Law-books, concomitant texts and ethnically framed legal pluralism on the fringes of post-Carolingian Europe: northern Italy and Catalonia around 1000

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Around 1000, a new type of law-book emerged in Catalonia and northern Italy that attests to new ways of handling legal material. Incorporating in full the Visigothic and Lombard law codes, respectively, these law-books provided a base for studying and interpreting old law through comments, glosses etc., addressing new users such as lay judges. By looking at the Catalonian Liber iudicum popularis *and the north Italian* Liber Papiensis *in their manuscript contexts along with several revealing concomitant texts, the article seeks to demonstrate that these law-books also need to be understood as reflecting a transformation of law brought about by the two regions' former belonging to the Carolingian empire. A manuscript-based approach can demonstrate how the local appropriation of pre-Carolingian and Carolingian traditions contributed to the legitimization of post-Carolingian rule in both regions, whose legal cultures evolved quite differently despite numerous parallels and points of comparison.*

It has often been pointed out that between the ninth and the eleventh century, Catalonia and northern Italy shared many features in their legal cultures,[1] as both stand out for the richness of their extant charters and

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[1] F. Bougard, *La justice dans le royaume d'Italie de la fin du VIIIe siècle au début du XIe siècle* (Rome, 1995), pp. 77, 207, 268, 295, 307, 338.

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demonstrate high standards in notarial practice and administrative literacy.[2] Their histories, however, were different. Northern Italy, once a central region of the later Roman empire, had come mostly under Lombard rule for two hundred years before becoming the Carolingian 'kingdom of Italy' in 774.[3] On the Iberian peninsula, parts of the Roman province of Tarraconensis, after two hundred years under Visigothic and another eighty under Arab rule, from 801 formed the heartland of the Frankish *marca Hispanica*, later called 'Catalonia'.[4] Also, the histories of both regions as constituent parts of the Carolingian empire were different, as the *regnum Italiae* had its own Carolingian king who also exercised some sort of supervision over the papal patrimony, whereas Catalonia, neighbouring both the emirate of Cordoba and the Christian polities further north and north-west, as a frontier region was governed by margraves and counts.[5] And finally, during the Carolingian empire's decomposition, in Catalonia the counts of Barcelona attained a higher degree of political independence from France and entertained complex, often not very peaceful relations with the Caliphate of Cordoba,[6] whereas northern Italy again became part of an empire governed from north of the Alps.[7]

Despite their distinctive histories before, during and after Carolingian rule, it makes sense to compare the legal cultures of northern Italy and Catalonia for the period around 1000 not only with regard to charters and notarial practice. Since the ninth century, the two regions' incorporation within the Carolingian empire had caused various legal and other texts to cross the Alps into Italy[8] and the Pyrenees into

2 See the studies in P. Erhart *et al.* (eds), *Die Privaturkunden der Karolingerzeit* (Dietikon and Zurich, 2009), and W.C. Brown *et al.* (eds), *Documentary Culture and the Laity in the Early Middle Ages* (Cambridge, 2013).

3 P. Delogu, 'The Name of the Kingdom', in C. Gantner and W. Pohl (eds), *After Charlemagne. Carolingian Italy and its Rulers* (Cambridge, 2021), pp. 36–53; I. Santos Salazar, *Governare la Lombardia carolingia (774–924)* (Rome, 2021).

4 P. Senac, *Les Carolingiens et al-Andalus, VIIIe–IXe siècle* (Paris, 2002), pp. 64–79; C.J. Chandler, *Carolingian Catalonia: Politics, Culture and Identity in an Imperial Province, 778–987* (Cambridge, 2018), pp. 60–110. – Although not referred to as such during the Carolingian period, the term 'Catalonia' is used here for convenience. See R. Collins, *Early Medieval Spain. Unity in Diversity, 400–1000*, 2nd edn (London, 1995), p. 256.

5 A.R. Lewis, *The Development of Southern French and Catalan Society* (Austin, TX, 1965), pp. 37–87; A. Stieldorf, *Marken und Markgrafen. Studien zur Grenzsicherung durch die fränkisch-deutschen Herrscher* (Hanover, 2012), pp. 205–16; R. Collins, *Caliphs and Kings. Spain, 796–1031* (Oxford, 2014), pp. 224–37; Chandler, *Carolingian Catalonia*, pp. 111–50.

