Francesco Amarelli

nihil dulcius est, bene quam munita tenere
edita doctrina sapientum templa serena
(Lucr. II.7-8)

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XXV
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CULTURE, LINGUAGGI, PERCORSI ARGOMENTATIVI E STILISTICI
IN ONORE DI FRANCESCO AMARELLI

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LAW AND LANGUAGE IN THE ROMAN AND GERMANIC TRADITIONS – A STUDY OF LIBER IUDICIORUM 6.4.3 AND THE IDEA OF INIURIA IN VISIGOTHIC LAW*

* The following abbreviations will be used for post-Roman law codes:

Aeth. = *Domas Æðelbirht*, L. Oliver, ed., *The Beginnings of English Law*, Toronto 2002, 60 ss.

CE = *Codex Euricianus*, K. Zeumer, ed., *Leges Visigothorum, Monumenta Germaniae Historica* (MGH)*, Leges Nationum Germanicarum* (LNG), I, Hannover 1902, 3 ss.

ER = *Edictus Rothari*, F. Bluhme, ed., *Edictus ceteraeque Langobardorum Leges*, Hannover 1869, 1 ss.

LB = *Lex Baiwariorum*, E. von Schwind, ed., *Lex Baiwariorum,* MGH LNG, V.2, Hannover 1926.

LC = *Liber Constitutionum*, L.R. De Salis, ed., *Leges Burgundionum,* MGH LNG, II.1, Hannover 1892, 41 ss.

LF = *Lex Frisionum*, K.A. Eckhardt-A. Eckhardt, ed., *Lex Frisionum,* MGH *Fontes Iuris*, XII, Hannover 1982.

LI = *Liber Iudiciorum*, K. Zeumer, ed., *Leges Visigothorum,* MGH LNG, I, Hannover 1902, 35 ss.

LR = *Lex Ribuaria*, F. Beyerle-R. Buchner, eds., *Lex Ribuaria*, MGH LNG III.2, Hannover 1954.

LRB = *Lex Romana Burgundionum*, L.R. De Salis, ed., *Leges Burgundionum,* MGH LNG, II.1, Hannover 1892, 122 ss.

LRV = *Lex Romana Visigothorum, (Breviarium Alarici),* G. Haenel, ed., *Lex Romana Visigothorum*, Berlin 1849.

PLA = *Pactus Legis Alamannorum*, K. Lehmann, ed., *Leges Alamannorum,* MGH LNG V.1, Hannover 1966, 21 ss.

PLS = *Pactus Legis Salicae*, K.A. Eckhardt, ed., *Pactus Legis Salicae,* MGH, LNG IV.1, Hannover 1952.

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1. *Introduction*

Visigothic law is preserved in a complex and interwoven series of texts that culminate in the two extant recensions of the so-called *Liber Iudiciorum* (LI), the first issued by king Recceswinth in 654 and the second by king Erwig in 681. Both recensions build on a tradition that traces back to codes first created by Visigothic kings in the fifth and sixth centuries which probably finds its roots in even earlier legal traditions. That these included Roman law is beyond question. In opposition to most contemporary Anglophone scholarship on the question, this study contends that they also include Germanic customary law. It will focus on uses of the concept of *iniuria,* a word with obvious resonances in the Romanist tradition, but which will be shown to have had a notably different meaning in the LI, and in the broader Germanic law tradition. Using as its primary hermeneutic tool the practice of philology, the study distances itself from current trends in hopes of reframing a debate which has largely overlooked, perhaps even shunned, the possibility that a common Germanic cultural heritage underlies the successor kingdoms of the post-Roman West.

I begin by outlining Visigothic legal history and historiography since this will be important to the argument that follows. As to historiography, the idea of a distinct Germanic legal tradition stretches back to the sixteenth century. Through the mid-twentieth century and even beyond, there was little argument that 'Germanic' law existed as an ontological category and even a discreet field of study. Yet the horrors of German ethnonationalism in the Nazi period and the complicity of *Germanische Altertumskunde* in these horrors led to a much-needed reexamination of this category. By the later twentieth century, Germanic law began to be systematically excluded from the epistemological framework and vocabulary set of many scholars. This revisionist approach is already evident in Iberian scholarship of the mid-twentieth century, especially in the work of A. D'Ors, who made a concerted effort to dissociate the earliest Visigothic laws from any connections with Germanic law – for all that he acknowledged the existence of the latter[1]. His lead has been followed by many subsequent Hispanophone

[1] A. D'Ors, *El Código de Eurico. Edición, palingenesia, índices*, Madrid 1960. On 'Germanism' in Spanish legal historiography, see J. Alvarado Planas, *El problema del germanismo en el derecho español, siglos V-XI*, Madrid 1997.

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scholars, who have tended to downplay 'Germanism' in the Visigothic context or deny its existence altogether. The same can be said of Anglo-American and French scholars working not just on Visigoths but on all post-Roman kingdoms in the late antique and early medieval West. Beginning in the 1980s, and particularly with the work of W. Goffart, these introduced a series of arguments that deny the existence of a 'Germanic' law tradition and would instead explain the shifts in legal practice witnessed in post-Roman western codes as natural developments of Roman principles through the influence of 'provincial' or 'vulgar' or 'military' law[2]. This approach is becoming widespread

[2] W. Goffart, *Barbarians and Romans, A.D. 418-584: The techniques of Accommodation*, Princeton 1980; Id., *Barbarian Tides: The Migration Age and the Later Roman Empire*, Philadelphia 2006, 23 ss.; P. Amory, *The Meaning and Purpose of Ethnic Terminology in the Burgundian Laws*, in *EME*, 2, 1993, 1 ss.; S. Kerneis, *L'ancienne loi des Bretons d'Armorique. Contributions à l'étude du droit vulgaire*, in *RHDE*, 73, 1995, 175 ss.; Ead., *Les jugements des soldats et les premières lois dites barbares (V^e siècle),* in *Giudizi, giudici e norme processuali in occidente nei secoli IV-VIII*, Santarcangelo di Romagna 2015, 211 ss.; Ead., *Rome et les barbares. Aux origines de la personalité des lois,* in *Civitas, iura, arma. Organizzazioni militari, istituzioni giuridiche e strutture sociali alle origini dell'Europa (secc. III-VIII). Atti del seminario internazionale, Cagliari, 5-6 ottobre 2012*, a cura di F. Botta-L. Loschiavo, Lecce 2015, 103 ss.; G. Halsall, *Reflections on Early Medieval Violence: The Example of 'Blood Feud'*, in *Memoria y Civilización,* 2, 1999, 7 ss.; Id., *Barbarian Migrations and the Roman West, 376-568*, Cambridge-New York 2007, 462 ss.; R. Collins, *Law and Identity in the Western Kingdoms in the Fifth and Sixth Centuries*, in *Medieval Europeans: Studies in Ethnic Identity and National Perspectives in Medieval Europe*, ed. A.P. Smyth, Houndmills 1998, 1 ss.; Id., *Visigothic Spain, 409-711*, Malden 2004, 223 ss.; P.S. Barnwell, *Emperors, Jurists and Kings: Law and Custom in the Late Roman and Early Medieval West*, in *P&P,* 168, 2000, 6 ss.; I. Wood, *The Legislation of Magistri Militum: The Laws of Gundobad and Sigismund*, in *Clio@Themis. Revue électronique d'histoire du droit*, 10, 2016, DOI: 10.35562/cliothemis.1191. The concepts of Roman 'Volksrecht' and 'vulgar law' have a venerable history in the study of eastern provincial contexts, see recently A. Dolganov, *Reichsrecht and Volksrecht in Theory and Practice: Roman Justice in the Province of Egypt (P. Oxy. II 237, P. Oxy. IV 706, SB XII 10929)*, in *Tyche,* 34, 2019, 27 ss., with earlier bibliography. The application of the idea of 'vulgar law' to western imperial contexts was championed by E. Levy, *West Roman Vulgar Law. The Law of Property*, Philadelphia 1951; Id., *Weströmisches Vulgarrecht. Das Obligationenrecht*, Weimar 1956, who offered important insights even while continuing to uphold the category of 'Germanic law' as a significant part of his analysis. D. Liebs, *Roman Vulgar Law in Late Antiquity*, in *Aspects of Law in Late Antiquity: Dedicated to A.M. Honoré on the Occasion of the Sixtieth Year of His Teaching in Oxford*, ed. A.J.B. Sirks, Oxford 2008, 49 ss., shows how the concept of 'vulgar

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among scholars working in the Germanophone academy as well[3]. It is against this trend that this paper speaks, and although it does so using only a single case study, it has chosen a case at the heart of the matter with the intent of reopening and refocusing the broader debate.

2. *Visigothic Legal History in Brief*

I turn now to Visigothic legal history[4]. After having entered the Roman empire as refugees in 376 CE and then moving regularly for the next forty years, the Goths were settled by the Roman state in Aquitania in 418 and began a three-centuries long tradition of rulership in southwestern Europe. Being greatly outnumbered by the provincial Roman population among whom they were settled, they relied heavily on the legal and administrative systems already in place in the territories where they settled. The first extant law book issued from their kingdom in Toulouse consists of a collection of regulations composed and transmitted entirely in Latin, some of which have been preserved in a palimpsest (Par. Lat. 12161). This earliest code is almost universally attributed to king Euric and dated to c. 476[5]. The *Codex Euricianus* (CE), as it is called, already shows the hybrid nature of Visigothic law, for it contains some provisions that reflect principles found in Roman law, but also many others that appear much closer to norms recorded in the post-Roman 'Germanic' codes to be discussed below. Moreover, the sixty provisions that Par. Lat. 12161 preserves probably constituted only about one sixth of the original code, and many of the laws it trans-

law' has come to be overused, serving as a freefloating signifier for historians (almost never legal historians) hoping to attribute all manner of normative change in the post-Roman period to 'vulgarized' forms of Roman law.

[3] See S. Esders, *The Legislation of Magistri Militum: The Laws of Gundobad and Sigismund*, in *Clio@Themis. Revue Électronique d'Histoire du Droit*, 10, 2016, DOI 10.35562/cliothemis.1168, and below ntt. 44, 120, 126.

[4] See more at K. Zeumer, *Geschichte der westgotischen Gesetzgegung I,* in *Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde*, 23, 1898, 419 ss.; P.D. King, *Law and Society in the Visigothic Kingdom*, Cambridge 1972, 1 ss.; R. Collins, *Visigothic* cit., 223 ss.; R. Ramis Barceló-P. Ramis Serra, *El libro de los juicios: Liber iudiciorum*, Madrid 2015, 13 ss.

[5] D. Liebs, *Römische Jurisprudenz in Gallien (2. Bis 8. Jahrhundert)*, Berlin 2002, 157 ss. See also *http://www.leges.uni-koeln.de/en/mss/codices/paris-bn-lat-12161/*.

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mits are fragmentary because of the condition of the palimpsest. This leaves us with many unanswered questions about the nature and scope of the original text. At a minimum, what we have confirms that the laws were not organized in a manner attested in any previous imperial code, for most of the titles are brief and are cast in the form of conditional sentences, usually beginning '*si quis...*' or '*qui*'. Although this format cannot be identified in any extant Roman lawbook before the eighth century, it is nearly universal in the aforementioned Germanic codes[6].

While the CE offers many examples of legal provisions that do not square with the Roman tradition, quite obviously Roman is the early sixth-century *Lex Romana Visigothorum* (LRV), also known as the *Breviarium of Alaric*. Issued in 506 under king Alaric II, the LRV offers a compilation of laws selected from the *Codex Theodosianus* and from late Roman legal compendia, to which it appends explanatory *interpretationes*, generally added to summarize but sometimes also modify the original texts[7]. As such, the LRV appears to have been compiled and issued in order to set out a normative framework for the Visigoths' Roman subjects, although this is not a position all would share.

Indeed, there is a longstanding debate about whether these first two codes were meant to be used by all peoples living within Visigothic territory (the so-called 'territorial' approach) or were instead valid for *personae* as divided into two groups constructed as notionally distinct ethnicities, Goths and Romans (the 'personal' approach). The question is not whether there were in fact two and only two ethnicities into which the population was divided, for ethnic identity is always complex and constructed and can be accessed and modified situation-

[6] The format first arises in the East with the eighth-century Byzantine *Ecloga*, see M. Humphreys, *The Laws of the Isaurian Era. The Ecloga and its Appendices, Translated Texts for Byzantinists*, 3, Liverpool 2017.

[7] On the circumstances of issue, see D. Liebs, *Römische* cit., 166 ss. On the *interpretationes*, see M. Roux, *Administrative Transitions in Gaul during the Second Half of the Fifth Century: The Example of the Visigothic Kingdom as Reflected in the Breviary of Alaric*, in *The Fifth Century: Age of Transformation. Proceedings of the 12th Biennial Shifting Frontiers in Late Antiquity Conference*, eds. J.W. Drijvers-N. Lenski, Bari 2019, 221 ss. I. Wood, *Le Bréviare chez les Burgondes*, in *Le Bréviaire d'Alaric. Aux origines du Code Civil*, éd. M. Rouche-B. Dumézil, Paris 2008, 160 cannot be right to argue that the LRV was inspired by the LRB for in at least one instance (LRB 21.2-3) the Burgundian lawgiver is clearly following the language of the Visigothic *interpretatio* at LRV CTh. 3.16.1. The influence was, thus, in the opposite direction.

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ally by the individuals and groups who lay claim to it. As such individuals and groups can never be neatly separated into discrete ethnic categories, rendering all efforts to impose strictly 'personal' laws an impossibility. Yet to say this is not to deny that individuals and groups throughout history have put great stock in the construction, curation, and maintenance of ethnic boundaries and that they have attempted to use normative frameworks to impose these – they obviously have, even if they have obviously also generally failed in these efforts. Thus, the question is not whether the Visigothic kingdom was divided into neatly divisible ethnic sets; it is, rather, were individuals invited by their rulers to associate themselves with distinct legal traditions on the basis of their claims to ethnic identity?

It had long been accepted that the CE and LRV were indeed 'personal' codes, but this began to be questioned in the mid-twentieth century by A. García Gallo, who argued that the CE and LRV operated in succession, with the latter replacing the former as the Goths' lone 'territorial code'. A somewhat different 'territorial' approach was developed by the aforementioned A. D'Ors, who argued instead that only the CE – which he took to be entirely Roman 'vulgar law' – ever operated as valid law in Visigothic territory, and that the LRV was compiled strictly for scholarly and teaching purposes[8]. Both arguments were addressed and soundly refuted by P.D. King in two articles whose arguments remain, up to present, unchallenged[9]. For this reason, this

[8] A. García Gallo, *Nacionalidad y territorialidad del derecho en la época Visigoda*, in *Anuario de Historia del derecho español*, 13, 1936-1941, 168 ss.; A. D'Ors, *La territorialidad del derecho de los Visigodos*, in *Estudios Visigóticos,* 1, 1956, 91 ss.; cf. A. D'Ors, *El Codigo* cit., passim.

[9] P.D. King, *The Alleged Territoriality of Visigothic Law*, in *Authority and Power: Studies on Medieval Law and Government Presented to Walter Ullman on His Seventieth Birthday*, ed. B. Tierney-P. Linehan, Cambridge 1980, 1 ss.; Id., *King Chindasvind and the First Territorial Law-Code of the Visigothic Kingdom*, in *Visigothic Spain: New Approaches*, ed. E. James, Oxford 1980, 131 ss. P.C. Díaz-R.G. González Salinero, *El Codigo de Eurico y el derecho romano vulgar*, in *Visigoti e Longobardi. Atti del seminario, Roma, 28-29 aprile 1997*, a cura di J. Arce-P. Delogu, Firenze 2001, 93 ss., reassert D'Ors's position without responding to P.D. King. K. Ubl, *Sinnstiftungen eines Rechtsbuchs. Die Lex Salica im Frankenreich*, Ostfildern 2017, 39 ss. and 50 ss., asks the question and comes down in favor of territoriality but also does not respond to P.D. King. P. Amory, *The Meaning* cit., had argued that Burgundian law was territorial and not personal despite the existence of dual codes as well, but his argument has been refuted by P. Heather, *Roman*

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study will proceed on the assumption that the CE and LRV operated concurrently as 'personal' codes for as long as they were valid law in the Visigothic kingdom.

For how long was this? In c. 585, Leovigild issued a new code, generally referred to as the *Codex Revisus*, which updated and expanded material received from the CE[10]. Although we no longer have a free-standing edition of this code, its scope and nature can be limned because its provisions were adopted under the designation '*antiquae*' into the seventh-century *Liber Iudiciorum* – to be discussed below. From the *antiquae* we can ascertain that Leovigild's code did not republish material from the LRV, which appears to have remained in force as a separate but valid lawbook into the seventh century. As such, we can assume Leovigild retained the system of 'personal' codes for *Gothi* and *Romani* which he had inherited[11]. At the same time, Leovigild's own policies pushed toward a greater unification of Goths and Romans within his kingdom, especially as regarded Christian doctrine. For all that he and many other Goths continued to assert their identity as followers of an Arianizing creed, Leovigild mollified Roman adherents of the Nicene creed with theological concessions aimed at uniting the two versions of the faith and thus the two largest ethnic groups under his control[12]. This effort was brought to a climax by his son and successor Reccared, who instead of doubling down on Arian credal enforcement, chose to convert to Nicene orthodoxy shortly after his father's death in 586. He then endorsed the unification of the entire kingdom under

law in the post-Roman West: A case study in the Burgundian kingdom, in *Das Vermächtnis der Römer. Römisches Recht und Europa. Referate einer Vorlesungsreihe des Collegium Generale der Universität Bern im Frühjahrssemester 2011*, hrsg. I. Fargnoli-S. Rebenich, Bern 2012, 177 ss.

10 K. Zeumer, *Geschichte*, *I* cit., 430 ss.

11 Isidore states explicitly that Leovigild was revising the the code of Euric, see Isid., *Orig. Goth*. 51: *In legibus quoque ea quae ab Eurico incondite constituta videbantur correxit, plurimas leges praetermissas adiciens plerasque superfluas auferens*.

12 R. Collins, *King Leovigild and the Conversion of the Visigoths*, in *Law, Culture, and Regionalism in Early Medieval Spain*, Aldershot 1992, no. II. For the connection of Arian profession with Gothic identity, and Nicene with Roman, see Greg. Tur., *Gloria Martyrum* 24 (MGH SRM I.2.52): *Romanos enim vocitant nostrae homines relegionis*; cf. E.A. Thompson, *The Goths in Spain*, Oxford 1969, 39 s.; R. Collins, *King Leovigild* cit., 6 s.

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Nicaea at the *Third Council of Toledo* in 589[13]. The acts of this council retain the ethnicizing categories *Gothi* and *Romani*, at once endorsing unity for the two peoples while also acknowledging the ongoing reality of their claims to be distinctive *gentes*[14]. It should thus come as no surprise that, although Reccared supplemented Leovigild's *Codex Revisus* with additional laws of his own, he appears not to have eliminated the bipartite structure of 'personal' codes. Indeed, the ongoing use of the LRV in legal practice is attested in the acts of the *Second Council of Seville* held in 619, which cite its provisions as valid law in several places[15].

The merging of the two traditions first occurred in the year 643/644, when king Chindaswinth created a new code that wove the personal traditions of the *Codex Revisus* with those of the LRV to form a single lawbook valid for all subjects of his kingdom. This appears to have been the Visigoths' first 'territorial' code, although it was promptly reedited by bishop Braulio of Zaragoza under Chindaswinth's son Recceswinth in winter 653/654[16]. It is this text, known since at least the eighth century as the *Liber Iudiciorum* (LI), on which we base most of our knowledge of Visigothic law, a fact that must be borne in mind whenever historicizing claims are made: even if the CE is extant in part and the LRV in full, we are missing large parts of the CE, and the entirety of

[13] Ioh. Bicl., *Chron*. 84. 91 (CCSL 173A.78, 81); Isid., *Orig. Goth*. 53; Greg. Tur., *Hist. Franc.* 9.15 (MGH SRM I.429-30); cf. R. Collins, *Visigothic* cit., 64 ss.

[14] Conc. Tol. III, *proemium* (Colección Canónica Hispana V.50): *de gentis Gotorum innovatione*; *Gothorum professio fidei* (Colección Canónica Hispana V.75, 77, 83): *confessio episcoporum, presbyterorum vel primorum Goticae gentis... Tunc episcopi omnes una cum clericis suis promoresque gentis Gothicae pari consensione dixerunt... libellum detestabilem... in quo continetur Romanorum ad haeresem Arrianam transductio*; *Canones* (Colección Canónica Hispana V.98-99): *Post confessionem igitur et subscribtionem omnium episcoporum et totius gentis Gothicae seniorum*; cf. Ioh. Bicl., *Chron*. 91 (CCSL 173A.81): *Reccaredus... ordinem conversionis sue et omnium sacerdotum vel gentis Gothice confessionem thomo scriptam manu sua episcopis porrigens...*

[15] Conc. Ispal. II, can. 1 (J. Vives, *Concilios visigóticos e hispano-romanos*, Barcelona 1963, 163), citing LRV CTh. 5.5.1-2; Conc. Ispal. II, can. 3 (Vives, *Concilios* cit., 165), alluding to LRV CTh. 4.21.1, 5.9.1-2, 5.10.1, 5.11.1, LRV Nov. Val. 9.1 (all on *coloni*, who are not otherwise present in the LI); Conc. Ispal. II, can. 8 (Vives, *Concilios* cit., 169), alluding to LRV CTh. 4.10.1-3 (on *liberti ingrati*). More at P.D. King, *King Chindasvind* cit., 136 ss.

