigothic Spain a new law should have been entered in the *Liber* which, in the words of a recent scholar, had become *crystalizado* after the Muslim conquest<sup>6</sup>. It also lay outside the concern of the Carolingian rulers of the Spanish March: they dealt with legal matters of the *Hispani* in other ways, by royal ordinance or *praeceptum*<sup>7</sup>. Should we conclude, then, from the negative manuscript evidence that the papal law of 878 remained dead letter in those provinces for which it was specifically meant?

One might have expected that the singular phenomenon of a papal decree dealing with Visigothic law would have received greater attention—or so it seems at least to the outsider—than students of Spanish legal history on the whole have given it. Recently, however, AQUILINO IGLESIA FERREIRÓS has shown, on the strength of material he assembled from published archival documents for a book-length study on the emerging law of Catalonia, that by the early tenth century penal sanctions had been devised to protect ecclesiastical property against invasion and theft: charters and deeds spoke of such penalties as *compositio* and soon would describe them as based on *canones* and *leges*<sup>8</sup>. Influence of the Church was to be expected in such penal clauses, but it is remarkable that the *leges mundanae* were invoked as well. Obviously these cannot have been laws of the *Liber iudic (ior) um*: in support of the penalties that were written into the charters of judicial rulings of Catalonia from the tenth century on, the only secular law we could cite is the one that Pope John VIII had incorporated in his decree at Troyes<sup>9</sup>. Here, then, law from abroad—and this point should be stressed—was being absorbed without formal «reception», on might say by osmosis. Through the copies which the bishops of Gerona, Barcelona, Elne, and Urgel had brought back from the council, some knowledge of the papal text must

<sup>6</sup> A. IGLESIA FERREIRÓS, «La creación del Derecho en Cataluña», en *Archivo de Historia del Derecho español* [=AHDE] 47 (1977) 99-423, at p. 245 f.

<sup>7</sup> Carolingian *constitutiones* or *praecepta de Hispania* in 815, 816, 844, 860, etc., took the form of charters in multiple copies (*descriptiones*), see MGH *Capit.* 1.259, 261, 264, etc.; R. D'ABADAL I DE VINYALS, *Catalunya Carolingia II* (Barcelona 1926-52) 418, 424, etc.; F. L. GANSHOF, *Recherches sur les Capitulaires* (Paris 1985) 43, 62-63.

<sup>8</sup> IGLESIA FERREIRÓS, art. cit. (n. 6) 243 ff.; many excerpts from documents are printed on the Apéndice (pp. 289-400), see references p. 247 n. 753, e.g. p. 243 (an. 904), Apéndice Nos. 49 (an. 847), 70 (an. 974).

<sup>9</sup> IGLESIA FERREIRÓS 247, but without explaining how «esta decisión de incorporar la mencionada norma papal al *Liber*» would have been transmitted.

have existed, and it is characteristic of this informal reception that the amount the pope had established for the *compositio sacrilegii* was not strictly observed but more often assimilated to the sanction of quadruple damages that was familiar to Visigothic law for other criminal actions<sup>10</sup>. Only one of the charters in the dossier collected by IGLESIAS FERREIRÓS provides for a penalty of thirty pounds of silver<sup>11</sup>.

Quadruple compensation is also found in the single legislative text, of uncertain date, that has recently come to light. An epitome of the *Liber iudicum* in a manuscript saec. XII from Ripoll, now at the Biblioteca Central de la Diputación Provincial in Barcelona, MS 944, presents it as an insertion at the end of title 4 of the fifth book. It is inscribed, «De his qui res ecclesiae traditas invadunt vel vastant aut absque proprii episcopi consensu accipiunt» and was published by GONZALO MARTÍNEZ DÍEZ S.J. in 1961<sup>12</sup>. The text prescribes that excommunication for occupying, seizing, and retaining property of churches or priests is to be reinforced by a *compositio*<sup>13</sup>:

Quisquis res ecclesiae debitas vel proprias sacerdotis horrendae cupiditatis instinctu occupaverit, retinuerit aut ex potestate alicuius ex aequo ecclesiae perceperit, si eas non restituerit communione privetur. Quod si agnito iure ecclesiastico non statim ecclesiae vel sacerdoti reformuerit aut, ut ipsum ius agnoscere possit, in iudicium helectorum venire distulerit, tandiu a communione ecclesiastica suspendatur quamdiu restitutis rebus tam ecclesiam quam sacerdotem reddat indempnem. Compositio vero ablatae rei in quadruplum erit iuxta emendationem legum...