6 J.A. Jarrett, *Rulers and Ruled in Frontier Catalonia, 880–1010: Pathways of Power* (Woodbridge, 2010); Chandler, *Carolingian Catalonia*, pp. 229–63.

7 W. Huschner, *Transalpine Kommunikation im Mittelalter. Diplomatische, kulturelle und politische Wechselwirkungen zwischen Italien und dem nordalpinen Reich (9.–11. Jahrhundert)*, 3 vols (Hanover, 2003).

8 See F. Bougard, 'Was there a Carolingian Italy? Politics, Institutions and Book Culture', in Gantner and Pohl (eds), *After Charlemagne*, pp. 54–81.

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Catalonia.[9] This process was managed in both regions through the agency of important monasteries and ecclesiastical centres. At the end of the first millennium, these legal texts were combined with regional law codes of pre-Carolingian origin to form a new type of law-book. Around 1000, in Pavia the so-called *Liber Papiensis* was compiled, which contains the *Leges Langobardorum* and Carolingian capitularies. Shortly later, in Barcelona, the text known as the *Liber iudicum popularis* was written, a legal compilation essentially based on the Visigothic *Liber iudiciorum*. With an older 'barbarian' law code forming the bulk of the material, these new law-books were augmented in the manuscripts by further legal and other texts considered to be relevant. The turn of the first millennium, often framed in terms of state failure or 'feudal anarchy',[10] thus sparked a new flourishing of legal cultures in both northern Italy[11] and Catalonia.[12]

In what follows, some basic features of these two law-books and their manuscripts will be discussed and compared in order to assess more precisely the long-term impact that Carolingian rule had on the legal culture of these two regions. Royal law-giving,[13] so evident in both the Lombard and Visigothic laws, constituted an important reference point for both law-books. But only through their belonging to the Carolingian empire did the two regions witness the emergence of an ethnic plurality of laws. To cope with the problems arising from this kind of legal pluralism the most important collision rule was the principle of the personality of laws, according to which a person, when called into court or carrying out a legal transaction, had to answer or act according to his or her law of birth.[14] In the nineteenth century,

9 M.M. Tischler, 'How Carolingian was Early Medieval Catalonia?', in S. Greer *et al.* (eds), *Using and Not Using the Past after the Carolingian Empire, c.900–c.1050* (London, 2019), pp. 111–33; *idem*, 'Using the Carolingian Past in a Society of Transformation: The Case of Early Medieval Septimania / Catalonia in the Long Tenth Century (900–1050)', *Medieval Worlds* 10 (2019), pp. 72–86.

10 Cf. P. Bonnassie, *La Catalogne du milieu du Xe à la fin de XIe siècle. Croisance et mutations d'une société*, 2 vols (Toulouse, 1975/6); C. Wickham, *Early Medieval Italy. Central Power and Local Society, 400–1000* (London, 1981), pp. 187–93; D. Barthélemy, *L'an mil et la Paix de Dieu: la France chrétienne et féodale (980–1060)* (Paris, 1999).

11 C.M. Radding, *The Origins of Medieval Jurisprudence. Pavia and Bologna 850–1150* (New Haven, 1988).

12 More recent research on Catalonia has been hesitant to accept the 'feudal revolution around 1000' as an explanatory model. See A.J. Kosto, *Making Agreements in Medieval Catalonia. Power, Order, and the Written Word, 1000–1200* (Cambridge, 2001), pp. 9–16; J.A. Bowman, *Shifting Landmarks. Property, Proof, and Dispute in Catalonia around the Year 1000* (Ithaca, 2004), pp. 7–10, 219, 222, 226–8.

13 P. Wormald, '*Lex Scripta* and *Verbum Regis*: Legislation and Germanic Kingship, from Euric to Cnut', in P.H. Sawyer and I.N. Wood (eds), *Early Medieval Kingship* (Leeds, 1977), pp. 105–38.

14 S.L. Guterman, *The Principle of the Personality of Law in the Germanic Kingdoms of Western Europe from the Fifth to the Eleventh Century* (New York, 1990); P. Hoppenbrouwers, '*Leges nationum* and Ethnic Personality of Law in Charlemagne's Empire', in J. Duindam *et al.* (eds), *Law and Empire: Ideas, Practices, Actors, Rulers and Elites* (Oxford, 2013), pp. 251–74.