[16] I follow P.D. King, *King Chindasvind* cit., in assuming that Chindaswinth rather than Recceswinth issued the first territorial code.

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Leovigild's *Codex Revisus*, the revised version of it issued by Reccared, and the initial redactions of Chindaswinth's new territorial code. All of the missing pieces must be reconstructed – sometimes merely inferred – from the extant texts in the LI.

The LI includes a law explicitly abrogating earlier codes and validating itself for 'all persons and nations subject to the power of Our Magnificence'[17]. It also includes a law, LI 2.1.10, that forbade the application of 'either Roman laws or foreign legal precepts' within the Visigothic kingdom[18]. The latter law was surely intended to ensure adherence to Recceswinth's new code rather than to censor the study of the 'laws of foreign nations' (*aliene gentis leges*), for 2.1.10 actually encourages the study of foreign law for philological purposes. Regardless, there can be no doubt that with LI 2.1.10 Recceswinth at once acknowledged 'Roman law' as a category distinct from 'Visigothic law' and asserted that the law of the LI alone was to hold sway in his kingdom. This will be important for what follows, for the fact that a Roman law code was valid for Visogothic *Romani* up to the issuance of the LI in 653/654 and that we have the entirety of that code in the LRV means that we can make relatively precise determinations about whether Roman principles certainly known to Chindaswinth and Recceswinth lay behind the norms they established in their code. The Visigoths offer, in other words, an ideal test case for whether or not post-Roman kingdoms were practicing late antique Roman law or a different kind of law, Germanic law, or some mixture of the two.

In 681, the *Liber Iudiciorum* was then revised under king Erwig, who issued a new recension, leaving us with a second manuscript branch of the LI. And the manuscript tradition remains even more complex given that subsequent users added further supplements and revisions to existing laws and, in the case of king Egica (r. 687-701), entirely new laws. In sum, Visigothic law of the seventh century represents the culmination of a long process in which legal traditions and

[17] LI 2.1.5: *in cunctis personis ac gentibus nostre amplitudinis imperio subiugatis*.

[18] LI 2.1.10: *nolumus sive Romanis legibus seu alienis institutionibus amodo amplius convexari*. See also LI 2.1.11 and 2.1.13, forbidding the use of any other code but the LI and ordering the destruction of any law book other than the LI that is brought into court, on pain of a massive fine of 30 pounds of gold; cf. K. Zeumer, *Geschichte der westgotischen Gesetzgegung II*, in *Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde*, 24, 1899, 70 ss.

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materials were gradually combined. Initially it operated with separate codes which aimed to govern (and help constitute) ethnically distinct sectors of the population. As these groups merged into a much more homogenous populace, Chindaswinth and his son Recceswinth introduced a single code that merged these variant strains and explicitly demanded territorial adherence. But even this new code, the LI, was itself revised in multiple recensions, for it was no more immune to ongoing development than any legal system ever has been.

3. *Ethnic Identifiers in Visigothic Legal Sources*

Although the LI is certainly a 'territorial code' meant for all inhabitants of the *regnum Gothorum*, its construction out of a multipartite tradition shows clear traces of the various strands from which it derives. These give insights into both the nature of the 'personal' codes which preceded it and the degree to which ethnic distinctions between *Gothi* and *Romani* remained a social fact into the seventh century. At the most basic level, the ongoing existence of claims to ethnic difference can be found in the many instances in the LI where the lawgiver insists that a particular provision applies to all persons, 'of whichever *gens* they may be'[19]. This language makes clear that the king wished his legislation to be valid territorially, without distinction by national identity, but also that he understood that his subjects continued to assert distinct ethnic identities and to attempt to leverage these to their own advantage – or the disadvantage of others. Here we must emphasize that the Visigothic kingdom was home to a plurality of ethnic identities including not just Goths and Romans but also Sueves, Jews, Syrians, Greeks, and others[20].

[19] LI 3.5.2: *hoc vero nefas si agere amodo provinciarum nostrarum cuiuslibet gentis homines sexus utriusque temtaverit*; 7.5.9: *quorumlibet sue cuiuslibet gentis et generis homo*; 9.1.21: *Nam et ceteri habitatores loci illius seu cuiuscumque gentis vel generis homines*; 12.2.2: *Nullus itaque cuiuscumque gentis aut generis homo, proprius et advena, proselitus et indigena, externus et incola.*

[20] See for example Conc. Tol. III, *professio regis* (Colección Canónica Hispana, V.58): *nec enim sola Gotorum conversio ad cumulum nostrae mercedis accessit, quin immo et Suevorum gentis infinita multitudo*; Conc. Narb. (a. 589) can. 4, 14 (Vives, *Concilios* 147, 149): *Ghotus, Romanus, Syrus, Graecus vel Iudaeus*; cf. Conc. Ispal. II (a. 619) can. 12 (J. Vives, *Concilios* cit., 171): *quidam ex haerese Acefalorum natione Syrus*; LI 12.3.12: *gens Iudaica*; cf. LI 5.7.19: *Et licet favente Deo gentes nostre affluant copia bellatorum*. One gets a similar sense of ethnic diversity – but also

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The sources also make clear that power – political, social, military, religious, and economic – was concentrated among Goths and Romans, and that legal power within the kingdom was based on their traditions. Above all, power was concentrated in the hands of the Goths, whose privileged status is evident throughout the source pool and appears in crystalline form in a series of laws which governed the division of lands between Romans and Goths dating back to the original settlement of the Goths in Aquitaine in 418. The circumstances of this resettlement remain a matter of dispute, but what is uncontested is that they were structured to the advantage of Goths at the expense of Romans, making it clear why the distinction between the two *gentes* remained important[21]. But even as late as the mid-seventh century, in a law on mustering recruits, king Erwig feels compelled to qualify that his law would apply to every subject 'whoever he may be, whether a Duke or Count or Royal Guard, whether he is a Goth or Roman, and whether freeborn or manumitted'[22]. The list covers rank, ethnicity, and status, with the only ethnic distinctions mentioned being Goth and Roman.

An even clearer instance of this merging of the 'personal' into a 'territorial' tradition can be found in LI 3.1.1, probably dating to Leovigild's *Codex Revisus*. This law, which removes a previously existing legal prohibition on intermarriage between Goths and Romans, offers clear evidence that ethnic difference remained a social fact even if a lawgiver of the 580s hoped to circumscribe its normative and social impact[23].

self-conscious ethnic differentiation – in the Merovingian Frankish world: *Form. Marc.* 1.8 (MGH Form. Mer. 48): *omnis populus ibidem commanentes, tam Franci, Romani, Burgundionis vel reliquas nationis*; 1.40 (MGH Form. Mer. 68): *omnes pagensis vestros, tam Francos, Romanos, vel reliqua natione degentibus*; LR 35.3: *Hoc autem constituimus, ut infra pago Ribuario tam Franci, Burgundiones, Alamanni seu de quacumque natione commoratus fuerit, in iudicio interpellatus sicut lex loci continet, ubi natus fuerit, sic respondeat*.

[21] LI 10.1.8: *De divisione terrarum facta inter Gotum adque Romanum*; 10.1.9: *De silveis inter Gotum et Romanum indivisis relictis*; 10.1.16: *Ut, si Goti de Romanorum tertiam quippiam tulerint, iudice insistente Romanis cuncta reforment*; 10.3.5: *Ut, si aliqua pars de alio loco tempore Romanorum remota est, ita persistat*. Cf. CE 276-277. P. Heather, *Roman law* cit., 198 ss., argues that also in the Burgundian kingdom the land division promoted the maintenance of ethnic differentiation.

[22] LI 9.2.9: *quisquis ille est, sive sit dux sive comes atque gardingus, siue sit Gotus sive Romanus, necnon ingenuus quisque vel etiam manumissus.*

[23] For the dating to Leovigild, see K. Zeumer, *Geschichte der westgo-*

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The law may have its roots in a prohibition on intermarriage between Romans and barbarians introduced in the fourth century with CTh. 3.14.1 (a. 370), a measure that was then absorbed into the Visigothic legal tradition as LRV CTh. 3.14.1, but it was also likely upheld in a no-longer extant provision of the CE[24]. Even if it is likely that the Visigothic prohibition on ethnic intermarriage was generally honored in the breach, its introduction into the Gothic tradition and retention up to the late sixth century confirm institutional ambitions to codify ethnic distinction. Nor did these disappear entirely with Leovigild's law legalizing ethnic intermarriage, for some manuscripts of the *Ninth Council of Toledo* (a. 655) still draw a distinction between Gothic and Roman *ingenui* in their prohibition of intermarriage between either group and ecclesiastical freedmen[25]. Furthermore, beginning with the *Fifth Council of Toledo* in 636, it was decided that Visigothic kings could only be elected from persons whose lineage could be traced from the 'nobility of the Gothic nation'[26]. By the mid-seventh century, then, ethnic claims had merged with claims to aristocratic lineage. But this fact should not be used to deny that 'Gothicness' in the period had been evacuated of cultural significance. Indeed, the cultural importance of Gothic identity is evident in a law of Chindaswinth regulating the content and size of a dowry for 'anyone from among the first officers of our palace and the elders of the Gothic nation'. The practices it prescribes can also be observed in a nearly contemporary formulaic dowry contract com-

tischen Gesetzgegung III, in *Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde*, 24, 1899, 573 ss.; A. D'Ors, *El codigo* cit., 132 s.

[24] R.W. Mathisen, *Provinciales, Gentiles, and Marriages between Romans and Barbarians in the Late Roman Empire*, in *JRS*, 99, 2009, 140 ss., has argued that CTh. 3.14.1 was narrowly intended to forbid marriages between Roman soldiers and North African military units that bore the designation *gentiles*. The argument is less than convincing, especially since the Theodosian compilers clearly took the law as a generalizing ban on marriages between Roman citizens and barbarians. So too the Visigothic *interpretatio*, which modifies the names of the original target groups (*provinciales* and *gentiles*) to *Romani* and *barbari*.

[25] Conc. Tol. VIIII, can. 13-14 (Colección Canónica Hispana, V.507, ntt. 238, 246).

[26] Conc. Tol. V, can. 3 (Colección Canónica Hispana, V.282): *ut quisquis talia meditatus fuerit, quem nec electio omnium provehit nec Gothicae gentis nobilitas ad hunc honoris apicem trahit, sit a consortio catholicorum privatus et divino anathemate condemnatus*; cf. Conc. Tol. VI, can. 17 (Colección Canónica Hispana, V.326): *genere Gothus*.

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posed in verse which lays out the terms for a 'Getic style' bride gift – 'Getic' being a literary term for 'Gothic'.[27] Ethnic claims were thus important in the Visigothic kingdom from its foundation in the fifth century through its final days in the seventh. As always, these were contingent and constructed, not absolute and essential, but their repetition in contemporary sources makes it clear that they were important to contemporary individuals and groups, and that this occasioned their acknowledgement and regulation by Visigothic kings.

4. Iniuria *in the* Liber Iudiciorum – *a word study*

With this background in mind, we turn to the concept of *iniuria*. The focus will be on the most extensive law in the *Liber Iudiciorum* to use this term – LI 6.4.3, a law issued by Chindaswinth and thus part of his project of merging Gothic and Roman traditions into a single code for his territory. This lengthy law offers a series of penalties for individual acts of physical violence against another person. Although it has a number of characteristics that resemble similar laws in the Germanic codes, its closing phrase characterizes the collectivity of offenses it catalogs with the generalizing designation *iniuria*. This word might seem to connect the law – dealing as it does with affronts to the person of a victim – with the Roman delict of that same name.

The word occurs at the end of the law when the lawgiver orders a judge who refused to enforce a settlement against a defendant found guilty of committing any of the offenses it catalogs to be deprived of his position, detained, and forced to pay a settlement (*compositio*) – 'in order that he who willingly refused to defend against the *iniuria* done to someone who appealed to him should himself be compelled to sustain loss from his own property'[28].

To understand whether the law should be connected with *iniuria* in Roman law, we must begin by outlining what this delict entailed. Here we

[27] LI 3.1.5: *ut quicumque ex palatii nostri primatibus vel senioribus gentis Gotorum*... Cf. *Formulae Visigothicae*, 20, ll. 48-61 (J. Gil, *Miscellanea Wisigothica,* Sevilla 1991², 92).

[28] LI 6.4.3: *quatenus ipse suarum rerum conpulsus damna sustineat, qui voluntarius defendere recusabit interpellantis iniuriam.* On *compositio* (along with *satisfactio*) in the barbarian law tradition, see E. Levy, *Weströmisches* cit., 307 ss.

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start with the *Digest* title (47.10) *De iniuriis et famosis libellis.* The preface of the title opens by explaining that *iniuria* in its broadest sense means 'injustice', and that it is often used in legal texts with this more general meaning. This same notion is also discussed in a passage from Ulpian's commentary on the edict which points out that there are instances where *iniuria* has the general meaning of acting illegally or contrary to law[29]. This point is important to keep in mind when considering the Visigothic laws, for as we shall see, at times the LI also uses *iniuria* with the general sense of 'injustice' or 'outrage', although these instances are rare.

As D. 47.10 continues, however, it offers a more specific definition of the civil law delict:

> Labeo says that *iniuria* can be perpetrated by act or by words: by act, when there is a laying on of hands; by words, whenever there is no laying on of hands, but a row occurs. Every *iniuria* is inflicted on the person or relates to one's dignity or involves disgrace: it is to the person when someone is struck; it pertains to dignity when a matron's attendant is seduced; and to disgrace when an attempt is made upon a person's chastity[30].

Crucial here is the bipartite division between physical and verbal abuse. The latter, the title goes on to explain, could apply not just to spoken insults but also to symbolic acts or verbal and non-verbal signs which diminished a victim's honor or reputation. The remainder of the *Digest* title then outlines the parameters of this offense, always keeping in view its bipartite physical or symbolic nature.

[29] D. 9.2.5.1 (Ulp. 18 *ad edictum*): *Iniuriam autem hic accipere nos oportet non quemadmodum circa iniuriarum actionem contumeliam quandam, sed quod non iure factum est, hoc est contra ius*.

[30] D. 47.10.1.1-2 (Ulp. 56 *ad edictum*): *Iniuriam autem fieri Labeo ait aut re aut verbis: re, quotiens manus inferuntur: verbis autem, quotiens non manus inferuntur, convicium fit. Omnemque iniuriam aut in corpus inferri aut ad dignitatem aut ad infamiam pertinere: in corpus fit, cum quis pulsatur: ad dignitatem, cum comes matronae abducitur: ad infamiam, cum pudicitia adtemptatur*; cf. Gai. 3.220-25; Coll. 2.5.1-5; PS. 5.4; I. 4.4. See more at W.W. Buckland, *A Text-Book of Roman Law from Augustus to Justinian*, Cambridge 1921, 585 ss.; O.F. Robinson, *The Criminal Law of Ancient Rome*, London 1995, 49 ss.; M. Hagemann, *Iniuria. Von den XII-Tafeln bis zur Justinianischen Kodifikation*, Köln 1998; J. Harries, *Law and Crime in the Roman World*, Cambridge 2007, 49 s.; cf. E. Levy, *Weströmisches* cit., 325 ss.

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This division did not disappear in the post-imperial West. Indeed, the LRV itself preserves a title from the *Sententiae Pauli* on *iniuria* through which we can see that western (what some would call 'vulgar') Roman law continued to uphold the distinction between corporal and non-corporeal abuse in the sixth century[31]. From this we can also deduce that bipartite *iniuria* would have been valid law in Visigothic territory – at least for *Romani* – into the early seventh-century, right up to the period when Chindaswinth set aside the LRV and set about creating his new title on personal assaults with LI 6.4.3.

We shall see in the section to follow that Chindaswinth did indeed incorporate some aspects of Roman law *iniuria* into LI 6.4.3. He does not, however, appear to have maintained the bipartite division that the Visigothic tradition had maintained for *Romani* up to his day. To understand how this is so, we must examine the use of the word *iniuria* throughout the LI. Appendix 1 of this article shows that *iniuria* and its cognates are used 32 times in the LI: the substantive is used 26 times; adjectival forms (*iniuriosus*) a further 5; and the gerund *iniuriandum* once. The vast majority of these instances (27) clearly imply violent physical force – I translate generically 'a violent act'. This leaves a further 5 cases in which violent force is not clear, raising the question of whether the term *iniuria* may still imply verbal or non-corporeal abuse in the LI. We should therefore examine each of these 5 cases to determine whether they preserve space for the second branch of *iniuria* attested in classical and post-classical Roman law:

> LI 2.1.9 (*De non criminando principe nec maledicendo illi*): punishes those who lodge 'base and unjust slanders' (*ignominia turpia et iniuriosa*) against the king with either the confiscation of half of their property (in the instance of those who are 'noble and reputable' – *nobiles idoneaeque personae*) or the total confiscation of their property and their enslavement (in the instance of 'baser and humbler' persons – *viliores humilioresque personae*). The law thus takes slanderous language against the king as a form of treason, and in so doing surely follows the Roman law of *maiestas*. Yet *maiestas* was a criminal offense distinct from *iniuria,* which means that, in this instance, *iniuriosus* is best translated in

[31] LRV PS. 4.1: *Sententia. Iniuriam patimur aut in corpus aut extra corpus. In corpus verberibus et illatione stupri. Extra corpus conviciis et famosis libellis.*

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the general sense of 'unjust', or even 'injurious'[32]. Nor does the sanction which LI 2.1.9 prescribes correspond with sanctions effected by the Roman law of *iniuria,* i.e. estimated damages to be paid to the victim – to be discussed below. This law is thus not related to Roman delictal *iniuria*.

LI 2.2.6 (*De quantitate itineris, quod alium quisque innocentem fatigare presumserit*): punishes plaintiffs who force a defendant to travel to court on false charges by ordering the false accuser to pay compositions calibrated to the distance the defendant had to travel. The law classes this offense as *iniuria* and also uses the adverb *iniuste* and adjective *iniustus* twice each. In every instance, the word is once again best translated with the generalizing 'injustice' or 'unjust', for the law does not concern itself with slander or outrages on the part of the defendant but rather with frivolous civil litigation. This was an offense which Roman law treated under the larger heading of *calumnia* – a charge that survived into Visigothic law in the LRV and was punishable not with money compositions but with exile[33].

LI 4.2.13 (*Ut post mortem matris filii in patris potestate consistant; et quid de rebus filiorum agere conveniat patrem*): This law, in separate recensions of Recceswinth and Erwig, treats the property of children inherited from a deceased mother when the father is still alive, ordering it to remain in the possession of the father unless he remarries, but ordering it to be turned over to the children if he takes a new wife so that the children 'may not be troubled by injustices from their stepmother' (*ne... noverce sue vexentur iniuriis*). Leaving aside the obvious departures from classical Roman succession law, this law also

[32] On the law of *maiestas* in the principate, see O.F. Robinson, *The Criminal* cit., 74 ss.; Harries, *Law* cit., 72 ss.; M. Peachin, *Augustus' Emergent Judicial Powers, the 'Crimen Maiestatis', and the Second Cyrene Edict*, in *Il Princeps Romano: autocrate o magistrato? Fattori giuridici e fattori sociali del potere imperiale da Augusto a Commodo*, a cura di J.-L. Ferrary-J. Scheid, Pavia 2015, 497 ss. The principles of the Roman *Lex Iulia de Maiestate* certainly entered Visigothic law through LRV PS. 5.31.

[33] D. 3.6; CTh. 9.39; C. 9.46; I. 4.16; cf. O.F. Robinson, *The Criminal* cit., 99 s. For Visigothic law, see LRV CTh. 9.29.

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does not use *iniuria* in the Roman delictal sense but once again with the generalizing meaning of 'injustice'. The stepmother was not accused of physically or verbally assaulting her husband's children but rather of potentially scheming to deprive them of their inheritance.

LI 5.7.10 (*Si libertus iniuriam faciat manumissori*): This law punishes freedmen who engage in injurious behavior toward their liberator with reenslavement. It uses *iniuria* in its title and *iniuriosus* in its body and even lists false accusations as a type of *iniuria*. Perhaps here we have verbal *iniuria*? Roman law did grant the power to re-enslave a freedman to patrons in a law issued by Constantine 'On ungrateful freedmen' (*De libertis ingratis*), and this law was absorbed into Visigothic tradition through LRV CTh. 4.10.1, which surely lies at the core of LI 5.7.10[34]. But the grounds for re-enslavement offered by Constantine's law *De libertis ingratis* are much vaguer than those we find in LI 5.7.10. They include offenses as trivial as 'boasting' and 'obstinacy' and never mention *iniuria.* LI 5.7.10, by contrast, lists two specific offenses it associates with the *iniuriae* that might lead to re-enslavement under the Visigoths, and these both involve threats to the body: 'whether he strikes the patron with his fist or any other type of blow, or he attacks him with false accusations through which the threat of a capital charge could arise against him'[35]. The first type of offense clearly involves physical violence, and violence of a sort that, as we shall see below, is of particular concern in Germanic law – 'striking' (*percussio*). But in a very

[34] CTh. 4.10.1 [= LRV CTh. 4.10.1]: Imp. Constantinus A. ad concilium Byzacenorum. *Libertis ingratis in tantum iura adversa sunt, ut, si quadam iactantia vel contumacia cervices erexerint aut levis offensae contraxerint culpam, a patronis rursus sub imperia dicionemque mittantur.* Dat. VI. kal. Aug. Coloniae Agrippinae, Pacatiano et Hilariano coss.
Interpretatio: *Quaecumque persona servilis a domino suo fuerit consecuta libertatem, si postea superbire coeperit aut patronum, id est manumissorem suum laeserit, amissa libertate, quam meruit, in servitium revocetur*. Cf. CTh. 4.10.2 = C. 6.7.3 + 9.1.21; I. 1.16.1; Nov. Iust. 78.2.