Punishment «iuxta priores canones» is also provided for not carrying out of or embezzling a deceased persons's bequest to a church or a priest, and for taking back pious gifts made to churches.

<sup>10</sup> *Lex Visig.* 2.2.7 (p. 84 ed. Zeumer), 3.3.3 (p. 141), 5.5.4 (p. 228), 7.2.8 (p. 295), 8.1.9, 12 (pp. 316, 318), 8.3.7. (p. 324), 9.2.6, 9 (pp. 329, 378); cf. MARTÍNEZ DÍEZ (as *infra*, n. 12). None of these envisages cases akin to sacrilege.—The insistence of IGLESIAS FERREIRÓS 244-45 on the quadruple sanction for sacrilege being a departure from Chindasvinth's law in *Lex Visig.* 2.5.8 (which imposes double or treble restitution) seems beside the point, since this *lex* deals with an entirely different delict. On quadruple penance for theft «de monasterio ecclesiae... (si) redditum non fuerit» in the Penitential of Silos (saec. x) see *ibid.* 245 n. 748.

<sup>11</sup> IGLESIA FERREIRÓS no. 126 (an. 1007). In two other documents the amount of 600s. is found for violation of immunity: «si quis... frangere ausus fuerit, iuxta ceteras monitantes censeatur [*var.* censeatur solvat], solidorum videlicet sexcentorum»: *ibid.* Nos 14 and 72 (ann. 871, 975), both using the same formulary. But the first of these antedates Troyes; the model obviously was Benedictus Levita 2.291(b), fashioned from the *Capitula legibus addita* of 803; see E. SECKEL, «Studien zu Benedictus Levita VII, Schlussteil 3», *Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde* 25 (1909/10) at pp. 447-48.

<sup>12</sup> G. MARTÍNEZ DÍEZ, «Un nuevo código del *Liber iudiciorum* del siglo XII», *AHDE* 31 (1961) 651-95.

<sup>13</sup> *Ibid.* 681. I have followed the editor's spelling but not his punctuation.

MARTÍNEZ INGLÉS suggests that this was a canon from the lost acts of the Eighteenth Council of Toledo (702)<sup>14</sup>. But this conjecture rests on the tenuous base of conciliar style («su estilo conciliar es innegable»); it cannot explain why among the 34 known full copies, epitomes, and fragments of the *Liber* none but this late manuscript should have added a canon from the 1st general Visigothic council before the Muslim conquest. Neither do we have any *priores canones* in the *Collectio Hispana* on failure to carry out pious bequests, nor could any *emendatio legum* be cited from Visigothic sources for the *compositio ablatae rei*<sup>15</sup>. What is more, if such laws had really existed, they would have destroyed the basis for the complaint of Sigebut of Narbonne at Troyes in 878.

We must leave further research on this matter to others. The possibility, however, should not be excluded that the new text in the epitome of the *Liber iudicum* from Ripoll is of later origin, tenth or eleventh century, and may itself have absorbed, like many Catalan charters and deeds of that period, the *emendatio legum* for sacrilege by Pope John VIII, adapting the six-hundred silver solidi of his decree to the more familiar quadruple compensation.

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<sup>14</sup> Ibid. 682.

<sup>15</sup> For the number of manuscripts see M. C. DÍAZ Y DÍAZ, «La Lex Visigothorum y sus manuscritos: Un ensayo de reinterpretación», *AHDE*, 46 (1976) 163-224: Zeumer had known or used only Nos. 1-24; on Nos. 25-34 see pp. 172-77. A connection of the new text with the edict of King Ervig *de tributis relaxatis* of 683 (6. 479 f. ed Zeumer) has been suggested by MARTÍNEZ DÍEZ art. cit. 682; but there the composition *in quadruplum* para las apropiaciones indebidas» was prescribed for exactig unlawful *tributa* (p. 479.34-41 Zeumer); see also the criticism of M. ZIMMERMANN, «L'usage du droit wisigothique en Catalogne du IX<sup>e</sup> au XII<sup>e</sup> siècle», *Mélanges de la Casa Velázquez*, 9 (1973) 234-81 at p. 272.