[35] LI 5.7.10 *antiqua: Si libertus manumissori suo iniuriosus fuerit, aut si patronum pugno aut quolibet hictu percusserit vel eum falsis accusationibus inpetierit, unde ipsi capitis periculum conparetur...*

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real sense, the second type of offense also constitutes a physical threat, for conviction on capital charges was equivalent to a death sentence. This is why Roman law never punished false capital accusations through delictal *iniuria* but rather with criminal charges through the *SC Turpilianum*[36]. Thus, while LI 5.7.10 may at first glance seem to imply an element of verbal *iniuria*, closer examination shows that, whether it involves striking or false accusations, *iniuria* in this law denotes 'a violent act'[37].

LI 6.5.12 (*Ne domini extra culpam suos servos occidant, et si ingenuus occidat ingenuum*): This law, also issued by Chindaswinth, punishes masters who kill their own slaves without a proper judicial hearing but excuses masters who do so when stirred up 'either by the incitement of an *iniuria* or moved by anger' (*vel incitatione iniurie vel ira commotus*). Here it is difficult to determine whether Chindswinth's use of *iniuria* implies physical or verbal assault. Chindaswinth is once again accessing a Roman law of Constantine, who in 319 forbade the deliberate murder of a slave as homicide, but then in 329 issued a new law which excused a master whose slave had died in the course of 'corrective punishment'[38]. Only the latter law was absorbed into the Visigothic tradition through the LRV, and with LI 6.5.12, Chindaswinth incorporates this into his new territorial code[39]. Earlier in the law, Chindaswinth catalogs more specific

[36] D. 48.16 *Ad senatus consultum Turpillianum et de abolitionibus criminum*; cf. Tac., *An*. 14.41, and see O.F. Robinson, *The Criminal* cit., 99 ss.

[37] LI 5.7.9, an *antiqua,* also discusses reenslavement, which it permits if the freedman has been *iniuriosum aut contumeliosum vel accusatorem aut criminatorem*. The parallel existence of two laws on reenslavement, one an *antiqua* from Leovigild's *Codex Revisus* (5.7.9) and a second newly written for Chindaswinth's new territorial code (5.7.10), is of itself important and implies that reenslavement had already been open to both Goths and Romans before the creation of a territorial code. Note that 5.7.9 distinguishes *iniuriosum* (physical abuse) from *contumeliosum* (verbal abuse), and that it too includes false accusations as grounds for reenslavement. The distinction between *iniuria* and *contumelia* is also found at LI 2.1.18: *Et illi siquidem, cui presumtiosus presumtor extitit, si solum contumeliam vel iniuriam fecerit, libram auri coactus exsolvat*; cf. LI 6.4 *Titulus* ('Vulgate' manuscripts): *De contumelio vulnere et debilitatione hominum*.

[38] CTh. 9.12.1 = C. 9.14.1; CTh. 9.12.2.

[39] LRV CTh. 9.9.1. More on Chindaswinth's laws on slavery at N. Lenski,

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> actions which he felt constituted grounds for acquittal for slave killing: 'Certainly if a male or female slave sets upon their lords in some noxious act of daring and strikes or attempts to strike (*percusserit vel percutere conatus fuerit*) a male or female lord with a sword, or a stone, or with any kind of blow...' the master may kill him with impunity[40]. All of these provocations by the slave clearly imply 'violent force', especially force as understood in the Germanic tradition of 'striking' offenses (*percussiones*). When later in the law Chindaswinth further excuses masters who killed their slaves when aroused 'by the incitement of an *iniuria* or moved by anger', he may still be referencing this catalog of physical violence. Regardless, LI 6.5.12 offers no solid evidence that Visigothic '*iniuria*' implied non-corporeal 'assault'. Once again, then, it is wisest to translate *iniuria* here as 'injustice'.

There is thus no single instance in which Visigothic law uses *iniuria* in the bipartite sense found in Roman law. Of the five laws in which we might suspect some form of verbal or symbolic *iniuria*, three entail categories of 'unjust' acts that are either criminal (treason – 2.1.9) or simply 'injurious' (frivolous litigation – 2.2.6, meddling stepmothers – 4.2.13) and would not have been treated as *iniuria* in Roman law. In a fourth, *iniuria* quite clearly means violent acts, whether physical assaults or false capital charges (5.7.10). And the fifth is ambiguous but offers no solid evidence for non corporeal assaults (6.5.12).

But even in cases where *iniuria* clearly means 'violent force' in the LI, the Visigothic usage also regularly deviates from the Roman law of *iniuria*. Thus in two instances *iniuria* or its cognates are used to characterize violent attacks by animals – LI 8.4.8 treats the killing of another's animal, which is excused if the defendant was enraged because the animal was harming him or his property (*Nam si eundem damni commovit iniuria, ut eum occideret aut debilitaret*…); and LI 8.4.19 concerns dog bites, which cannot be recompensed if the person bitten had provoked the dog to 'do injury' to an innocent person (*Nam si*

Slavery among the Visigoths, in *Slavery in the Late Antique World, 150 – 700 CE*, eds. C.L. de Wet-M. Kahlos-V. Vuolanto, Cambridge 2022, 271 s.

[40] LI 6.5.12 [Recc.]: *Sane si servus vel ancilla, ausu pestifero resultantes dominis, seu gladio vel lapide sive quocumque hictu dominum dominamve percusserit vel percutere conatus fuerit...*

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eum ad innocentem forsitam iniuriandum incitavit). In neither instance would the Roman law of *iniuria* have applied, for both would have been covered under the title *De pauperie*, given that Roman law did not consider animals capable of formulating the intent to commit *iniuria* against their victim[41].

We have already noted that, apart from the 4 of the 5 instances treated in detail above where *iniuria* is best translated generically as 'injustice', its use in the LI always entails a 'violent act'. To summarize in brief: 2.1.18 covers the violent usurpation of judicial authority; 2.2.8 violent expulsion from a judicial court; 2.5.9 the use of force to compel the creation of legal documents; 4.5.1 the violent abuse of elders; 5.7.9-10 the violent abuse of a former master; 6.4.4 the forcible detention of a traveler; 6.5.6 public brawling; 6.5.12 violent assault on a master; 6.5.19 violent personal attack; 7.3.6 kidnapping; 8.1.4 violently detaining someone in their own home; 8.3.14 the violent seizure of animals; 8.4.8 damage done by violent animals; 8.4.19 dog bites; 8.4.26 killing an asylum seeker; 9.3.3 violent removal from a church.

Some laws catalog examples of behavior they associate with *iniuria* that make it even clearer that in a Visigothic legal context, *iniuria* necessarily entailed violent force. Thus at LI 4.5.1, concerning approved grounds for disherison, we find:

> For if a son, daughter, grandson, or granddaughter has proved so presumptuous that they attempt to afflict their grandfather, grandmother, father, or mother with such serious violent acts (*tam gravibus iniuriis*) – that is, if they should strike (*percutiant*) them with a slap, punch, kick, stone, staff, or whip, or if they presume insolently to drag them off by the foot, or hair, or hand, or by any other dishonorable method, or (*aut*) if they publicly accuse their grandfather or grandmother or parents of any crime (*quodcumque crimen... obiciant*)...[42].

[41] On the *Actio de pauperie,* see D. 9.1; I. 4.9, with M. Polojac, *Actio de Pauperie and Liability for Damage Caused by Animals in Roman Law*, Belgrade 2003. The Germanic law tradition had its own remedies for damages caused by animals, see H. Brunner, *Deutsche Rechtsgeschichte*, 2, *Systematisches Handbuch der deutschen Rechtswissenschaft*, Abt. 2, Teil 1, Band 2, hrsg. C. Schwerin, Berlin 1928², 728 ss.

[42] LI 4.5.1: *Nam si filius filave, nepos, neptis tam presumtiosi extiterint ut avum suum aut aviam sive etiam patrem aut matrem tam gravibus iniuriis conentur affi-*

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Once again, we see the catalog of striking offenses which will be treated in more detail below, and we also see these coupled with criminal accusations, precisely as we witnessed at LI 5.7.10. But here it is important to note that Roman law would not have considered these offenses to be remediable through the law of *iniuria* in the first place, for descendants were in the *potestas* of male parents or grandparents and thus unable to pay a settlement to their ascendants – who, at any rate, controlled all their assets as *peculium* and could not have benefitted from winning an *iniuria* suit anyway.

Even more noteworthy, LI 2.2.8 allows a judge who is having difficulty removing an overbearing patron from his courtroom to fine the offender two pounds of gold and expel him using violent force – which it characterizes as *iniuria*:

> But if a powerful person (*potens*) shows contempt for a judge and baldly refuses to depart from the court or is unwilling to give way to the judge, the judge should have the power to exact two pounds of gold from that powerful person and to drive him forth from the court with violent force (*iniuria violenta*)[43].

Here *iniuria violenta* is used in the instrumental ablative and coded positively. It describes forceful behavior permissible for the judge dealing with an overbearing patron, and the lawgiver even encourages its use in this situation. If, as we shall see below, the Visigothic lawgiver understood *iniuria* to include a catalog of violent acts often involving striking – punching, kicking, whipping – we get some sense of the type of force permitted to the judge against overbearing patrons. Nothing could make it clearer that, for the Visigoths, *iniuria* had the basic meaning of 'violent force' or a 'violent act' and not the broader sense of an 'unjust physical or verbal offense', as it was understood in Roman law.

cere, hoc est, si aut alapa, pugno vel calce seu lapide aut fuste vel flagella percutiant, sive per pedem vel per capillos ac per manum etiam vel quocumque inhonesto casu abstraere contumeliose presumant, aut publice quodcumque crimen avo aut avie seu genitoribus suis obiciant...

[43] LI 2.2.8: *Quod si potens contemserit iudicem et proterve resistens de iudicio egredi vel locum dare iudicanti noluerit, potestatem habeat iudex ab ipso potente duas auri libras exigere et hunc iniuria violenta a iudicio propulsare*.

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5. *LI 6.4.3 and Compensation for Bodily Assault*

Now that we have established that there is a clear distinction between the Roman delict of *iniuria* and the Visigothic conception of this word, it is time to determine what Chindaswinth might have meant when he used '*iniuria*' to characterize a broader set of the offenses cataloged at LI 6.4.3. The law was, as noted, part of a larger effort to meld the personal codes of the *Gothi* and *Romani* into a single territorial whole. As such, it is certain to borrow elements of both traditions even while striving to reconcile the two. This is evident from the outset in the prose of the law, which is continuous and classicizing, setting it apart from other Germanic codes, which offer clipped sentences written in vernacular Latin and organized as lists[44].

That LI 6.4.3 is doing something different from Roman law is, however, clear already from the law's title, 'Concerning retaliation and the sum of the composition for not retaliating' (*De reddendo talione et compositionis summam [sic] pro non reddendo talione*). *Talio* (revenge) is thus the broader problem the lawgiver is attempting to solve. This is a word noteworthy for being used only rarely in classical Latin prose and almost never in Roman legal texts[45]. The single exception to the latter is connected with an entry from the XII Tables, which had prescribed *talio* for the settlement of some claims related to nothing less than *iniuria* itself. The entry is reported in Gaius *Institutes*:

> Under the XII Tables the penalties for *iniuria* used to be: 'for destroying a limb, retaliation (*talio*); for breaking or bruising a bone, 300 *asses* if the sufferer was a free man, 150 if a slave; for

[44] This may explain why S. Esders, *Wergild and the Monetary Logic of Early Medieval Conflict Resolution,* in *Wergild, Compensation and Penance. The Monetary Logic of Early Medieval Conflict Resolution*, eds. L. Bothe-S. Esders-H. Nijdam, Leiden 2021, 6 nt. 11, claims that Wergild lists are absent from Visigothic law. What follows shows they are not. C. Petit, *Crimen y castigo en el reino visigodo de Toledo*, in *Recueils de la Société Jean Bodin pour l'Histoire Comparative des Institutions*, 56, *La peine – punishment*, 2, *Europe avant le XVIII^e siècle*, Bruxelles 1991, 9 ss., takes a different approach which acknowledges the existence of a Germanic law tradition of delictal punishment but denies its applicability to Visigothic law, which Petit sees as fundamentally Roman.

[45] J. Morwood, *Talio, Oxford Latin Dictionary*, Oxford 2008, 1901. A search of the CLCT (Brepols) database turns up only 42 instances in classical sources, 14 of these from a single passage at Gell., *Noct. Att*. 20.1 on *talio* in the XII Tables.

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> all other *iniuriae* 25 *asses*.' These penal sums were considered sufficient in those days of extreme poverty. But the system now in force is different, for the Praetor allows us to make our own assessment of the outrage (*iniuriam aestimare*), and the *iudex* may, at his discretion, condemn in the amount of our assessment or in a lesser sum[46].

This passage offers three important insights: first *talio* in the sense of 'retaliation in kind' had been a legal remedy for the mutilation of limbs in earliest Roman law but was no longer allowed in classical law (hence the disappearance of *talio* from all subsequent Roman legal texts); second, fixed money penalties had characterized early Roman law but had been eliminated – because monetary inflation had eroded their usefulness[47]; and third, fixed penalties had been replaced by a system of judicial discretion in which a plaintiff proposed a monetary assessment (*aestimatio*), which the Praetor would then either accept or reduce as he saw fit, depending on the 'quality' of the parties involved – i.e. the relative social standing of perpetrator and victim[48]. Here it should be remembered that a major part of the offense was the affront it represented to a person's honor, an attribute calibrated to their qualities of person and status. In brief, both *talio* (in-kind vengance) and fixed money penalties were, by the second century BCE, relics of Roman legal history. And this remained the case with Roman law as observed

[46] Gai. 3.223-24: *Poena autem iniuriarum ex lege XII tabularum propter membrum quidem ruptum talio erat; propter os vero fractum aut collisum trecentorum assium poena erat, si libero os fractum erat; at si servo, CL; propter ceteras vero iniurias XXV assium poena erat constituta. Et videbantur illis temporibus in magna paupertate satis idoneae istae pecuniariae poenae. Sed nunc alio iure utimur. Permittitur enim nobis a praetore ipsis iniuriam aestimare, et iudex uel tanti condemnat, quanti nos aestimauerimus, uel minoris, prout illi uisum fuerit*; cf. Coll. 2.5.5. See also I. 4.4.7, which confirms that the same system of assessed damages was also in place in the sixth-century East.

[47] A point made clear in the famous story reported at Gell., *Noct. Att*. 20.1.12-13 of the second-century BCE aristocrat Lucius Veratius, who deliberately committed *iniuriae* with the knowledge that he could easily afford to pay the fixed fine from the XII Tables in deflated coin. Gell., *Noct. Att*. 20.1.14-19 also offers a philosophical justification for the avoidance of *talio* in Roman law.

[48] See also Gell., *Noct. Att*. 20.1.13: *Propterea, inquit, praetores hanc abolescere et relinqui censuerunt iniuriisque aestumandis recuperatores se daturos edixerunt*; cf. M. Hagemann, *Iniuria* cit., 50 ss.

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in the Visigothic kingdom up to the issuance of Chindaswinth's territorial code, for the LRV explains that the *aestimatio* of damages was the standard solution for personal offenses in its title *de iniuriis*[49].

While in-kind retaliation and fixed money penalties were not a part of the imperial Roman law of *iniuria*, both are important concerns in LI 6.4.3. As to the former, LI 6.4.3 does in fact prescribe one-for-one retaliation in a limited number of the offenses it catalogs – those involving the mutilation of freepersons by freedmen or slaves mutilating slaves, as we shall see. But by and large, the law avoids retaliation in favor of money compositions or corporal punishments. In every instance, it clearly intends the penalties it prescribes for various offenses to be understood as substituting for 'retaliation' and serving to prevent those who would otherwise seek retaliation from doing so. Thus the law's title, 'On retaliation and the sum of the composition *for not retaliating*'; so also the provision for anyone who inflicted a major physical assault that did not result in permanent disability and should thus '*receive retaliation against himself* in proportion to what he inflicted' by being forced to pay a money settlement to his victim; and especially the prescription concerning those who committed minor physical assaults: 'But *we prohibit retaliation* for a slap, a punch, or a kick, or striking on the head, lest when the retaliation is exacted, even greater harm or danger accrues'[50].

Although this problem of controlling vengeance does not appear to have been of running social or legal concern in Roman law, it is a mainstay of Germanic legal anthroplogy. Germanic societies in Antiquity and the early Middle Ages recognized the importance of the 'feud' (Gothic *fiaþwa*)[51] between individuals and families – offenses were to

[49] LRV PS. 5.4.1: *quod ex affectu uniuscuiusque patientis et facientis aestimatur*; 5.4.7: *pro qualitate sui arbitrio iudicis aestimatur*; cf. LRB 5.1: *solutio vel vindicta facti ipsius pro qualitate persone in iudicis arbitrio estimatione consistit*. Levy, *Weströmisches* cit., 120 ss. shows how the restoration for damages shifts in late Roman western law, but it does not deny or disprove the ongoing use of *aestimatio* in the case of *iniuria.*

[50] LI 6.4.3: *De reddendo talione et conpositionis summam pro non reddendo talione... correptus a iudice in se recipiat talionem... Pro alapa vero, pugno vel calce aut percussionem in capite proibemus reddere talionem, ne, dum talio rependitur, aut lesio maior aut periculum ingeratur*.

[51] *fiaþwa* ('hatred', 'feud', from *fijan* 'to hate') occurs thrice in the Gothic Bible (Gal. 5.3; Eph. 2.15-16). In every instance, it is used to translate the Greek ἔχθρα.

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be avenged in kind by the victim or members of their kin-group[52]. But given the social harm created by cycles of feud and the threat they pose to centralizing authorities, the early Germanic codes exert tremendous efforts to prevent the continuation of feud through the supervision of a regulated system of compositions – monetary sums are paid in lieu of retaliation and, once settled, are expected to end the feud. This is a principle stated explicitly in many early Germanic codes, and even where it is not, all the codes make it clear that their compositions are to be used as instruments for converting feud into monetized forms of revenge[53]. Chindaswinth's use of *talio* at LI 6.4.3 is thus partaking of the language of Germanic social and legal practice[54].

The same can be said, by and large, of the penalties Chindaswinth prescribes. Here, as we might expect from a lawgiver intent on merging Gothic and Roman legal orders, Chindaswinth's LI 6.4.3 shows some traces of both traditions. It begins by listing a series of offenses against

[52] See the classic case of the feud between Chramnesind and Sichar at Greg. Tur., *Hist. Franc*. 7.47, 9.19 (MGH SRM 1.1.366-8, 432-4).

[53] LC 2.7 forbids the relatives of a murder victim from seeking revenge from anyone but the perpetrator. Lombardic law regularly makes it explicitly clear that its provisions were designed to prevent revenge (ER 13: *Et qui illius mortui iniuriam vindicandam denegaverit solacia*) and above all to put a stop to the *faida* (ER 75: *ideo maiorem conpositionem posuimus quam antiqui nostri ut faida, quod est inimicitia, post accepta suprascripta conpositione postponatur et amplius non requiratur, nec dolus teneatur, sed sit sibi causa finitia, amicitia manentem*; cf. 19, 45, 74, 138, 143, 162, 188, 190, 326, 387; *Leges Liutprandi*, 13, 119). Frankish formularies for recording the settlement of disputes over personal delicts also make it clear that the composition is meant to prevent further disputing and guarantee peace, e.g. *Formulae Andecavenses* 5, 6, 39, 42, 44; *Marculfi Formulae* 2.18; *Formulae Turonenses* 38 (MGH Formulae, 6-7, 17, 19-20, 88-89, 156). The use of compositions to end a feud can also be inferred from the payment of *fredus* ('peace money' – modern High German '*Friede*') to the king or his adjutant (usually his *grafio*) in order to end the *faido*, as at PLS 13.6; 35.9; 50.3; 53.2, 4, 6, 8; 88; 92; cf. 24.7. Famously, Charlemagne ordered exile for those who refused to accept a composition as settlement for the *faida, Capitulare Haristallense* c. 22 (MGH CRF I.51). More on the anthropology of these principles at H. Nijdam, *Wergild and Honour: Using the Case of Frisia to Build a Model*, in *Wergild, Compensation and Penance. The Monetary Logic of Early Medieval Conflict Resolution*, eds. L. Bothe-S. Esders-H. Nijdam, Leiden 2021, 161 ss. G. Halsall, *Reflections* cit., is not helpful.

[54] LI 6.1.8 (*antiqua*), forbidding family feuding, is aimed at the same problem. Note that Conc. Tol. XI can. 5 (Colección Canónica Hispana VI 109 s.) may imply that in-kind *talio* continued as late as 675.

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free persons which represented serious physical assaults but would not have caused serious bodily disability:

- *Decalvatio* (abusive hair cutting) of a freeborn person[55].
- Deformation of the face or body by marking with blows or dragging.
- Savaging of the limbs.
- Binding of a person, holding them in detention or with fetters, or selling them into detention.

These offenses Chindaswinth ordered to be punished by the arrest of the perpetrator and his compulsion by a judge to pay a monetary composition in an amount to be recommended by the victim[56]. The estimation of damages follows closely the Roman law of *iniuria.* As such, it provides certain proof that Chindaswinth's law drew from this strain of the legal tradition he had inherited through the LRV. Yet, as we shall see below, the catalog of offenses itself is drawn from Germanic law.

There follows a set of offenses which represented minor physical assaults and for which no recompense – no *talio* – was to be allowed to the victim. Instead, the perpetrator was to be punished by the judge through a fixed number of lashes, graded according to the offense. These included:

- For a slap (*alapa*), 10 lashes.
- For a punch (*pugnus*), 20 lashes.
- For a kick (*calx*), 20 lashes.
- For a blow to the head (*percussio in capite*) that did not result in bloodshed, 30 lashes.

This was obviously not in keeping with the praetorian delict of *iniuria*, which surely would have granted a civil judgment against a perpetrator for any of these offenses, but it may nonetheless have followed

[55] More on this punishment at P.E. Dutton, *Charlemagne's Mustache, and Other Cultural Clusters of a Dark Age,* New York 2004, 13 ss.

[56] LI 6.4.3: *correptus a iudice in se recipiat talionem, ita ut his, qui male pertulerit aut corporis contumeliam sustinuerit, si conponi sibi a presumtore voluerit, tantum conpositionis accipiat, quantum ipse taxaverit, qui lesionem noscitur pertulisse*.

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Roman principles. This is because, in the imperial period, certain types of delictal *iniuria* came also to be treated as criminal matters, to be sanctioned with physical punishments meted out by the state – at least for those from the lower orders[57]. Once again, then, we have pieces of the Roman tradition deployed to resolve these relatively minor forms of physical assault. Yet here too the law's catalog of blows by type is, as we shall see below, drawn directly from the Germanic tradition.

Finally, Chindaswinth lays out a series of major violent acts that did result in permanent bodily disability and prescribes fixed money penalties for any freeborn person who inflicted these or another freeborn person:

- For an eye, 100 solidi (72 if the victim was left only partially blind).
- For a nose, 100 solidi (or an amount assessed by the judge if the nose was only partially damaged).
- For lips or ears, the same as with the nose.
- Hobbling, 100 solidi.
- For a hand, whether cut off or permanently disabled, 100 solidi
- For a thumb, 50 solidi.
- For an index finger, 40 solidi.
- For a middle finger, 30 solidi.
- For a fourth finger, 20 solidi.
- For a fifth finger, 10 solidi.
- For a foot, the same as for hands (100 solidi).
- For individual teeth, 12 solidi.
- For rupturing the chest cavity (*cassus*) resulting in disability, 72 solidi.

This third scheme is elaborate and carefully graded by the nature of the offense. As such, it veers widely from the Roman law of *iniuria,* which staunchly refused to assign money values to the bodies of freepersons or to their body parts. This fact should be stressed, for misunderstandings of this reality have led more than one proponent of 'vulgar law' interpretations to assert the opposite[58]. The only hint of Roman

[57] See E. Levy, *Weströmische* cit., 325 ss., and cf. D. 47.10.7.6; I. 4.4.10.

[58] P.S. Barnwell, *Emperors* cit., 15 s., claims to have found a single example of a money value being assigned to free Roman bodies at D. 9.3.1 (Ulp. 23 *ad*

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iniuria in this third catalog is in the instance of noses, lips, or ears when an estimation by the judge was to be used to determine damages if these facial features were permanently injured but not destroyed.

The law then goes on to catalog the consequences for classes of people other than freeborn persons who committed related physical assaults or were the victims thereof:

- For a slave perpetrator, handing over to the victim for retaliation (i.e. *talio*).
- For a freeborn perpetrator of violence against a slave or agricultural laborer (*rusticanus*) – for decalvation, 10 solidi; for mutilation, 200 lashes and the consignment of another slave of equal value.
- For freedman perpetrators of assaults against freeborn victims, enduring the same violent act they had inflicted (i.e. *talio*) and 100 lashes.
- For freeborn perpetrators of assaults against freedman victims, one third the composition owed to a freeborn victim for the same act.
- For slave perpetrators against another person's enslaved victim, enduring the same violent act they had inflicted (i.e. *talio*) and 100 lashes.
- For slaves who bind a freeborn person, 200 lashes.
- For freeborn persons who detained another person's slave, 3 solidi per day and 3 per night for each day the slave was absent from work.
- For freeborn perpetrators who struck and wounded another person's slave, 1 solidus per blow (owed to the master), or, if the slave was debilitated or killed, an amount assessed by the judge (*iudicis aestimatio*).

edictum). A careful reading of this title, on the quasi-delict *de eiectis vel effusis,* proves precisely the opposite – the praetor is ordering the payment of a penalty and not compensation for the freeman's body, and Ulpian states this explicitly later in the law (D. 9.3.1.5: *quia in homine libero nulla corporis aestimatio fieri potest, sed quinquaginta aureorum condemnatio fit*; cf. D. 9.3.7). H. Siems, *Studien zur Lex Frisionum. Abhandlungen zur rechtswissenschaftlichen Grundlagenforschung*, 42, Ebelsbach 1980, 45 nt. 22, mentions D. 21.1.42 (Ulp. 2 *ad edictum aedilium curulium*), which orders a fixed money fine for keeping dangerous animals near roadways, but again this is a penalty for violating the law, not a valuation on a body – as Siems himself agrees.

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- For slave perpetrators of debilitating assaults against another master's slaves, 50 lashes and compensation to the victim's master with half the amount owed in the case of a similar assault on a freeborn person.

In this last part of the law, we see a mixture of principles: in some instances, in kind retaliation; in others, penalties based on percentages of the schedules laid out for offenses by freeborn perpetrators against freeborn victims; and in the instance of debilitated slaves, a mixed system of fixed compositions for blows that did not cause permanent damage, and estimated damages for permanent debilitation or killing. This last clearly follows the Roman *Lex Aquilia*'s provisions for *damnum iniuria datum* – further evidence that Chindaswinth was indeed incorporating aspects of Roman law into his new statute[59]. Yet much else about this last part of the law on compensation for non-freeborn victims also reflects the Germanic tradition of graded compositions and penalties for the three classes of persons commonly found in Germanic societies, as we shall see.

Chindaswinth also includes a related set of compositions which are found earlier in title LI 6.4 'Concerning wounding and disabling' (*De vulnere et debilitatione*). These come at LI 6.4.1 'Concerning blows of a freeborn person and slave', which catalogs violent blows directed at the head. It calls for the following payments:

- For a bruise (*pro libore*), 5 solidi.
- For a cut (*pro cute rupta*), 10 solidi.
- For a wound up to the bone (*pro plaga usque ad ossum*), 20 solidi.
- For a skull fracture (*pro osso fracto*), 100 solidi.
- For a freeborn perpetrator against an enslaved victim, half of the above listed composition.
- For an enslaved perpetrator against an enslaved victim, one third of the above listed composition and 50 lashes.
- For a slave perpetrator against a freeborn victim, the same composition as with a freeborn perpetrator against a slave, plus 70 lashes.
- Masters who do not wish to pay the composition for their slaves can turn them over to the victim.

[59] On the *Lex Aquilia* see G. VALDITARA, *Damnum iniuria datum*, Torino 2005[2].

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Once again, we see the Germanic pattern of offenses graded by the severity of the wound, but also by the status of the perpetrator and victim. We also see the mixing of a Roman principle in the option for 'noxal surrender' of the slave perpetrator into the ownership of the plaintiff[60]. Also worthy of note is the fact that LI 6.4.1 precedes LI 6.4.3 in its presentation in the code, even if I have reversed the order in this discussion because of my focus on LI 6.4.3. Thus, in the LI itself, and probably also in Chindaswinth's earlier version of this code and likely in the CE as well, the catalog of offenses follows a head-to-toe ordering.

6. *The Germanic Law Tradition of Composition for Assault*

While, as we have seen, LI 6.4.3 by all means incorporates Roman law principles in its approach to bodily assault, at its core it represents a continuation of Germanic legal traditions. This we can know by comparison with the earliest legal codes from the post-Roman kingdoms of western Europe. In what follows, I will examine Chindaswinth's seventh-century law in relation to eight other codes in this early Germanic tradition:

- *Pactus legis Salicae* (PLS), the code of the Salian Franks, probably first issued in its 65-title form in 507[61].
- *Liber Constitutionum* (LC), of the Burgundians, probably first issued in 517 CE with laws tracing as early as 501[62].
- *Domas Æðelbirht* (Aeth.), the first Anglo-Saxon code, first issued c. 620[63].

[60] On the noxal surrender of a slave for delictal liability, see W.W. Buckland, *The Roman Law of Slavery*, Cambridge 1908, 98 ss.

[61] On dating see K. Ubl, *Sinnstiftungen* cit., 53 ss., 92 ss., who presents the evidence for this traditional date and makes the case that the date may be even earlier. Extensive resources and bibliography on all these codes can be found at *http://www.leges.uni-koeln.de/en/lex/*.

[62] On dating see D. Liebs, *Römische* cit., 163 ss.; cf. I. Wood, *Le Bréviare*; K. Ubl, *Sinnstiftungen* cit., 44 ss.

[63] On dating see L. Oliver, *The Beginnings of English Law*, Toronto-Buffalo 2002, 41 ss.

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- *Lex Ribuaria* (LR), of the Ripuarian Franks, first issued c. 633/634[64].
- *Edictum Rothari* (ER), of the Lombards, issued in 643[65].
- *Pactus Legis Alamannorum* (PLA), the first Alamannic code, issued c. 630[66].
- *Lex Baiwariorum* (LB), of the early Bavarians, probably first issued c. 630 then reissued c. 745[67].
- *Lex Frisionum* (LF), of the Frisians, issued c. 785[68].

I have chosen these codes for comparison because the first six are certainly earlier than or roughly contemporary with Chindaswinth's; the seventh, the *Lex Baiwariorum*, survives in an eighth-century redaction, but this may trace to a seventh-century text and, regardless, is known to have borrowed heavily from the *Codex Euricianus*, whose fragments no longer preserve laws pertinent to the matters covered in LI 6.4.3[69]; and the eighth, the *Lex Frisionum,* while Carolingian, shows some of the clearest signs of recording customary law among the codes first copied in territories newly conquered by Charlemagne – not least because it continues to regulate pagan practice. Of the eight codes, only one is composed in a Germanic language, Aethelberht's Anglo-Saxon code. The other seven were written in late or 'vulgar' Latin, probably because literate scholars learned in the law were trained as writers

[64] On dating see F. Beyerle, *Das Gesetzbuch Ribuariens. Volksrechtliche Studien III*, in *ZRG GA*, 55, 1935, 1 ss.; cf. T. Faulkner, *Law and Authority in the Early Middle Ages. The Frankish Leges in the Carolingian Period*, Cambridge 2016, 13 ss.

[65] On dating see C. Azzara-S. Gasparri, *Le leggi dei Longobardi. Storia, memoria e diritto di un popolo germanico,* Roma 2005², 41.

[66] On dating see K. Lehmann-K.A. Eckhardt, *Leges Alamannorum*, MGH, *Leges Nationum Germanicarum*, V.1, Hannover 1966², 6.

[67] On dating see P. Landau, *Die Lex Baiuvariorum: Entstehungszeit, Entstehungsort und Charakter von Bayerns ältester Rechts- und Geschichtsquelle,* Münich 2004.

[68] On the Lex Frisionum and its peculiar history, see H. Siems, *Studien* cit., 114 ss.; cf. H. Nijdam, *Wergild* cit. See also the online resource, *http://www.keesn.nl/lex/lex_en_text.htm.*

[69] On the relationship between the LB and the CE, see I. Fastrich-Sutty, *Die Rezeption des westgotischen Rechts in der Lex Baiuvariorum. Eine Studie zur Bearbeitung von Rechtstexten im frühen Mittelalter*, Köln 2001.

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of Latin, but also because Latin was widely accepted as the language of written law[70]. Regardless, all the Latinate codes employ Germanic words, some quite frequently (PLS, LR, ER, PLA, LB, LF), others more sparingly (LC, LI)[71].

The overlap between these Germanic codes and LI 6.4.3 in the matter of bodily assaults is laid out schematically in Table 1. The table is presented using the catalog of offenses listed in the two proximate laws outlined above, LI 6.4.1 and 6.4.3. The offenses listed in Table 1 follow the order of those cataloged in these two, which thus forms an index for the whole table; blank cells indicate that the code in that column does not record a composition for a given offense listed in the LI; because the offenses for all codes are cataloged according to the LI ordering, offenses from codes other than LI do not necessarily appear in the order we find them in their respective texts; their corresponding citation, however, is listed in order to permit readers to understand their original ordering. This allows us to visualize the close relationship between the offenses listed across all nine codes on two levels: first, the many quite specific offenses identified in the codes recur with remarkable consistency across the full set[72]; second, the offenses show a tendency to appear in the same order across the set. This mirroring of ordering is indi-

[70] On Latin speaking jurists in late antique Gaul, see D. Liebs, *Römische* cit., 41 ss. With regard to the Visigothic CE, it is likely that Leo of Narbonne was involved and perhaps even the compositor, see J.R. Martindale, *Leo* 5, in *PLRE*, 2, 662 s.; P.C. Díaz-R.G. González Salinero, *El Codigo* cit., 96 ss.; D. Liebs, *Römische* cit., 53 ss. Note that Ennodius reports that Euric himself spoke Gothic and used an interpreter to communicate with his Latin-speaking embassy, Ennod., *Vit. Epiph*. (80).88-89 (MGH AA VII.95).

[71] On this often-neglected fact, see N. Francovich Onesti, *Filologia germanica. Lingue e culture dei Germani antichi*, Roma 1991; R. Schmidt-Wiegand, *Stammesrecht und Volkssprache. Ausgewählte Aufsätze zu den Leges barbarorum. Festgabe für Ruth Schmidt-Wiegand zum 1.1.1991*, Weinheim 1991; G. von Olberg, *Die Bezeichnungen für soziale Stände, Schichten und Gruppen in den Leges Barbarorum*, Berlin-New York 1991; W. Haubrichs, *Wergeld: The Germanic Terminology of Compositio and its Implementation in the Early Middle Ages*, in *Wergild, Compensation and Penance. The Monetary Logic of Early Medieval Conflict Resolution*, eds. L. Bothe-S. Esders-H. Nijdam, Leiden 2021, 92 ss.

[72] This point is emphasized at P. Wormald, *The Leges Barbarorum: Law and Ethnicity in the Post-Roman West*, in *Regna and Gentes. The Relationship between Late Antique and Early Medieval Peoples and Kingdoms in the Transformation of the Roman World*, eds. H.-W. Goetz-J. Jarnut-W. Pohl, Leiden 2003, 21 ss.; L. Oliver, *The Body Legal in Barbarian Law,* Buffalo 2011.

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cated by the darker highlighting of citations which appear in groupings that follow an order discernible in the LI.

LI		PLS	LC	ÆETH	LR	ER	PLA	LB	LF
LI 6.4.1	headwound - bruise 5 soldi			Aeth 58	1 schilling	ER 44	3 soldi		LF 22.3 1/2 soldius
LI 6.4.1	headwound - cut 10 soldi					ER 46	6 soldi	PLA 1.5 3 soldi	LF 22.5 2 soldi
LI 6.4.1	headwound - cut through bone 20 soldi	PLS 17.4	15 soldi	Aeth 36	10 shillings	ER 47	12 soldi	PLA 1.4 6 soldi	LB 4.5 6 soldi	LF 22.6 12 soldi
LI 6.4.1	headwound - hole in skull 100 soldi			Aeth 36.1	20 shillings LR 3	36 soldi		PLA 1.1 12 soldi	LB 4.6 12 soldi	LF 22.8 24 soldi
LI 6.4.3	decahalsion victim's assessment 104.1 PLS		45 soldi LC 92.1	30 soldi				PLA 18.7 6 soldi		LF 22.39 4 soldi
LI 6.4.3	disfigurement victim's assessment PLS 17.8,		LC 11.2	3 times lower body wounds Aeth 56	6 shillings	ER 54	16 soldi			
LI 6.4.3	striking body victim's assessment 10		9 soldi LC 5.1	6 soldi		ER 43-44	3 soldi		LB 4.1 1 soldius	LF 22.3 1/2 soldius
LI 6.4.3	birding assessment PLS 32.1, 3		30 soldi LC 32.1-2	12 soldi Aeth 24	20 shillings LR 45	36 soldi	ER 42	2/3 wergild		LB 4.7 12 soldi	LF 22.82 16 soldi
LI 6.4.3	eye gouging 100 soldi	PLS 29.1	100 soldi LC 11.1n	1/2 pretium Aeth 43	50 shillings LR 5.3	100 soldi	ER 48	1/2 wergild	PLA 5.2 40 soldi	LB 4.8 40 soldi	LF 22.46 1/2 wergild
LI 6.4.3	cut off nose 100 soldi	PLS 29.1	100 soldi	Aeth 45	9 shillings LR 5.2	100 soldi	ER 49	1/2 wergild			LF 22.10 24 soldii
LI 6.4.3	cut off ear 100 soldi	PLS 29.1	100 soldi	Aeth 40	12 shillings LR 5.1	100 soldi	ER 53	1/4 wergild	PLA 6.1 40 soldi	LB 4.14 20 soldi	LF 22.9 12 soldii
LI 6.4.3	cut off lip 100 soldi	PLS 29.1	100 soldi				ER 50 1/2 wergild		LB 4.15 6 soldi	
LI 6.4.3	hobbling 100 soldi	PLS 29.1	100 soldi LC 48.3	1/2 pretium			ER 112, 364 1/4 wergild	PLA 11.2 20 soldi	LB 4.10 20 soldi	LF 22.46 22 soldii
LI 6.4.3	cut off hand 100 soldi	PLS 29.1	100 soldi LC 11.1	1/2 pretium	LR 5.4	100 soldi	ER 62	1/2 wergild	PLA 9.5 40 soldi	LB 4.10 20 soldi	LF 22.27 45 soldii
LI 6.4.3	thumb 50 soldi	PLS 29.4	50 soldi	Aeth 54	20 shillings LR 5.5	50 soldi	ER 63	1/6 wergild	PLA 10.1 12 soldi	LB 4.11 12 soldi	LF 22.28 13 soldii
LI 6.4.3	2nd finger 40 soldi	PLS 29.6	35 soldi	Aeth 54.2	9 shillings LR 5.7	36 soldi	ER 64	16 soldi	PLA 10.3 10 soldi	LB 4.11 9 soldi	LF 22.29 7 soldii
LI 6.4.3	3rd finger 30 soldi	PLS 29.9	15 soldi	Aeth 54.3	4 shillings		ER 65	5 soldi	PLA 10.6 6 soldi	LB 4.11 5 soldi	LF 22.30 7 soldii
LI 6.4.3	4th finger 20 soldi	PLS 29.9	9 soldi	Aeth 54.4	6 shillings		ER 66	8 soldi	PLA 10.8 5 soldi	LB 4.11 5 soldi	LF 22.31 8 soldii
LI 6.4.3	5th finger 10 soldi	PLS 29.9	15 soldi	Aeth 54.5	11 shillings		ER 67	16 soldi	PLA 10.10 10 soldi	LB 4.11 9 soldi	LF 22.32 6 soldii
LI 6.4.3	cut off foot 100 soldi	PLS 29.11	62.5 soldi	Aeth 69	50 shillings LR 5.8	100 soldi	ER 68-73	1/2 wergild	PLA 11.1 40 soldi		LF 22.62 45 soldii
LI 6.4.3	tooth 12 soldi	PLS 29.17	LC 26.1-3 15 soldi	Aeth 51	6 shillings		ER 51-52	16 soldi		LB 4.16 12 soldi	LF 22.21 4 soldii
LI 6.4.3	chest / gut 72 soldi	PLS 17.6	30 soldi	Aeth 62	12 shillings LR 4	36 soldi	ER 59	20 soldi	PLA 8.1 12 soldi		LF 22.47 12 soldii

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To be sure, each code offers its own level of specificity and complication, but the fact that all share so many similarities in both the particularities of the offenses they list and the order in which they present them points to a shared tradition. Moreover, these similarities cannot be attributed to textual contamination between the sources, since the LC, PLS, and ER are thought to have developed independently from one another. This can be said *a fortiori* of Aeth., which certainly remained beyond the ken of any of the other codes here discussed. And even if, as noted, the LB used the Visigothic CE, as well as the PLS, PLA, and perhaps the ER; and the PLA used the PLS; and the LR used both the PLS and the LC, these later codes have their own distinct arrangements and penalties and are by no means mere copies of the codes that preceded them. In light of the normative similarities we find within these varied texts, we must conclude that the laws reflect not a shared textual tradition – one code copying the next – but a shared legal anthropology.

In her important book *The Beginnings of English Law*, Lisi Oliver noted the same patterning evident in Table 1 and particularly the fact that the catalogs of personal injuries invariably follow a head-to-toe ordering – just as we have already seen in the LI. She argued that these commonalities trace not to textual interaction between these codes but to an oral tradition of 'lawspeaking' that stretched across the Germanic peoples of northern Europe[73]. Traces of this same oral tradition can also be found in a passage of the LC, which is the code with the least developed schedule of compositions:

> LC 11.2: If anyone inflicts a wound on another's face, we order him to pay three times the price in fee simple established for wounds which are covered up by clothing[74].

[73] L. Oliver, *The Beginnings* cit., 34 ss., 99 ss.; cf. L. Oliver, *The Body* cit., 71 ss. On 'lawspeaking', see esp. PLS 57: LVII *De rachineburgiis*; LR 56(55): *De rachinburgiis legem dicentibus*.

[74] LC 11.2: *Si quis cuicumque in faciem vulnus inflixerit, in triplum vulneris pretium iubemus exsolvi, quantum in simplum ea vulnera aestimantur, quae vestibus conteguntur.* Note that LC 48.1 mentions schedules of punishments in earlier laws (*superioribus... legibus*) which are no longer extant, but this appears to refer only 'to wounds inflicted by iron' (*de inflictis ferro vuleribus*).

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The difficulty with this passage is that the LC offers no further information or schedules for wounds on 'parts of the body covered up by clothing'. The lawgiver simply assumes his audience (judges and claimants) will understand, and this assumption means that a body of oral customary law must subtend this code. This would already have been known to judges when faced with reckoning personal injuries to the body and the face. To reckon compensation for a face-wound, a judge would have to have known the price for body wounds and then multiplied that amount by three, depending on the nature of the face wound – be it a bruise, bloody cut, puncture, or cut to the bone, all gradations well attested across the codes.

Also striking are the similarities in the values associated with each offense across the nine codes. Every composition was determined on the basis of the value of the damaged body part in relation to the full value of an adult free person's body. This calculus is based on the distinctly Germanic legal principle of Wergild, a notion that has also been questioned by those who reject the category of Germanic law. Some of these critics would have us focus not on the question of a shared tradition but on Wergild's peculiar functions in the variety of early medieval geo-political situations where it was applied[75]. Others argue more boldly that Wergild is not Germanic at all but rather a 'vulgar' law principle, or 'military', or even 'Celtic'. With the former position (focusing on particularism) I have no argument except to say that it neither proves nor disproves whether the Wergild principle was rooted in a shared legal anthropology connected with Germanic cultural identity. The latter position (vulgar, military, Celtic law), has been put forward exuberantly in a monograph of C. Camby and several articles by S. Kerneis, but it is deeply flawed[76]. There is simply no

[75] K. Ubl, *Sinnstiftungen* cit.; L. Bothe, *Triplice Weregeldum: Social and Functional Status in the Lex Ribuaria*, in *Wergild, Compensation and Penance. The Monetary Logic of Early Medieval Conflict Resolution*, eds. L. Bothe-S. Esders-H. Nijdam, Leiden 2021, 183 ss.; S. Esders, *Wergild* cit.; H. Nijdam, *Wergild* cit.; cf. H. Siems, *Obervations Concerning the 'Wergild System': Explanatory Approaches, Effectiveness and Structural Deficits*, in *Wergild, Compensation and Penance. The Monetary Logic of Early Medieval Conflict Resolution*, eds. L. Bothe-S. Esders-H. Nijdam, Leiden 2021, 38 ss.

[76] S. Kerneis, *L'ancienne* cit., makes the Celtic case, which was demolished at M. Coumert, *Existe-t-il une «Ancienne Loi des Bretons d'Armorique»? Identités ethniques et tradition manuscrite au haut Moyen Âge,* in *La Bretagne Lin-*

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denying that Germanic societies, in stark contrast with Roman legal culture[77], assigned a monetary value to the body of each individual which was graded according to their ethnicity (Burgundian, Frank, Roman, etc), ranking (elite, commoner, etc), status (free, slave, etc), gender (male, female), and age (child, adult, elder).

Although some codes show less variation in the relative values of each sub-group, we can establish with some certainty the Wergild value of a freeborn adult male in each of the nine codes treated here[78]:

- Visigothic freeman = 300 solidi (LI 7.3.3; 8.4.16 [Recc.]; cf. 6.1.5; 6.5.1, 14)[79].
- Salian Frankish freeman = 200 solidi (PLS 41.1; cf. PLS A1 15.1).
- Burgundian freeman = 300 solidi (LC 2.2).
- Kentish Anglo-Saxon freeman = 100 shillings (Aeth. 21).
- Ripuarian Frankish freeman = 200 solidi (LR 7; cf. 40.1).
- Lombard freeman = 300 solidi (L. Liut. 62).
- Alaman freeman = 160 solidi (PLA 14.6).

guistique, 18, 2012, 227 ss. S. KERNEIS, *Les jugements* cit., and EAD., *Rome* cit., pivot to the military argument, but it is equally weak and merely awaits formal refutation. C. CAMBY, *Wergeld ou Ueueregildus. Le rachat pécuniaire de l'offense entre continuités romaines et innovation germanique*, Genève 2013, turns above all on the faulty argument that 'Wergild' is not a Germanic but a Latin word. To be sure, **wira-* (man, human) is semantically related to Latin *vir*, but 'gild' cleary derives from from Proto-Germanic **geldan* ('to pay', 'be worth something') and is not Latin. Moreover, 'Wergild' is only one of the words used in our sources to describe a phenomenon that goes by many names in our sources, including the Germanic *wera, launegild, widergild, leodis, leodardi, fredus, bannus* and the Latin *pretium*. Against CAMBY, see W. HAUBRICHS, *Wergeld* cit.; H. SIEMS, *Obervations* cit.; cf. R.W. MATHISEN, *Monetary Fines, Penalties and Compensations in Late Antiquity*, in *Wergild, Compensation and Penance. The Monetary Logic of Early Medieval Conflict Resolution*, eds. L. BOTHE-S. ESDERS-H. NIJDAM, Leiden 2021, 65 ss.

[77] The post-Roman codes are acutely aware that Roman law did not assign monetary values to free bodies, see LRB 2.1 (Cod. C5 = MGH LNG 2.1.125): *Quia de pretio occisorum nihil evidenter lex romana constituit*.

[78] See more at H. SIEMS, *Studien* cit., 274 ss. We use the value for the Frisian noble rather than freeman because this is clearly the standard for other valuations.

[79] See also LI 6.3.2 on fetus killing = 150 solidi; 6.4.10 and 6.5.12 on slave killing. Note that Erwig increased the full Wergild to 500 solidi, LI 8.4.16 [Erv.]. Egica then appears to have rejected this increase at LI 6.1.3.

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- Bavarian freemen = 80 solidi (LB 4.29)[80].
- Frisian noble = 80 solidi (LF 1.3, 6, 9).

It has often been noted that the values assigned to various bodly offenses in the post-Roman codes vary widely in terms of nominal amounts – a fact clear at Table 1. These variations have also been used to support a case for the particularity of each legal tradition – or the existence of a variety of traditions[81]. While it is certain that the considerable divergence in nominal amounts assigned to the various offenses confirms that each code derived from a unique set of geo-political circumstances, what has rarely been noted is the degree to which the amounts set out in the codes line up with striking consistency when one calculates not nominal money values but rather the percentage of a full Wergild each fine represents. These values are displayed in Table 2 and shown graphically at Chart 1 where the statistical correlation is more than striking[82]. Just as striking is the fact that the alignment in values is not uniform but rather displays sufficient variety to confirm a degree of independence for each tradition. But the evident autonomy of the various lawmakers only makes the clear and consistent pattern that much more probative. This was a system of patterned solutions wherein the variation in nominal coin values has obscured an underlying uniformity only apparent if one reckons instead based on percentage of full Wergild.

[80] We follow A. Luschin von Ebengreuth, *Österreichische reichsgeschichte. Geschichte der staatsbildung, der rechtsquellen und des öffentlichen rechts*, Austria 1895, 64, in assuming the Wergild of a freeman was '*LXXX sold*' and that the '*bis*' of MSS was added in the later redaction.

[81] P. Wormald, *The Leges* cit., 47 ss., presents an appendix of numbers for absolute money values which he claims shows 'that the barbarian *leges* are all trying to do the same sort of thing about personal injury, though in almost invariably distinctive ways'. See also the extensive investigations of L. Oliver, *The Body* cit., who is convinced that the similarities across codes point to a set of shared Germanic traditions. Sadly, Oliver's entire argument is vitiated by the fact that the base Wergild amounts used as denominators throughout are frequently incorrect – L. Oliver, *The Body* cit., 138 tab. 5.1 and 248 ss., lists the full Visigothic Wergild at 200 rather than 300 solidi, Burgundian at 100 rather than 300, Frisian at 100 rather than 53, and Bavarian at 200 rather than 80. See more on these compositions at P. Tyszka, *The Human Body in Barbarian Laws, c. 500-c. 800, Corpus hominis as a Cultural Category*, Frankfurt 2014, 115 ss.

[82] Compare L. Oliver, *The Body* cit., 134 ss. tables 4.1-2; 138 table 5.1; 227 ss.

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	LI	PLS	LC	Aeth	LR	ER	PLA	LB	LF
Headwound - bruise	1	na	na	1	na	1	na	na	1
Headwound - cut	3	na	na	na	na	2	2	na	2
Headwound - cut to skull	7	7	na	10	na	4	4	8	15
Headwound - hole in skull	33	na	na	20	18	7	8	16	30
Decalvation	aestimatio	7	10	na	na	na	4	na	5
Disfigurement	aestimatio	na	na	6	na	5	na	na	na
Striking	aestimatio	4	2	na	na	1	na	2	1
Binding	aestimatio	15	4	20	18	67	na	14	20
Eye	33	50	50	50	50	50	25	50	50
Nose	33	50	na	9	50	50	na	na	30
Ear	33	50	na	12	50	25	25	24	15
Lip	33	na	na	12	na	50	na	8	na
Hobbling	33	50	50	50	na	25	12	24	27
Hand	33	50	50	na	50	50	25	24	56
Thumb	17	25	na	20	25	17	7	14	16
Finger 2	13	17	na	9	18	5	6	12	9
Finger 3	10	7	na	4	na	2	4	6	9
Finger 4	7	4	na	6	na	3	3	6	10
Finger 5	3	7	na	11	na	5	6	12	7
Foot	33	31	na	50	na	50	25	na	56
Tooth	4	7	5	6	na	5	na	14	5
Chest / gut	24	15	na	12	18	7	7	na	15

Table 2: Percentage of Wergild Values by Code (X-axis) and Offense (Y-axis)

Nor should it surprise us that the Germanic tradition established a consistent schedule of relative values for the various offenses it sanctioned. Indeed, the very fact that such offenses were specific and delimited made them categorizable into manageable blocks. That the lawgivers saw them thus is clearest in the catalog of 'Seven Cases' extant in a single manuscript (Paris Lat. 18237) of the Lex Salica. This list grouped offenses not by type but by the value of settlement prescribed: 35, 45, 62, 100, 200, and 500 solidi[83]. A similar sense that offenses could be grouped by the money amount of their composition can be found in the Visigothic context in a few laws that mention types of cases involving a certain 'quantity' of solidi[84]. In both instances, these groupings

[83] PLS *Septem causas* (MGH LNG 4.1.269 ss.).

[84] LI 6.1.2: *si trecentorum summa est solidorum vel amplius*; LI 6.1.3 [Nov.]:

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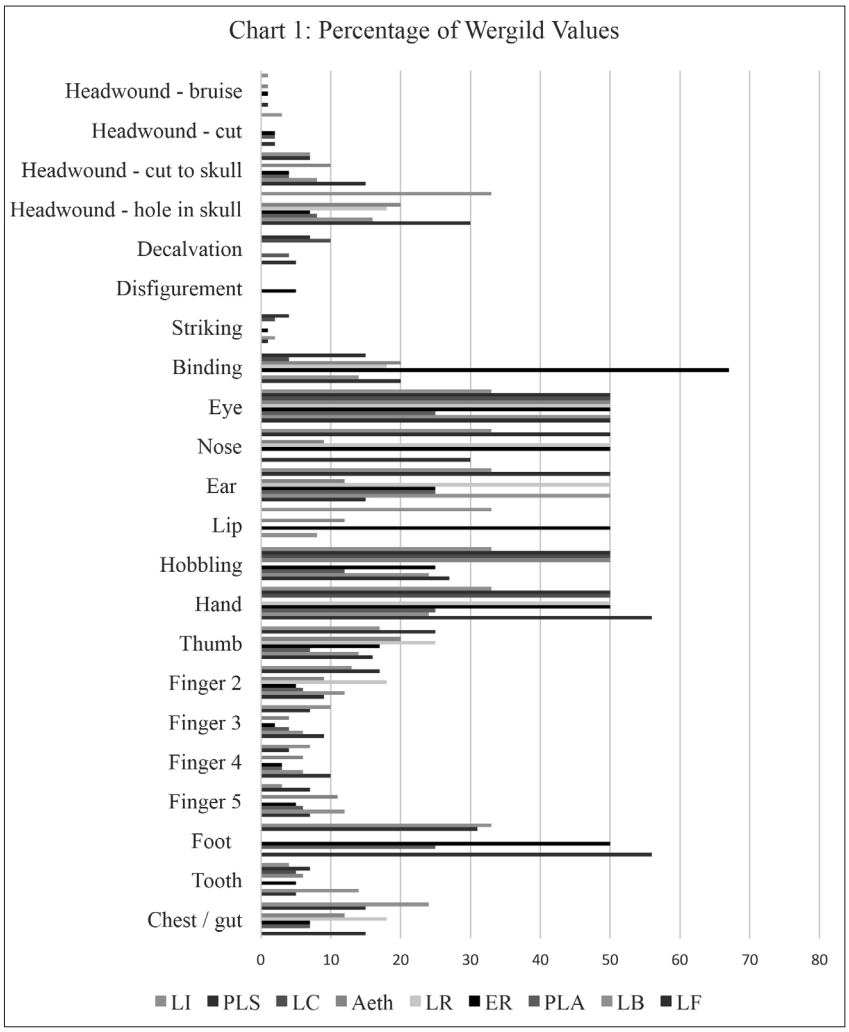

appear to have been later retrojections used to describe a system that had long been organized on its own logic – the written lawgivers simply

credentes in trecentis solidis questionem agitari; 6.1.5 [Rec.]: *si libertum questioni putaverit addicendum, sive pro capitali crimine seu pro centum quinquaginta solidorum quantitate...*; 6.1.5 [Erv.]: *nisi ducentorum quinquaginta solidorum quantitate causa ipsa valuerit... tunc in eo permittetur questio agitari, si causa ipsa, unde accusatur, C solidis valere constiterit*.

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rationalized that logic into the quantitative patterns they were able to reconstruct from it. And related mathematical operations were clearly at play in other aspects of the system as well, as for example when we note that the total value of all five fingers adds up to half of a full Wergild – which is also the value of a full hand – in the instance of three of these codes, and this despite the fact that none has the same total Wergild value for an individual freeman and none reckons the proportional value of fingers in the same way[85]. Above all, even a cursory look at the set of codes reveals a staggering number of compositions and penalties figured as fractions or multiples of a related composition or penalty – *duplum triplum, quadruplum,* etc[86]. Given all this calculating, we can well understand why the Franks called their judges 'law reckoners' (*rachinburgi*). These compositions formed sophisticated mathematical structures, not haphazard accumulations of random numbers.

The same impression of a shared system is to be gained from the fact that all the codes under consideration lay out first the level of composition to be paid for injuries to freeborn persons (which are taken to be the standard), then offer separate lists for restitution to freedmen and slaves. We have already seen this to be the case at LI 6.4.3, which first listed values for compositions and punishments for disputes between two freeborn persons (*ingenui*), then went on to lay out compensations and punishments for various combinations of freeborn, freed (*liberti*), and enslaved (*servi*) perpetrators and victims. In like fashion, the last five laws in the title 6.4 *De vulnere et debilitatione* (6.4.6-11) lay out fines and punishment for various combinations of freeborn, freed, and enslaved perpetrators and victims. This system was, as noted above, de-

[85] LI 6.4.3: 50+40+30+20+10 = 150 solidi; LB 4.11: 12+9+5+5+9 = 40 solidi; Aeth. 54: 20+9+4+6+11 = 50 shillings. See also S. Esders, «*Eliten*» *und* «*Strafrecht*» *im frühen Mittelalter. Überlegungen zu den Bussen- und Wergeldkatalogen der Leges barbarorum*, in *Théorie et pratiques des élites au haut Moyen Âge. Conception, perception et réalisation sociale*, ed. F. Bougard-H.-W. Goetz-R. Le Jan, Turnhout 2011, 261 ss., on the social logic of the system.

[86] A CLCT search of all the codes used in this study except LI and Aeth. turns up, collectively: 168 examples of *medieta**, 4 of *medi** + *pret**, 40 examples of *dupl**, 38 of *tripl**, 60 of *terti** + *par**, 5 of *quadrupl**, 16 of *quart** + *par**, 2 of *quint** + *par**, 4 of *sext** + *par**. More on the system across all Germanic codes, including Scandanvian, at W.E. Wilda, *Das Strafrecht der Germanen*, Halle 1842, 340 ss. Roman law also used multipliers for reckoning delictal penalties, but this was generally confined to the *duplum* and *quadruplum*, cf. E. Levy, *Weströmisches* cit., 352 s. index s.v.; R.W. Mathisen, *Monetary Fines* cit.

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finitively not calqued on Roman law, which drew no fixed distinction between freeborn and freed citizens when reckoning damages, even if it did rank punishments based on the distinction between *humiliores* and *honestiores,* a division the Visigoths retained[87]. With regard to offenses against slaves, as we saw above, Chindaswinth hybridized Germanic and Roman principles, offering fixed money penalties for lesser offenses (not the *aestimatio* for *iniuria* – which would have been paid to the master), but then *aestimatio* for disabling injuries or death (thus following the Roman *Lex Aquilia*)[88].

All seven Germanic codes used for comparison here also begin by laying out fixed money penalties for free male members of the dominant ethnic community (Frank, Burgundian, etc – some recognizing additional values for 'nobles'), then turn to separate schedules for freedmen or semi-servile individuals (*liti, aldii,* etc), and then slaves:

- The *Pactus Legis Salicae* first considers injuries to freepersons (*ingenui*) (PLS 29; 77.1), then semi-free persons (*leti* – a Germanic substantive deriving from the verb 'to let, to free', Old High German *lâzan,* cf. Gothic *lausjan*)[89] (PLS 35.5, 8; 77.2), then slaves (*servi*) (PLS 35.1-4, 5-7).
- The *Liber Constitutionum* groups offenses under categorical titles, but within each title lists compositions for freepersons first (*ingenui homines*), then for freedmen (*liberti*), and then for the enslaved (*servi*) (LC 5, 33); or, alternatively, sets compositions as a share of the Wergild value of an individual, which had the effect of grading compositions to status (LC 11).
- The *Domas Æðelbirht* have numerous provisions for injuries to the freeman (*friman*) (Aeth. 3-72), then a much smaller number for those to the slave (*esne*) (Aeth. 87-88).

[87] P. Heather, *Roman law* cit., 20 ss. rightly emphasizes that the division of society into three groups (rathern than two) was not typical of Roman law but was characteristic of Germanic. See more on social divisions in Visigothic society at N. Lenski, *Slavery* cit., 251 ss.

[88] It is worth noting that, because the *Lex Aquilia* assumed enslaved bodies could be assigned monetary values, there was no need to resort to fixed money penalties with this category of victim – Roman law could be followed. The Germanic valuations were instead imposed where Roman law refused to assign money values, i.e. the bodies of free persons.

[89] See R. Schmidt-Wiegand, *Stammesrecht* cit., 244 ss.; G. von Olberg, *Die Bezeichnungen* cit., 161 ss.

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- The *Lex Ribuaria* first considers injuries to freepersons (*ingenui Ribuarii*) (LR 5-7), then slaves (*servi*) (LR 20), then combinations of free and slave victims and perpetrators (LR 21-29).
- The *Edictum Rothari* first considers injuries to freepersons (*homines liberi*) (ER 41-75), then half-free persons (*aldii*)[90] (ER 77-102), then slaves (*servi rusticani*) (ER 103-126).
- The *Pactus Legis Alamannorum*, like the LC, groups offenses under categorical titles, but within each title lists compositions for freepersons (*ingenui*), then semi-free persons (*leti*), then slaves (*servi*) (PLA 2.7.1-11; 11.1-8; 17.1-7; 18.1-6).
- The *Lex Baiwariorum* first considers injuries to free persons (*liberi*) (LB 4), then to freedpersons (*frilaz* – a Germanic word, also attested in fourth-century Gothic *fralets*[91]) (LB 5), then slaves (*servi*) (LB 6).
- The *Lex Frisionum* has numerous provisions for injuries to free persons (*liberi*) in its title on wounds (LF 22 - *De dolg*), then provides a formula for grading fines for the noble (*nobilis*), the freeman (*liber*), and half-free (*litus*) (LF 90; cf. 11.16; 15.1-4).

Here again we see how LI 6.4.3 lines up with the formal system in the collectivity of Germanic codes[92]. The Visigothic law of personal injury is, in other words, fundamentally rooted in patterns of compensation for personal injuries drawn from Germanic law. As indicated above, Visigothic law also partakes of Roman principles in many ways, just as we would expect given Chindaswinth's territorializing project. But it simply cannot be denied that there is robust evidence for a distinctive set of Germanic legal principles attested in the realm of bodily injury and that the LI is part of this tradition.

The argument can also be demonstrated through linguistic analysis. In every instance where a code is recorded in Latin, it preserves traditions regarding offenses that were originally regulated in spoken Germanic languages. When these principles were recorded in Latin, the

[90] The word is Germanic, but its etymology is disputed, see G. VON OLBERG, *Die Bezeichnungen* cit., 87 ss.

[91] Found at I Cor. 7.22; cf. G. VON OLBERG, *Die Bezeichnungen* cit., 180 ss. Cf. Modern High German 'Freigelassener'.

[92] Also compare LI 6.4.8-9, compositions for wounds that heal, with Aeth. 63, and see L. OLIVER, *The Beginnings* cit., 104 s.

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lawgivers of some codes used either Latin or Greek words only, but in other codes the lawgiver mingled the two linguistic traditions in various combinations. Because the offense is clearly the same across the complex of codes even if the name used pulls from the two language families in varying proportions, we must conclude that we are looking at a single tradition but that it is being expressed across a variety of normative frameworks using a variety of interrelated linguistic expressions. Take for example the offense characterized as 'chest / gut' in Table 1. This is a category of wounds that involved penetrating the trunk of the body, creating a chest or gut wound. The offense is associated in several codes with derivatives of the Proto-Germanic word **hrefin,* meaning 'belly' (Old High German *href*, cf. English 'midriff'). The range of wounds covered by this category of composition in the codes included stabbings anywhere on the trunk – which were frequently deadly in the early Middle Ages[93]:

- LI 6.4.3: *cassos fregerit* (Latin) – 'he should rupture his chest cavity'.
- LR 4: *alterum transpunxerit aut infra costas plagaverit* (Latin) – 'he should puncture another person or strike him between the ribs'.
- ER 59: *alium intra capsum plagaverit* (Latin) – 'he should strike him in the ribcage'.
- PLS 17.6: *intra costas fuerit aut in ventrem ita vulnus intraverit, ut usque ad intrania perveniat, mallobergo gisifrit hoc est* (Latin / Germanic – Frankish) – 'the wound was between the ribs or entered the belly enough to penetrate the guts, which is '*gisifrit* ('rib-rupture') in the Malberg gloss'.
- Aeth. 62: *hrifwund weorðeÞ* (Germanic – Old English) – 'a midriff-wound occurs'.
- PLA 8.1: *in revo placatus* (Latin / Germanic – Old Suebic), 'wounded in the midriff'.
- LB 1.6; 10.1, 4; 4.6; 5.5; 6.5: *hrevavvunt*[94] (Germanic – Old Bavarian) – 'a midriff-wound'.

[93] See more at L. Oliver, *The Beginnings* cit., 102 s.

[94] The LB always uses *hrevavvunt* in a transferred sense, whether to characterize a headwound up to the brain (4.6, 5.5, 6.5) or another 'almost-mortal-attack', as when someone escapes from a burning building and the arsonist owes them their '*hrevavvunt*' – their 'midriff-wound-value' (1.6, 10.1).

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It is worthy of note that, on the one hand, the Latin expressions tend to rely more heavily on verbs of action (*frango, transpungo, plago, intro, pervenio*) combined with nominal direct objects (*cassos, costas, capsum*) and/or prepositional phrases (*in ventrem, ad intrenia*), and on the other, the Germanic forms give more force to combining noun forms (*hrifwund* – 'midriff-wound', *gisifrit* – 'rib-rupture') which are joined to a semantically weak verb (*weorðeÞ* – 'occurred'). The latter is very much in keeping with the tendency of Germanic languages to build verbal expressions around *Funktionsverbgefüge* – an English example being 'do a faceplant'. Thus, the compositions for headwounds discussed in LI 6.4.1 with a strong Latin predicate (*hictu in capite percusserit*) would likely have been encapsulated in their original Gothic form with a combining noun form predicated by a semantically weak verb. This is what we find in the Gothic Bible's translation of 'the parable of the wicked tenants', where the tenants assault the landowner's servant and inflict a headwound on him: *haubiÞwunda brahtedun* (literally 'they brought a head-wound')[95]. By facilitating the creation of easily identifiable nominal categories, this pattern of using combining noun forms would have aided with the oral transmission of Germanic laws since memorizing lists of compound nouns is simpler than memorizing distinct subject-verb clauses.

One final piece of evidence that Chindaswinth was merging Roman law principles into a distinctively Germanic normative complex in his new territorial code comes at LI 6.5.13, which regulates the mutilation by masters of their slaves. We have already seen above that, when Chindaswinth merged the codes, he incorporated two laws of Constantine related to slavery which he had inherited through the LRV: LRV CTh. 4.10.1, on re-enslaving freedmen, enters the LI at 5.7.10, which permits former masters to re-enslave their freedpersons for *iniuriae* they have committed; and LRV CTh. 9.9.1, on killing slaves, enters the LI at 6.5.12, allowing slave killing only after a judicial inquiry, or when a master is avenging an *iniuria* by a slave[96]. But at LI 6.5.13 (immediately following the law on slave killing), Chindaswinth introduced yet another principle that we might also be tempted to associate

[95] Mark 12.4: *ja aftra insandida du im anÞarana skalk; jah Þana stainam wairpandans gaaiwiskodedun jah haubiÞwundan brahtedun, jah insandidedun ganaititana.* Text from W. STREITGERG, ed. *Die Gotische Bibel,* Heidelberg 1971, 209.

[96] See above ntt. 38-39.

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with late Roman slave law. Chindaswinth's enactment forbids the mutilation of slave bodies without prior approval from a judicial inquiry. He justifies his prohibition as necessary, 'so that they [masters] might not defile the formation of God's image while exercising their cruelties against their subordinates'[97] – a reference to Gen. 1.27. In 315, Constantine had also referenced Gen. 1.27 in a law forbidding penal slaves to be tattooed on the face, 'which is formed in the image of heavenly beauty'[98]. But Constantine's law was not absorbed into the LRV, so it is unlikely to have served as Chindaswinth's inspiration. Indeed, Chindaswinth's law deals not at all with facial tattooing, but rather with the same bodily assaults he catalogs at LI 6.4.3:

> Therefore, we decree that any male or female lord, who without an investigation by a judge and by a manifestly wicked deed, cuts off the hand, nose, lip, tongue, ear, or foot of a male or female slave, or plucks out an eye or mutilates or orders to be mutilated or ripped off any part of the body, he should be bound to an exile of three years under penitence in the presence of the bishop, in whose territory either he [the lord] resides or the crime was committed[99].

Moved by pious sentiments, Chindaswinth has brought the enslaved person into the catalog of Wergild compositions. In keeping with his judicial practice, he does so in part relying on the very Roman punishment of exile, yet he surely chooses this punishment in order to avoid forcing masters to pay out compositions to their own slaves for the kinds of violent mutilations listed in the Germanic systems, and that Chindaswinth himself lists and regulates at LI 6.4.3.

[97] LI 6.5.13: *Nec etiam imaginis Dei plasmationem adulterent, dum in subditis crudelitates suas exercent, debilitationem corporum prohibendum oportuit*.

[98] CTh. 9.40.2 = C. 9.47.17, especially '*...facies, quae ad similitudinem pulchritudinis caelestis est figurata...*'. More on this law at N. Lenski, *Slavery* cit., 271 s.

[99] LI 6.5.13: *Ideo decernimus, ut quicumque dominus dominave absque iudicis examinatione et manifesto scelere servo suo vel ancille manum, nasum, labium, linguam, aurem etiam vel pedem absciderit aut oculum evulserit seu quacumque parte corporis detruncaverit aut detruncari vel extirpari preceperit, trium annorum exilio sub penitentia religetur aput episcopum in cuius territorio aut ipse manere aut factum scelus esse videtur*.

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This leaves us to wonder whether such gruesome punishments were in fact a feature of slaving practices in Visigothic society. Sadly, there is evidence that they were. Indeed, several sources allow us to see that there was actually resistance to Chindaswinth's effort to curb these horrific penalties. Extant canons from the subsequent Councils of Mérida (666) and Toledo XI (675) grapple with the problem of clerical slave-owners who continued to practice 'amputations' (*truncationes*) on their slaves despite the royal order[100]. And it is surely this same practice that inspired king Erwig to omit Chindaswinth's law on slave mutilation from his recension of the code (681). We only know of its existence because Egica reintroduced it in a *Novella* that makes mention of Erwig's exclusion of the law[101]. With his law on slave mutilation, Chindswinth was thus working to shift societal norms as part of his larger project of merging Germanic and Roman principles. The resistance to his efforts attested in the sources confirms that the merger was not simple or easy – Chindaswinth was not simply changing a law, he was trying to change long-established social practices that had accepted amputations (*truncationes*) as a normal form of wreaking vengeance, on enslaved and - to judge by LI 6.4.3 - even free bodies.

7. *The Idea of* Iniuria *in the Germanic Codes*

A similar alignment across the collectivity of the Germanic codes is observable if we return to the word *iniuria* and the broader set of ideas around it. The term is used in three of the codes under consideration – the LC, ER, and LB. It occurs a total of 23 times, all of which are cataloged in Appendix 2: LC = 6; ER + *Lex Liutprandi* = 16; LB = 1. In every instance but 1, the word clearly means 'a violent act' or 'violent force.' The exception is ER 381:

> If someone in anger (*per furorem*) calls another man a coward (*arga*) and cannot deny it, and he says that he said it in anger (*per furorem*), then he may take an oath that he does not know him to be coward. Afterwards he shall pay twelve solidi as a

[100] Conc. Emerit., can. 15 (Vives, *Concilios* cit., 335 s.); Conc. Toledo. XI, can. 6 (Colección Canónica Hispana VI.110). More on amputations at C. Petit, *Crimen* cit., 50 s.

[101] LI 6.5.13* [Nov.].

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> composition for this hurtful word (*iniurioso verbo*). And if he persists, may he win out in battle (*pugna*), if he can, or he must certainly pay as above[102].

Here we seem to be verging into the treatment of a verbal insult as a form of *iniuria*. But we must keep in mind that the Latin *furor* is remarkably close in sense to the original Germanic meaning of feud / *faida*. This fact, combined with the option to resolve the dispute through a duel (*pugna*) indicate that the level of violence implied would have been very high. This was not simply an insult – this was a 'fighting word'. Such an affront would, of course, also have constituted *iniuria* in Roman law, but a much closer parallel to this Lombardic scenario can be found in other Germanic codes. The *Pactus Legis Salicae* also catalogs a series of quite specific insulting words which it sanctions with fixed money fines: PLS 30.1 (*cinitus* – bugger); 30.1 (*concagatus* – shithead); 30.3 (*meretrix* – whore); 30.4 (*vulpis* – fox); 30.5 (*lepus* – hare); 30.6 (for saying a person abandoned his shield); 30.7 (*delator aut falsator* – traitor or forger); PLS 48.[2] and PLS *Cap*. 5.131 (calling someone a perjurer); 64.1 (*herburgium* – sorcerer); 64.2 (*stria aut meretrix* – witch or whore)[103]. PLS 30.6 is particularly close to ER 381 in sense – calling someone a coward in the context of these highly militarized societies was an extremely grave insult and likely to provoke a feud. In like fashion, the *Pactus Legis Alamannorum* forbids women to call other women a 'witch' or 'poisoner' (*stria aut erbaria*) and to insult men with the name 'servant' (*subdulo*), all offenses which were to be recompensed with a 12-solidus fine[104]. But apart from ER 381, none of these offenses is associated with the word *iniuria* or its cognates. And nothing in the way they are handled coincides particularly closely with Roman law, which creates categories of action rather than identifying specific banned words, and which leaves the level of sanctions to judicial discretion (*aestimatio*). There is no question but what both Roman and Germanic law regarded harmful speech as punishable, but where

[102] ER 381: *Si quis alium arga per furorem clamaverit, et negare non potuerit, et dixerit quod per furorem dixisset, tunc iuratus dicat, quod eum arga non cognovisset; postea conponat pro ipso iniurioso verbo solidos duodecim. Et si perseveraverit, convincat per pugnam, si potuerit, aut certe conponat ut supra*.

[103] See K. Ubl, *Sinnstiftungen* cit., 90 s.

[104] PLA 13.1-2.

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hurtful speech is referenced with the adjective *iniuriosus* at ER 381, it is treated in a way that is distinctly Germanic and does not follow the principles of Roman law.

Instead, the LC, ER, and RB seem to regard the nominal category of *iniuria* as a specific type of violence which usually does physical harm to the body, often permanent damage. The codes also seem to share a sense of how this sort of violence could be perpetrated. We saw this above in our discussion of LI 4.5.1, which catalogs assaults a descendant may inflict on a parent or grandparent that could be deemed 'serious acts of violence' (*graves iniuriae*):

- 'a slap (*alapa*), punch (*pugno*), kick (*calce*), stone (*lapide*), staff (*fuste*), or whip (*flagella*), or if they presume insolently to drag them off by the foot, or hair, or hand or in any sort of dishonorable incident (*per pedem vel per capillos ac per manum etiam vel quocumque inhonesto casu abstraere contumeliose presumant*).

We also saw it in two other such catalogs in our discussion of the meaning of *iniuria* in the LI above. These include LI 5.7.10, on the *libertus* who commits *iniuria* against his manumitter:

- 'If a freedman is violent (*iniuriosus*) toward his manumitter and if he strikes (*percusserit*) the patron with a punch (*pugno*) or any other type of blow (*quolibet hictu*)...'.

And LI 6.5.12, excusing a master from charges he has murdered his slave, provided he can argue the slave committed an *iniuria* against him:

- 'Certainly if a male or female slave set upon their lords in some noxious act of daring and strike or attempt to strike (*percusserit vel percutere conatus fuerit*) a male or female lord with a sword (*gladio*), or a stone (*lapide*), or with any kind of blow (*quolibet hictu*)...'.

These catalogs mirror closely similar lists presented three times in LI 6.4.3: once at the beginning where offenses not meriting retaliation are listed; once in the middle, listing offenses to the head; and once on assaults by freeborn persons against slaves:

- '… should any freeborn man obstinately dare… to deform or mark him with ugly markings in the face or in any other part of

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his body by striking him with a whip, club, or any other blow or by dragging him maliciously (*flagello, fuste, seu quocumque hictu feriendo aut trahendo malitiose*)'.
- 'But we prohibit retaliation for a slap (*alapa*), a punch (*pugno*), or a kick (*calce*), or a striking on the head (*percussio in capite*).'
- 'If a freeborn man angrily strikes another man's slave with a club, or a whip, or any kind of blow (*fuste aut flagello vel quolibet hictu… percussit*)'.

And again at LI 6.5.6, on killing in the midst of a brawl:

- 'If an instance of homicide arises when someone attempts to inflict a violent act (*iniuria*) by a kick (*calce*) or a punch (*pugno*) or any kind of blow (*quacumque percussione*), he [the perpetrator] should be punished for homicide'.

The Visigoths thus had a sense of the kinds of actions which might qualify as *iniuria*, and these are related to specific acts of striking, either with certain body parts, such as the fist or foot, or with weapons, or by dragging, and particularly dragging by the hair.

By now we should not be surprised that we find very similar catalogs of violent acts in several places in other Germanic codes. Thus in the Burgundian *Liber Constitutionum*:

- LC 5 tit.: 'Concerning those who strike (*percutiunt*) with whip (*flagello*), club (*fuste*), kick (*calce*), and fist (*pugno*)'.
- LC 48.1: 'Therefore if someone breaks an arm with a blow of a club or stone (*ictu fustis aut lapidis*)'.
- LC 102.1: 'Any Jew who presumes to lay hands on a Christian, with a fist (*pugno*) or kick (*calce*) or club (*fuste*) or whip (*flagello*) or rock (*saxo*) or to grab them by the hair (*per capillos prehenderit*), we order them to be punished by the cutting off of their hand'.

In similar fashion, the *Pactus Legis Salicae* lists violent actions according to a graded catalog in its title on compositions for wounds (*vulnera*):

- PLS 17.4-7: by hitting (*plagare*).
- PLS 17.8: by club (*fustis*).
- PLS 17.10: by fist (*pugno*).

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And later in the same code:

- PLS 104.4: by punch or kick (*pugno aut calce*)[105].

Nor do the similarities stop with the catalogs of blows, for the definition of *iniuria* presented at LI 4.5.1 and quoted above also included 'insolently to drag them off by the foot, or hair, or hand'. This is clearly related to the passage of the Burgundian LC just quoted (102.1: 'or to grab them by the hair'). And we find similar prohibitions on dragging by the hair in other early Germanic codes:

- LC 5.4: 'If someone seizes a free man by the hair (*per capillos corripuerit*), should he do so with one hand, he should pay II solidi, if with both III solidi, and for a fine (*multa*) VI solidi'. (cf. LC 5.5).
- LF 22.65: 'If someone in anger seizes by the hair (*iratus per capillos comprehenderit*), he should pay a composition of II solidi and a peace fee (*freda*) of IIII solidi to the king'. (cf. LF Ad. Sap. VVlemar 3.40).
- Aeth. 33: 'If hair-seizing occurs (*Gif feaxfang geweorð* – note, once again, the combining noun form), 50 sceattas shall be paid as a compensation'.

And we saw that one of the offenses covered in LI 6.4.3 included '*decalvatio*' – abusive hair cutting. Indeed, the Germanic codes in general share a concern with violence to the hair, particularly female hair, that is marked as distinctive of these cultures[106].

[105] Roman law does offer catalogs of weapons it associates with 'killing' under the *Lex Aquilia, SC. Silanianum,* and *De vi et vi armata,* see D. 9.2.7.1; 9.27.17; 29.5.1.17; 43.16.3.2-4; 47.2.44.2; 50.16.41. Constantine's law on slave killing also lists outlawed modes of killing which include *ictu fustis aut lapidis*, CTh. 9.12.1. But none of these citations have anything to do with *iniuria* nor do the catalogs closely parallel what we see in the barbarian codes.

[106] See LI 6.4.3; PLS 104; LC 92.1; cf. L. Oliver, *The Body* cit., 108 ss. M. Diesenberger, *Hair, Sacrality and Symbolic Capital in the Frankish Kingdoms*, in *The Construction of Communities in the Early Middle Ages. Texts, Resources and Artefacts*, ed. R. Corradini-M. Diesenberger-H. Reimitz, Leiden 2003, 173 ss., assembles a broader set of sources for the symbolic importance of hair in post-Roman barbarian societies. See also the shared concern with the violation of the prop-

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This repetition of catalogs of types of violence has to be more than coincidental. Not only do the same offenses recur across a large number of codes, they also tend to follow the same order of presentation. Given that, as noted earlier, these codes did not simply copy one another and in many instances they shared no knowledge of one another, there is almost no way to explain the similarity unless we assume a shared tradition or legal anthropology. These principles must, in other words, have predated the first written recording of these codes, which had previously been known through oral or customary traditions.

That the codes represented the written recording of oral traditions is indeed attested by Isidore in the case of Visigothic law under Euric (c. 476) and in that of (Ribuarian) Frankish, Alamannic and Bavarian law under the Merovingian king Theuderic II (d. 613), in the preface to the LB[107]. In his supplements to the Lombardic code of Rothari, king Liutprand (d. 744) even offers us the Lombardic name for these customary traditions – *cavvarfida*[108]. And the remaining barbarian codes also offer ample linguistic indications that they record a Latinized version of oral customary law[109]. The verbal echoes we have just seen along with the verbal interrelations explored in the previous section on *hrevavvunt*, in as indeed so many of the shared features identified thus far, all reforce the impression that shared oral traditions precede and inform the

erty boundaries of the freeman's house (*domus*) or 'courtyard' (*curtis*): LI 6.4.2; 8.1.4; 8.3.14; PLS 7.11; 34.5; 42.1; LC 15.1; 33.1; ER 32, 34, 277, 380; LR 67; PA 21.3-5; LB 4.23; 11.1-2; Aeth. 17, 29; LF 17.4.

[107] On the CE, see Isid., *Orig. Goth.* 35 (cf. 51): *sub hoc rege (Eurico) Gothi legum instituta scriptis habere coeperunt, nam antea tantum moribus et consuetudine tenebantur*; cf. Sidon., *Ep.* 8.3.3. On the LB, see LB Praef. (MGH LNG V.2.202): *Theuderichus rex Francorum, cum esset Catalaunis, elegit viros sapientes qui in regno suo legibus antiquis eruditi erant. Ipso autem dictante iussit conscribere legem Francorum et Alamannorum et Baioariorum unicuque genti quae in eius potestate erat, secundum consuetudinem suam, addidit quae addenda erant et improvisa et inconposita resecavit*. Cf. I. Fastrich-Sutty, *Die Rezeption* cit., 19 ss.

[108] *Lex Liutprandi*, 77, 133; cf. D. Fruscione, *Cawarfida*, in *I Longobardi in Italia: Lingua e cultura*, a cura di C. Falluomini, Alessandria 2015, 385 ss.

[109] See R. Schmidt-Wiegand, *Stammesrecht* cit., 148 ss.; G. von Olberg, *Die Bezeichnungen* cit., 24 ss.; C. Azzara-S. Gasparri, *Le leggi* cit., XLIII s.; P. Tyszka, *The Human* cit., 40 ss.; K. Ubl, *The Limits of Government: Wergild and Legal Reforms under Charlemagne*, in *Wergild, Compensation and Penance. The Monetary Logic of Early Medieval Conflict Resolution*, eds. L. Bothe-S. Esders-H. Nijdam, Leiden 2021, 253.

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composition of our extant written codes. All these codes partake of a Germanic tradition of 'law-speaking', attested in a variety of sources, and we can still find traces of the memory work out of which they are constructed in these repeated formulaic catalogs[110].

8. Iniuria *and Roadway Travel*

Iniuria is also used in both the LI and other post-Roman codes to describe instances of roadway violence. This is already clear if we read the next law on from LI 6.4.3:

> LI 6.4.4. *Antiqua*. If anyone detains a traveler with violent force (*retinuerit iniuriose*) and against his will. If anyone detains a person found on the road in violent fashion (*iniuriose*) and against his will, and that person is in no way a debtor to him, the man who was held should receive 5 solidi for this violent act (*iniuria*) against him; and if the man who held him does not have enough to pay the composition, he should receive 50 lashes. But if he [the traveler] was a debtor to him and was unwilling to pay off the debt, he [the creditor] should present this man to the judge of the territory without violent force (*iniuria*), and he [the judge] should ordain for him what is just. But if a slave does this without the command of his lord, he should be stretched out and receive 100 blows of the whip. But if he does this on orders from his lord, the lord should be held liable for the above settlement[111].

[110] See above nt. 73.

[111] LI 6.4.4: *Si in itinere positum aliquis iniuriose sine sua volumtate retinuerit, et ei in nullo debitor existat, quinque solidos pro sua iniuria consequatur ille, qui tentus est; et si non habuerit, unde conponat, ille, qui eum retinuerat, L flagella suscipiat. Quod si debitor illi fuerit et debitum reddere noluerit, sine iniuria hunc territorii iudici presentet, et ipse illi quod iustum est ordinet. Si vero servus hoc sine domini iussione conmiserit, C hictus extensus accipiat flagellorum. Si autem domino iubente hoc fecerit, ad superiorem conpositionem dominus teneatur obnoxius.* For this and other laws discussed below, see especially S. Esders, *Reisende soll man nicht Aufhalten? Über Infrastrukturen sowie erwünschte und unerwünschte Mobilität im westotischen Spanien*, in *Wasser – Wege – Wissen auf der ibersichen Halbinsel. Von römischen Imperium bis zur islamischen Herrschaft*, hrsg. I. Czeghun-C. Möller-Y. Quesada Morillas-J.A. Pérez Juan, Baden-Baden 2016, 151 ss., which focuses on the way these laws reflect practices of mobility.

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This law, an *antiqua* deriving from Leovigild's sixth-century *Codex Revisus*, uses the noun *iniuria* twice, and the adjectival *iniuriose* two more times to describe the act of forcefully detaining or physically arresting a roadway traveler. Another *antiqua* later in the LI also uses *iniuria* to describe offenses related to the molestation of travelers:

> LI 8.4.26. *Antiqua*. If the animals of roadway travelers are expelled from vacant fields. If someone leads horses or oxen or other animals of any sort belonging to roadway travelers from pastures on open and vacant fields, even if someone has enclosed them [the pastures and fields] with ditches, to his house to pen them up, he should be compelled to pay a tremissis for every two head; but if he expels them so they cannot graze, the person who sustained this violent act (*iniuria*) should receive a tremissis for every four head...[112].

This enactment shows that early Visigothic law was concerned not only with the forceful detention of a traveler on the road, but also the impounding or violent expulsion of animals belonging to travelers along a public roadway. As was the case in LI 6.4.3, these two laws characterize these offenses with the word *iniuria* and punish them with a fixed money composition.

It goes without saying that neither offense would have been dealt with through the remedy for delictal *iniuria* in Roman law. The first would have been treated under the *Lex Fabia* – whose outlines were preserved into Late Antiquity and transmitted into Visigothic law in the LRV – and punished as *plagium* (kidnapping), a capital offense[113]. The second would have fallen under the title *De abactoribus* ('On rustlers') which also survived in the LRV and which, depending on the scale of the animal theft, could also have been a capital of-

[112] LI 8.4.26: *Si aliquis de apertorum et vacantium camporum pascuis, licet eos quisque fossis precinxerit, caballos aut boves vel cetera animalia generis cuiuscumque iter agentium ad domum suam inclusurus adduxerit, per dua capita tremissem cogatur exolvere; si vero, ut non pascantur, expulerit, per quattuor capita tremissem accipiat qui excepit iniuriam. Quod si hec et que superius dicta sunt servus domino nesciente conmiserit, a comite civitatis vel iudice C flagellorum hictibus verberetur, et dominus servi nullam calumniam aut detrimentum sustineat.*

[113] D. 48.15; PS. 5.6.14; 5.30b.1, with O.F. Robinson, *The Criminal* cit., 32 ss. On the late empire, see C. 9.20.7 and especially LRV CTh. 9.14.1; LRV PS. 5.7.12.

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fense[114]. Here again, then, we see the Visigothic lawmaker using the word *iniuria* to describe illicit actions – violent actions – that Roman law did not resolve with delictal remedies for *iniuria.*

When we look to the Germanic codes, we find principles very similar to those in these Visigothic laws[115]. The phenomenon is particularly pronounced in the Lombardic code, especially at ER 26:

> Concerning way blocking (*vvegvvorin*), which is to say *horbitariam*. If someone should place himself in the way of a free woman and inflict her with a violent act (*iniuria*), he should make a composition of 90 solidi, half to the king and half to the woman [i.e. 45 each] upon whom he inflicted the *iniuria*, or to the person who has her guardianship (*mundius*)[116].

'Way-blocking' (*vvegvvorin,* cf. Modern High German *Wegwehren*) with violent force was thus a specific kind of offense which Lombardic law – like Visigothic – chose to associate with the broader term *iniuria*. Moveover, the same offense seems to have been of broader concern to the Lombardic lawmaker, for the ER lists seven further laws related to blocking a traveler's way:

- ER 17: on blocking the way for a man journeying to the king.
- ER 18: on using an armed band to prevent people from traveling to the king.
- ER 27: on blocking the way for a free man, on pain of a composition of 20 solidi.
- ER 28: on blocking the way for slaves or *aldii*, on pain of a composition of 20 solidi to the slave's owner.
- ER 29: exempting those who block a way to protect their field or meadow from a penalty.
- ER 371: repeating the ban on blocking the way for women from ER 26.
- ER 373: on slaves of the king who commit *vvegvvorin.*

[114] D. 47.14; Coll. 11.3; PS. 5.18.1-4, with O.F. Robinson, *The Criminal* cit., 25 s. On the late empire, see LRV PS. 5.20.

[115] See more at W.E. Wilda, *Das Strafrecht* cit., 780 s.

[116] ER 26: *De vvegvvorin id est orbitaria. Si quis mulieri libere aut puellae in via se anteposuerit aut aliqua iniuria intulerit, noningentos solidos conponat, medietatem regi et medietatem cui ipsa iniuria inlata fuerit, aut mundius de ea pertenuerit*.

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Four of these laws use the word *iniuria* in relation to the offense (ER 17, 18, 26, 371). The blocking or detention of travelers was thus of major concern and was considered not just an inconvenience but also a violent personal affront, for implicit in all these laws is not simply standing in someone's way, but forcibly preventing them from making their journey. Yet the very schematism of the offense as identified with the characteristically Germanic combining noun form '*vvegvvorin*' allowed for adaptation of the concept to a variety of specific circumstances, provided 'way-blocking' was somehow involved. A picture thus emerges of a Germanic tradition that sought categorically to control the blocking of travelers on a roadway and associated it with the broader idea of violent force to be sanctioned under the expansive heading of *iniuria.*

The same is confirmed in most other Germanic codes as well. The PLA (18.1-6) devotes a section to 'way-ambushing' (*wegalaugen* – another combining noun form), which it punishes with a 6-solidus fine in the instance of male victims and 12-solidi for females, with further gradations depending on status. The same code also punishes those who 'tied up, road-blocked (*via o[b]status*), or beat' a slave swineherd, shepherd, horse-herder, or cattle-herder with 9 solidi and double whatever other damages they would pay for physical assaults inflicted on them (PLA 21.2-4). The PLS also devotes a title (PLS 31.1-2) to the regulation of 'way ambushing', which it terms *via lacina.* This phrasing represents a mixed Latino-Frankish version of the same term found in the PLA, from the Latin *via* (see also Frankish *wega*) and the Frankish *lagīn* ('laying', 'laying in wait')[117]. It too protects a free man and woman from suffering the offense, forcing the offender to pay a composition of 15 solidi for blocking males and 45 for females (the latter matching what we find in Lombardic law). This code also extends the offense to include blocking the way to a mill, which it terms *urbis via lacina* (PLS 31.3).

Via lacina is also at issue in a separate set of Salian Frankish laws which forbid the breaking down of an enclosure (*sclusa, clausura*) built to protect a person's field or meadow (PLS 22.3; 27.22). Here we see the Frankish lawgiver – or the tradition – needing to adapt the legal concept of 'way-blocking' to account for the right to protect one's property. Not all way-blocking was bad, for unrestricted movement across people's

[117] For the etymology, see R. Schmidt-Wiegand, *Stammesrecht* cit., 91 s., 192, 456.

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property would result in damage and potential conflict. The law was thus working to keep travel along roadways unrestricted and free of violence, but also to keep owners of agricultural land from suffering damage to their property by trespassing travelers. The same balancing act was evident in Lombardic law seen above at ER 29, exempting those who build enclosures to protect their fields from charges of *vvegvvorin*.

Unsurprisingly, the Frankish LR also forbids road-blocking (*via lacina*) against freemen, on pain of a 15-solidus composition for males and 45 for women (LR 75, 83). So too, the Burgundian code includes a title regulating both aspects of the equation, forbidding the blocking of a public road (*via publica*) on pain of a fine of 12 solidi, while also forbidding the breaking of enclosures (*sepes*) that property owners erect to protect their fields (LC 27). The Bavarian code forbids the blocking of a *via publica* with an enclosure on pain of a 12-solidus composition (LB 10.19), and it forbids the molestation of a traveler (*peregrinus*) on pain of a fiscal fine of 160 solidi plus double the normal compensation to the victim for any violent act (*iniuria* – LB 4.32). The Frisian law forbids physical assaults, thefts, or road-blockings committed against travelers on pain of a 16-solidus composition (LF Add. Sap. 3.1). And even the Anglo-Saxon law code of early seventh-century Kent balances laws against 'road-robbing' (*wegreaf*) with those forbidding 'enclosure breaking' (*edorbrecþe* – once again, combining noun forms), both fined at 6 shillings (Aeth. 19, 27).

There is thus a clear pattern across the Germanic codes: the maintenance of a system that balances, on the one hand, a shared concern to guarantee the maintenance of open and violence-free roadways, and on the other, to guarantee landowners a right to protect their agricultural property through the construction of enclosures. Important for our purposes, however, the former, 'road blocking', was regularly associated with the word *iniuria* and was therefore punished as a personal offense that entailed fixed money compositions to the victim. Moreover, as with the compositions for bodily assaults seen above, the fines imposed are remarkably consistent in their amounts.

LI 6.4.4, on not detaining travelers, clearly represents part of this Germanic tradition. Yet it also departs from it in at least two respects: first, it grants tremendous latitude for the detention of travelers who were indebted to the person detaining them, which likely reflects an economic situation marked by pronounced disparities in wealth; second, the fine it imposes on perpetrators of this *iniuria* (5 solidi) is considerably lower than that found in the other codes (which range be-

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tween 12 and 20 solidi for men and up to 45 for women). Both points reinforce the picture of a power dynamic characterized by high levels of inequality. The related LI 8.4.26, on impounding animals from travelers, shows a third difference from the Germanic codes in that it explicitly denies any exemption to the laws on blocking to landowners who have enclosed their agricultural land with barriers. This last likely represents a legal development occasioned by the nature of the landscape of the Iberian Peninsula, and particularly the Meseta, where large open expanses of marginal land favor free-range herding[118]. With 6.4.4 and 8.4.26 we thus appear to witness how a Germanic legal tradition on road-blocking and constructing enclosures – of itself rigid but also, as we have seen, adaptable – was modified in the LI to fit a Visigothic Iberian social and topological milieu.

This adaptation of the Germanic legal tradition to a post-Roman Iberian environment helps explain several further laws in book 8 of the LI as well. These include LI 8.4.24, an *antiqua,* which forbids the blockage of a public road (*iter publicum*) by enclosures (*sepes*) on pain of a fine of 20 solidi for those of higher station (*potentiores*) and 10 for others. It is supplemented by LI 8.4.25, another *antiqua*, which states that no one may violate 'Our precept' (*preceptum nostrum*) against blocking a public road and prescribes that a half arpent of land (60 feet) must be kept open on the sides of the road so that travelers can pitch camp there, a provision that probably traces to Roman precedent[119]. The law prescribes fines for violators of 15 solidi for persons of higher station and 8 for others, but it also permits those with crops along a roadway to protect them with enclosures (*sepes*) or ditches (*fossata*)[120]. Yet another *antiqua* (LI 8.4.27) requires landowners who have not enclosed their pasturelands (*in pascuis que conclusa non sunt*) to allow

[118] Although LI 8.4.26 could also be related to the Germanic law tradition regulating the seizure of pledges (*pignorare*) from a defendent, which in some instances allowed the seizure of another's livestock from one's own property if these were doing damage to it, see LC 23.1-4; 49.1-3; PLS 9.3, 6-8; LR 85.2. This same principle is upheld in the Visigothic tradition as well at LI 8.3.13-14, which indicates that 8.4.26 is again reconciling the competing interests of open travel with property protection – in the open rangeland of the Iberian Peninsula.

[119] S. Esders, *Reisende* cit., 158.

[120] S. Esders, *Reisende* cit., 162 nt. 35, draws analogies to the Roman law principles of public lands for pasturing or the private servitude of *pascua*, but no close connection is shown.

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travelers (*iter agentibus*) to camp on these lands and pasture their oxen and cattle (*iumenta vel boves*) there for up to two days and even to cut branches from their trees to feed cattle. And yet another (LI 8.3.9) forbids landowners from constructing enclosures for their crops which are so narrow that they force roadway travelers (*iter agentes*) to trample upon their cultivations – in hopes of collecting for the resultant damages. This entire complex of laws is clearly aimed at striking the same balance found elsewhere in the Germanic tradition between protecting the interests of travelers in safe access to roadways and providing protection for landowners so these could protect their roadway-adjacent property from trespassing. They do so using the guideposts set by the Germanic tradition, but they also depart from that tradition by adapting the original principles to suit an Iberian context.

Before leaving the subject of road-blocking and enclosure construction, we should examine one further pair of Visigothic laws, which were mentioned in the previous paragraph, for what they can show us about how far back these laws go in the Visigothic tradition. Both LI 8.4.24 and 25 almost certainly trace to a lost provision from the CE, a fact we can establish with relative certainty by comparing them with related provisions in the LB – which, as noted above, borrowed heavily from the CE:

- LB 10.19: [Concerning a public road]. If someone blocks (*clauserit*) a public road (*via publica*) where the King or Duke travels, or anyone's leveled road, contrary to the law (*contra legem*), he should pay a composition of 12 solidi and take down that enclosure. And if he wishes to deny the charge, he should take an oath with 12 oathhelpers[121].
- LI 8.4.25 *Antiqua*: 'Concerning the preservation of space beside public roads (*viae publicae*). Let there be no violator of our precept (*praeceptum nostrum*) who blocks a road on which We [i.e. the king] are accustomed to going to a city or to Our provinces...[122].

[121] LB 10.19: *[De via publica]. ... si quis viam publicam ubi rex vel dux egreditur, vel viam equalem alicuius clauserit contra legem, cum XII solđ componat et illam sepem tollat. Et si negare voluerit, cum XII sacramentalibus iuret*. Note that '*rex vel*' does not appear in all MSS.

[122] LI 8.4.26: *De servando spatio iuxta vias publicas. Viam, per quam ad civitatem sive ad provincias nostras ire consuevimus, nullus precepti nostri temera-*

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The Visigothic law then goes on to punish violators with a 15-solidus fine for higher status persons and 8 solidi for others, to be paid to the royal treasury, and it sets out terms for the construction of permissible enclosures (*sepes, fossata*). We should also compare:

- LB 10.20: [Concerning a shared country road]. With regard to a shared-country or pastoral road (*via convincinale vel pastorale*), whoever blocks it to another contrary to the law (*contra legem clauserit*), he should pay a composition of 6 solidi and open the road or take an oath with 6 oathhelpers[123].
- LI 8.4.24 *antiqua*: Concerning damages for those closing off a public way. If a public way is closed off (*iter publicum clausum sit*), no malicious action shall be brought against a person who breaks the fence or wall (*sepem aut vallum*). But he who closed off a road, which used to be frequented...[124].

LI 8.4.24 goes on to lay out penalties for the person who blocked the road: 100 lashes if a slave, 20 solidi for a person of high status, 10 for those of lower status, and they are to be compelled to reopen the road. Both of these passages are clearly related to a third in the Burgundian LC:

- LC 27.3: Whoever blocks a public road or a country one (*viam publicam aut vicinalem clauserit*) should know that he must pay 12 solidi as a fine and do so in such a way that the enclosure (*sepis*) may be knocked down by travelers (*a transitoribus*) without penalty and the crop mown down for as wide as the roadway is thought to measure[125].

tor exsistat, ut eam excludat; sed utroque medietas aripennis libera servetur, ut iter agentibus adplicandi spatium non vetetur.

123 LB 10.20: *[De via convicinali]. De via convicinale vel pastorale, qui eam alicui contra legem clauserit, cum VI sol̃. componat et aperiat vel cum VI sacramentalibus iuret.*

124 LI 8.4.24: *De damnis iter publicum concludentium. Si iter publicum clausum sit, rumpenti sepem aut vallum nulla calumnia moveatur. Ille vero, qui viam clauserat, que consueverat frequentari...*

125 LC 27.3: *quicumque viam publicam aut vicinalem clauserit, XII solidos se multae nomine noverit inlaturum, ita ut sepis illa impune a transitoribus deponatur et messis, quantum viae spatium continere putatur, conteratur*.

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From the obvious similarities in form and language, all of these laws clearly trace to a common source. As indicated above, in the instance of the LB and LI, this must be the CE since both are known to derive some of their material from this source. The close parallel with the LC passage indicates that it too must have been referencing the CE, which was produced only about four decades before it was. In brief, at least as regards rules on road-blocking and enclosure construction, we have good reason to believe that the tradition preserved in these three sources traces to the earliest known Germanic code. The related laws on *vvegvvorin*, *wegalaugen*, or *wegreaf* in the ER, PLS, PLA, and Aeth. further confirm that the principles used were not just textually connected but formed part of a shared Germanic heritage.

To return to our starting point, we might once again ask why it is that LI 6.4.4 and 8.4.26 use the word *iniuria* to characterize the offense of assaulting roadway travelers or impounding or abusing their animals. When LI 8.4.26 prescribes fines for impounding or expelling animals belonging to a traveler, it is not punishing theft. Indeed, roadway theft is covered in a different law, LI 8.1.12, and it prescribes fourfold restitution for anyone who stole from a traveler (or person living on a farm)[126]. Rather LI 8.4.26 concerns itself with a different offense – one where the perpetrator is being punished for the violence of his actions, for *iniuria.* At issue is the kind of offense that could lead to a feud – to the *talio* that Chindaswinth sought to prevent through his regulations in LI 6.4.3. These two Visigothic laws on roadway travel thus fit into a broader complex of problems related to mobility, but under that half of the equation that involves violent force, (*iniuria*) through 'road-blocking'. Here again, we see that Visigothic – and indeed Germanic – *iniuria* was a broad category, in many ways more expansive than in Roman law, for it entailed affronts not just to a person but even to that person's animals. Yet Germanic *iniuria* was in another sense narrower, for

[126] S. Esders, *Reisende* cit., 165, associates the *quadruplum* of LI 8.1.12 with the delictal penalty for *furtum* in Roman law. This is possible, but elsewhere the LI prescribes a ninefold composition for theft (LI 7.2.13-14). This appears to fit better with the Germanic tradition which, in contrast with Roman law, regularly punished theft with nine-fold penalties, often described with the Germanic *niungeldo* (LB 1.3, 2.12, 9.1) or *novigeldos* (LC 9.1, 19.11, 86.2; *Leges Alamannorum* 7; 27.1; 32; 49.1). The discrepancy between LI 8.1.12 and 7.2.13-14 is not easily explained, unless the lower penalty at 8.1.12 results from the lower status of the victims being compensated.

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it always implied some level of violent force or physical attack – or at least the use of 'fighting words' which could open the kind of feuding Chindaswinth and the Germanic lawmakers were trying to curb.

9. *Conclusion*

This study has used philological analysis of a single law in the seventh-century *Liber Iudiciorum* (LI 6.4.3) to argue that the law is at base 'Germanic'. This term is used advisedly. Indeed, this study is part of a larger argument I hope to build against the trend in contemporary scholarship to avoid the term Germanic. It is hoped it has shown that such avoidance leads to greater not less confusion and is even harmful to our comprehension of the complexities of late antique social life and normative regulation.

It opens with a review of the development of Visigothic jurisprudence, beginning with the *Code of Euric* (c. 476) and the *Lex Romana Visigothorum* (a. 507). These two codes, it is asserted, were 'personal' rather than territorial in the sense that each was built on different regulatory models and each was aimed respectively, if not exclusively, at the two largest populations within the kingdom – Goths and Romans. This separation – always unwieldy and ultimately impossible to maintain – continued through the sixth century, when Leovigild issued his *Codex Revisus* (c. 585) while leaving the LRV in place. It was only altered in the seventh through the introduction of a new code by Chindaswinth and his son Recceswinth, which has come down to us under the title *Liber Iudiciorum.* The earliest extant version of this first territorial code was enacted in 653/654 and made valid for all populations within the Visigothic kingdom, while all earlier and foreign codes were invalidated. Even so, ethnic identity assertion continued throughout Visigothic history and contoured social relations even after the publication of the LI.

A word study follows which explores in detail the meaning of the term *iniuria* in LI 6.4.3. This law catalogs reparations and punishments for acts of personal violence and uses the word *iniuria* at its close to characterize the offenses it has listed. *Iniuria* is a term used in Roman law of a delict involving an assault on another person either through physical violence or through a verbal / symbolic affront. Analysis of *iniuria* in Visigothic law shows that, in the LI the word pertains almost exclusively to physical violence. Moreover, in the few cases in the LI where *iniuria* seems to have symbolic valences, it is always applied to

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matters that, for other reasons, would not have been treated as *iniuria* under Roman law. In these instances, the word is best translated with the generalizing notion of 'injustice', a root meaning the word always retained. In all others it is best translated 'violent act' or 'violent force'.

LI 6.4.3 covers a broad range of offenses that include violent physical assaults of a non-permanent nature (slaps, punches, kicks, etc) but also personal attacks that could lead to permanent marking or disability (cutting, fracturing, amputating, etc). Its issuer, Chindaswinth, states explicitly that he introduced the law to limit 'revenge' (*talio*), by which he surely means the Germanic tradition of 'feuding'. The offenses he then catalogs are shown to follow not the Roman but the Germanic legal tradition, as it is attested in the earliest written codes from the post-Roman West. In the LI and these Germanic codes, compositions are graded according to the nature of the wound (bruises, lacerations, fractures, amputations, etc) and the body part involved (heads, eyes, nose, arms, fingers, feet, etc). Settlements in LI 6.4.3 are also graded by the status of perpetrator and victim and are reckoned largely though not exclusively in fixed money amounts. This too corresponds with procedures in the Germanic codes and not with the Roman law of *iniuria*, which determined penalties based on estimated damages. Nonetheless, Chindaswinth does prescribe *aestimatio* for a small number of offenses, giving evidence that he was merging Roman with Germanic law and not simply transmitting the latter.

To prove this point, the law is brought into comparison with laws in eight other Germanic codes in three sections, in the first of which it is shown that not only do the specifics and organization of offenses in LI 6.4.3 correspond with related passages in these codes, but also the relative amounts assigned to each composition provide evidence of a broader pattern. The second of these comparative sections uses philology to show that the complex of Germanic codes uses similar terms and attaches similar meanings to the word *iniuria,* and they associate this offense with interrelated catalogs of types of blows. A third shows that *iniuria* is also applied to 'road-blocking' and the construction of 'enclosures', which of itself forms a distinctly Germanic normative principle – one that the Visigoths employ, even while altering it significantly to fit their Iberian environment. In every instance, the larger complex of codes can be used to show that a distinctive legal epistemology is being accessed. It is also argued, again on philological grounds, that this complex is best characterized with the qualifier 'Germanic' insofar as attested Germanic words are present in or at least subtend many of the

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principles at the heart of these laws. If we accept that this body of codes represents a shared legal anthropology distinct from Roman law and that all of these codes were written by Germanic speaking peoples using principles that were originally formulated in Germanic languages, there is no good reason to refuse to continue the traditional use of the term 'Germanic' to describe this complex of laws[127].

Indeed, understanding these laws as part of a larger ethno-linguistic complex is crucial to grasping the normative environment in the successor kingdoms of the post-Roman West. While every one of the states that arose in the former Roman provinces of western Europe was deeply imbued with the heritage of the Roman Empire, the new rulers in the polities that replaced Rome had their own identities and traditions, among them a shared language family (Germanic) and a shared legal anthropology. Indeed, this study of the use of the Latin word *iniuria* in the two systems has shown how productive it can be not just to compare these societies with Rome but also to contrast them. Both legal cultures use the Latin word *iniuria*, whose generic meaning is simply 'injustice', to characterize personal affronts grave enough to inflict trauma and compromise honor. The Roman system, with its staunch refusal to assign money values to free bodies and body parts (but obviously not the bodies of the enslaved) and its highly stratified code of *dignitas* (senators, equestrians, decurions, plebeians, peregrines, freedmen, Junian Latins, *coloni, dediticii*, slaves), laid greater emphasis on the question of honor (encompassing symbolic and not just physical assaults under delictal *iniuria*), and less on trauma (which it recompensed only conditionally depending on the relative levels of honor of a given perpetrator and victim – *aestimatio*)[128].

[127] To be sure, Germanic is an 'etic' term for a larger set of nationalities that remained politically fragmented even while sharing linguistic and cultural commonalities. But it has the virtue of being an ancient word used to describe this collectivity and its language (e.g. SIDON., *Ep*. 5.5.3-5), and is thus qualitatively no different than the umbrella ethnonym 'Graecus'/ 'Greek'.

[128] Caesar's use of *iniuria* throughout his corpus offers a good sense of how tightly connected it is with concepts of honor. One finds the same in Vergil, where it could be said that the entire plot of the Aeneid is predicated on the wounding of Juno's honor by the *iniuria* of Paris's judgment, VIRG., *Aen*. 1.26-27: ... *manet alta mente repostum / iudicium Paridis spretaeque iniuria formae.* More on Roman honor at C.A. BARTON, *Roman honor. The fire in the bones*, Berkeley 2001; J.E. LENDON, *Empire of Honour. The Art of Government in the Roman World*, Oxford 1997.

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The Germanic system, which used the money valuation of bodies (Wergild) as the bedrock on which its judicial system was constructed, laid much greater emphasis on physical trauma (which it compensated with fixed-money amounts graded to its three broad status categories – free, semi-free, slave), and much less emphasis on honor (largely eschewing compensations for symbolic offenses)[129]. Though rooted in the same concerns, the two systems for dealing with *iniuria* were thus distinct, distinct enough that they must have co-existed in parallel in a given polity whose populations were divided. This is the situation that prevailed in the Visigothic kingdom up to the issuance of Chindaswinth's territorial code, and it was also true of the Burgundian kingdom, for which we also have coexisting personal codes in the LC and LRB. Ultimately, in the Visigothic case, this system of separation broke down. As Gothic and Roman populations merged, their separate legal systems were joined into a single territorial code. But in other kingdoms, and especially those under Frankish control, things went in the opposite direction. The system of ethno-legal distinction already evident in the sixth century was used to solidify ethnicized social differentiation deep into the Middle Ages[130]. To say that these ethnicizing systems existed is of course not an endorsement of them. Nor should calling these new codes 'Germanic' be regarded as in any way an endorsement of the ethno-nationalist horrors that have been perpetrated under the aegis of *Germanische Altertumskunde*. But to learn from the past and, above all, to learn how to avoid its pitfalls, we must confront it in all of its complexity, disturbing though that may be.

[129] On bodily trauma in the Germanic codes see P. Tyszka, *The Human* cit., 115 ss.; L. Oliver, *The Body* cit., passim. H. Nijdam, *Wergild* cit., is right to emphasize that honor is also at issue, as is clear from the fact that visible wounds to the face are valuated higher than equivalent wounds to the rest of the body. But Germanic honor is not as finely gradated or curated as its Roman cousin, and Germanic compensations are much more closely correlated to the nature of the physical wound than the status of the wounded.

[130] See especially K. Ubl, *Sinnstiftungen* cit., 137 ss.; H. Reimitz, *History, Frankish Identity and the Framing of Western Ethnicity, 550-850*, Cambridge, 2015.

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Appendix 1. *Catalog of* iniuria *and its cognates in the* Liber Iudiciorum

CITATION	SENTENCE / CLAUSE	CONTEXT: MEANING
LI 2.1.9 [Recc. Erv.]	Quapropter quicumque in principem aut crimen iniecerit aut maledictum intulerit, ita ut hunc de vita sua non humiliter et silenter admonere procuret, sed huic superve et cuntumeliose insultare pertemtet sive etiam in detractionis eius **ignominia turpia et iniuriosa** presumat.	Against false accusations about the king: 'injurious'
LI 2.1.18 [Recc.]	Et illi siquidem, cui presumtiosus presumtor extitit, **si solum contumeliam vel iniuriam fecerit, libram auri coactus exsolvat**; si vero rei aliquam temeranter abstulerit vel auferri preceperit, tantundem cum eadem rem, quam tulerit, aliut tantum de suo coactus restituat.	Usurping judicial authority: 'violent act' force (contrasted with *contumelia*).
LI 2.2.6 [Recc. Erv.]	Removeri **debet iniuriam** ab his, quorum probatur innocentia a molestiis inproborum existere aliena.	Forcing someone to court unjustly: 'injustice'.
LI 2.2.8 [Recc.]	Quod si potens contemserit iudicem et proterve resistens de iudicio egredi vel locum dare iudicanti noluerit, potestatem habeat iudex ab ipso potente duas auri libras exigere et hunc **iniuria violenta** a iudicio propulsare.	Permission for a judge to expel unwelcome patronus from court: 'violent force'.

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LI 2.5.9 [Recc. Erv.]	Si ille, qui paciscitur, aut in custodia mittitur aut sub gladio mortem forte timuerit, aut ne penas quascumque vel ignominia patiatur, vel certe si **aliquam iniuriam passus fuerit**…	Creation of legal documents under force or fraud: 'violent force'.
LI 4.2.13 [Recc.]	Qui autem novercam superduxerit, omnes facultates maternas filiis mox reformet; ne, dum filii cum rebus suis ad domum transeunt alienam, **noverce sue vexentur iniuriis**.	Unjust behavior of stepmother: 'injustice'.
LI 4.5.1 [Recc.]	Nam si filius filiave, nepos, neptis tam presumtiosi extiterint ut avum suum aut aviam sive etiam patrem aut matrem tam **gravibus iniuriis** conentur afficere, hoc est, si aut alapa, pugno vel calce seu lapide aut fuste vel flagella percutiant, sive per pedem vel per capillos ac per manum etiam vel quocumque inhonesto casu abstraere contumeliose presumant, aut publice quodcumque crimen avo aut avie seu genitoribus suis obiciant.	Justification for disherison of descendent: 'violent acts'.
LI 5.7.9 [Recc.]	Qui servo suo vel ancille libertatem donaverit, et presente sacerdote vel aliis duobus aut tribus testibus hoc factum esse constiterit, huiusmodi libertatem revocare non liceat, excepto si manumissori eum, qui manumissus est, **iniuriosum aut contumeliosum vel accusatorem aut criminatorem esse constiterit**…	Revocation of manumission for Physical or verbal abuse or civil or criminal accusation: 'violent, harmful'.

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LI 5.7.10 [Recc. Erv.]	Si libertus **iniuriam** faciat manumissori. Si libertus manumissori suo **iniuriosus** fuerit, aut si patronum pugno aut quolibet hictu percusserit vel eum falsis accusationibus inpetierit, unde ipsi capitis periculum conparetur, addicendi eum ad servitutem habeat potestatem.	If a libertus attacks his patronus: 'violent act', 'violent' (see above nt. 35).
LI 6.4.4 [Recc. Erv.]	Si iterantem quis retinuerit **iniuriose** adque nolenter. Si in itinere positum aliquis **iniuriose** sine sua volumtate retinuerit, et ei in nullo debitor existat, quinque solidos **pro sua iniuria** consequatur ille, qui tentus est; et si non habuerit, unde conponat, ille, qui eum retinuerat, L flagella suscipiat. Quod si debitor illi fuerit et debitum reddere noluerit, **sine iniuria** hunc territorii iudici presentet, et ipse illi quod iustum est ordinet.	Forcibly detaining a traveler: 'violently, forcefully', 'violent act'.
LI 6.5.6 [Recc. Erv.]	Si dum levis **iniuria** infertur, homicidium committatur. Si, dum quis calce vel pugno aut quacumque percussione **iniuriam** conatur inferre, homicidii extiterit occasio, pro homicidio puniatur.	Killing while brawling: 'violent act'.
LI 6.5.12 [Recc.]	Nam si dominus fortasse vel domina in ancilla vel servo, tam proprio quam extraneo, **vel incitatione iniurie vel ira commotus,** dum disciplinam ingerit, quocumque hictu percutiens homicidium perpetraverit.	Provocation by a slave: 'violent act' (see above nt. 40).

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LI 6.5.19 [Recc. Erv.]	Si pater filium aut mater filiam aut filius patrem aut frater fratrem aut quemlibet sibi propinquum, **gravibus coactus iniuriis**, aut dum repugnat, occiderit, et hoc idoneis testibus, quibus merito fides possit adhiberi, aput iudicem potuerit adprobare, quod parracidium, dum propriam vitam tuetur, admiserit, securus abscedat.	Defense against attack by a relative: 'violent acts'.
LI 7.3.6 [Recc. Erv.]	Quod si qui plagiatus est reduci potuerit, et dominus pro servo conponere vellit, libram auri **pro iniuriam ingenui** dabit.	Slave kidnaps a free-born person: 'violent act'.
LI 8.1.4 [Recc. Erv.]	Ingenui autem huius criminis socii, si in eius patrocinio non sunt, C flagella suscipiant et singuli trecenos solidos cogantur exolvere, illis procul dubio profuturos, quibus **hanc iniuriam** intulisse noscuntur. Quod si hoc servi ignorantibus dominis sua sponte conmiserint, servi penam sustineant superius conprehensam; domini vero nihil **iniurie** vel detrimenti perferant.	Blocking someone from their home using violence: 'violent act'.
LI 8.3.14 [Recc. Erv.]	Quod si de domo aut clausa involaverit aut per violentia tulerit, octo solidos qui **iniuriam** pertulit consequatur, et preterea duplum damnum ille, qui abstulit, reddere conpellatur.	Seizing animals by force: 'violent act'.

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LI 8.4.8 [Recc. Erv.]	Si damno vel **iniuria** inpellente aut sine damno alienum animal occidatur. Nam si eundem **damni commovit iniuria**, ut eum occideret aut debilitaret, pretium pecodis aut animalis reddat occisi vel debilitati et nihil patiatur **iniurie**.	Violent damage done by animal provokes its killing: 'violent act'.
LI 8.4.19 [Recc. Erv.]	Nam si eum ad innocentem forsitam **iniuriandum** incitavit, tamquam si ipse vulnus intulerit, iuxta legem conponere non moretur.	Dog bite: 'injuring by violence'.
LI 8.4.26 [Recc. Erv.]	Si fuerit occisus, percussor in loco sancto **nullam fecit iniuriam** nec ullam calumniam pertimescat.	Killing of an asylum seeker who uses force to defend himself: 'violent act'.
LI 9.3.3 [Recc. Erv.]	Si quis de altaribus servum suum aut debitorem, non traditum sibi a sacerdote vel ab ecclesie custodibus, **violenter** abstraxerit, si onestioris loci persona est, ubi primum iudici de eo fuerit relatum, altario, cui **iniuriosus** fuit, cogatur exolvere solidos C, inferioris loci persona det solidos XXX.	Violent removal of an asylum seeker from a church: 'violent'.

Appendix 2. *Catalog of* iniuria *and its cognates in other post-Roman codes*

CITATION	SENTENCE / CLAUSE	CONTEXT: MEANING
Liber Constitutionum		
LC 33 tit.	De **iniuriis**, quae mulieribus inlatae fuerint.	Assaults on women: 'violent acts'.

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LC 33.4	Si a servo haec ingenuae inrogatur **iniuria**, CC fustium ictus, si libertae, C, si ancillae, LXXV fustium ictus accipiat.	Violent assault by slave: 'violent act'.
LC 33.5	Si vero mulier illa, cuius tali ordine **iniuriam** iussimus vindicari, liti se sponte miscuerit, pro inlata **iniuria** nihil queratur.	Violent assault on a woman: 'violent act'.
LC 76.4	Nam ut **iniurias** eorum iussimus vindicari, ita in se distringendum esse non dubitent, nisi omni diligentia quae sunt praecepta servaverint.	Violent assault on king's Wittiscalci: 'violent act'.
LC 92.6	Iubemus etiam, ut, postquam a iudice servus ipse domino traditus fuerit, C fustium ictus servus ipse accipiat, ut postmodum nec alteri **iniuriam** faciat, nec domino suo damnum inferat.	Violent assault on women: 'violent act'.
Edictus Rothari		
ER 13	Et qui illius mortui **iniuriam** vindicandam denegaverit solacia, siquidem rogatus fuerit, unusquisque conponat solidos quinquagenta, medietatem regi et medietatem cui solacia denegaverit.	Killing of a lord: 'violent act'.
ER 17	Nullus de adversariis illi aliquam in itinere **iniuria** aut molestia facere presumat.	Assaulting a royal messenger: 'violent act'.
ER 18	Si quis ex adversariis manum armatam super quemcumque ad regem venientem iniecerit, **suam iniuriam** aut qualemcumque culpam vindicandam, noningentos solidus sit culpabilis...	Assaulting visitors to the king: 'violent act'.

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ER 19	Si quis **pro iniuria sua vindicanda** super quemcumque cum mano armata cocurrerit... medietatem regi et medietatem cui **iniuria** inlata fuerit.	Attacking another for vengeance: 'violent act'.
ER 26	Si quis mulieri libere aut puellae in via se anteposuerit, aut **aliqua iniuria** intulerit...	Assaulting a female traveler: 'violent act'.
ER 35	Exegantur et in sacro altario ponantur, ubi **iniuria** facta est...	Attacking an asylum seeker: 'violent act'.
ER 257	Nam alia culpam non requiratur pro eo quod **iniuria** passa est.	Violent force against a thieving woman: 'violent act'.
ER 272	In sagrum altarium, ubi **iniuria** facta est.	Attacking an asylum seeker: 'violent act'.
ER 279	Si servi, id est concilius, manu armata in vico intraverint ad malum faciendum, et quicumque liber homo sub regni nostri dicione positus cum illis in capite fuerit, animae suae incurrat periculum, aut conponat solidos nongentos, medietatem regi et medietatem cui **iniuria** inlata est.	Raids by slave gangs: 'violent act'.
ER 280	Et unusquisque qui in ipsam seditionem cucurerit ad malum faciendum, conponat sol. duodecim, medietatem regi et medietatem cui **iniuria** fecerit...	Raids by *homines rusticani*: 'violent act'.
ER 371	Fiunt culpabiles id est de muliere libera si viam antesteterit aut **iniuriam** fecerit.	Blocking passage to women or assaulting them: 'violent act'.
ER 378	Nam alia culpa pro **iniuria** sua unde nongenti solidi iudicantur non requiratur.	Women who choose to engage in fight are denied 90 solidi for assault: 'violent assault'.

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ER 381	Si quis alium arga per furorem clamaverit, et negare non potuerit, et dixerit quod per furorem dixisset, tunc iuratus dicat, quod eum arga non cognovisset; postea conponat **pro ipso iniurioso verbo** solidos duodecim.	Calling someone a coward: 'damaging word'.
Leges Liutprandi		
LL 31	Reliquos vero trecentos habeat ipsa femina, cui tales **iniuria** aut detractio facta est.	Abduction of woman: 'violent act'.
LL 141	Ut si aliqua **iniuria** aut obprobrium, aut plagas aut feritas, aut mortem ibi acceperint, nihil ad ipsas mulieres aut ad viros aut ad mundoald earum conponant.	Assaults by bands of women: 'violent act'.
Lex Baiwariorum		
LB 8	Si quis ministros ecclesiae… **iniuriaverit** aut percusserit vel plagaverit vel occiderit.	Assault on clerics: 'do violence to'.

SINTESI

L'idea di 'diritto germanico' non era controversa prima della metà del ventesimo secolo, ma durante gli ultimi cinquanta anni è quasi scomparsa dal vocabolario di molti studiosi. Questo saggio riapre la questione prendendo spunto da una singola legge dal codice Visigoto. *Liber Iudiciorum* 6.4.3 utilizza la parola *iniuria* per indicare le aggressioni personali che vengono punite. Un esame più attento di questo termine nel suo contesto dimostra, però, che non viene usato con lo stesso significato attribuitogli in diritto romano. Anzi, *iniuria* in questa legge e in altre raccolte nello stesso codice sta a significare chiaramente un atto di violenza fisica. La legge è poi paragonata ad altre nella tradizione giuridica post-romana. Il confronto mostra

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che questo complesso di leggi ha un'ampia gamma di somiglianze nel linguaggio e nell'antropologia giuridica che le collegano e che giustificano la loro caratterizzazione come rappresentativa di una tradizione di diritto 'germanico'.

Parole chiave

Diritto germanico – Diritto provinciale – Diritto visigoto – Wergild – *Iniuria*.

Abstract

The concept of 'Germanic law' did not arouse controversy before the mid-twentieth century, but the last fifty years have seen an almost complete retreat from its usage in many circles. This study reopens the question using a single law from the Visigothic code as its starting point. *Liber Iudiciorum* 6.4.3 uses the word *iniuria* to describe the personal assaults it punishes, but a close examination of this word shows that it is not used to refer to the Roman delict of that name. Instead, *iniuria* in this law and others in the same code clearly means a violent physical act. The law is then compared to others in the post-Roman legal tradition, and it is shown that this complex of laws bears a wide range of similarities in language and legal anthropology unto itself, and that these link them together and justify their characterization as representative of a 'Germanic' law tradition.

Keywords

Germanic Law – Provincial Law – Visigothic Law – Wergild – *Iniuria*.

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