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Friedrich Carl von Savigny drew attention to this principle in his history of Roman law in the Middle Ages,[15] only to take it later as a historical starting point in developing a new field in contemporary law called 'international private law'.[16] Indeed, from a modern 'inter-state perspective' on the plurality of laws, the legal framework established by the Franks could be seen as a first attempt to regulate the mobility of functional groups of different origin *within* a larger empire and to establish a supraregional rule of law despite ethnic and legal fragmentation.[17] Effective for centuries to come, the principle of personality of laws emanated from a sophisticated legal policy practised in different parts of the Carolingian empire.[18]

It is argued here that pre-Carolingian and Carolingian legal pasts were not just ideological claims, but give important insight into layers of legitimacy around 1000 in both northern Italy and Catalonia. Looking at the two law-books in the context of their manuscript transmission allows us to trace a profound transformation of legal culture in both regions. They attest to processes of regional identity formation, in which older law codes played a fundamental role, while ethnically defined legal pluralism came to be regarded as a facet of Carolingian heritage to which local and regional actors paid respect and sought to continue.

The *Liber Papiensis* and legal culture in northern Italy around 1000

When northern Italy, largely comprising the territory of the former Lombard kingdom, was reorganized as the *regnum Italiae* by the Franks,

[15] F.C. von Savigny, *Geschichte des Römischen Rechts im Mittelalter*, vol. 1 (Heidelberg, 1815), engaging with L.A. Muratori, 'De legibus Italicorum et statutorum origine', in *idem*, *Antiquitates Italicae medii aevi*, t. 2 (Milan, 1739), diss. 22, cols 233–90, who built much of his argument on the 'Codex Estensis' of the *Liber Papiensis* (below nn. 24, 48). For an English translation of the first edition of this text: F.C. von Savigny, *The History of the Roman Law during the Middle Ages, Vol. 1*, trans. E. Cathcart (Edinburgh, 1829). Note, however, that this article draws on the second edition.

[16] E.M. Meijers, 'L'histoire des principes fondamentaux du droit international privé à partir du Moyen âge, spécialement dans l'Europe occidentale', in *Recueil des Cours de l'Académie de droit international* 49 (1934), III, pp. 543–686; cf. F.K. Juenger, *Choice of Law and Multistate Justice* (Boston, 1993), pp. 10–42.

[17] K. Neumeyer, *Die gemeinrechtliche Entwicklung des internationalen Privat- und Strafrechts bis Bartolus*, vol. 1: *Die Geltung der Stammesrechte in Italien* (Munich, 1901); S. Esders, *Agobard, Wala und die Vielfalt gentiler Rechte. Zwei Studien zu Rechtspluralismus, Personalitätsprinzip und Zeugnisfähigkeit im Karolingerreich* (in press). – On late antique precursors of 'legal dualism', see L. Loschiavo, 'A proposito di *ius speciale* e personalità del diritto: *ius militare* e *leges barbarorum*', in *Ravenna Capitale. L'esercito Romano e l'alba dell'Europa* (Santarcangelo di Romagna, 2020), pp. 185–211.

[18] S. Esders and H. Reimitz, 'Diversity and Convergence. The Accommodation of Ethnic and Legal Pluralism in the Carolingian Empire', in W. Pohl and R. Kramer (eds), *Empires and Communities in the Post-Roman and Early Islamic World, c. 400–1000 CE* (Oxford, 2021), pp. 227–52.

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Pavia, with its royal palace constructed by Theoderic the Goth and later used by the Lombard kings, continued to be a residential city under the Carolingians.[19] As an episcopal see, Pavia came to contain a school[20] and with royal support became a centre of legal knowledge.[21] When the Ottonian rulers incorporated Italy into their kingdom around 960,[22] Pavia remained proud of its rights and legal expertise.[23] The Pavese people revolted against Henry II when he was crowned King of Italy there in 1004.[24] After Henry's death in 1024, they even ruined the royal palace and in their legal defence argued cunningly that they could not have destroyed the king's palace, for when destroying the building, there was no king alive.[25]

The *Liber Papiensis*,[26] written in Pavia around 1000, has come down to us in seven manuscripts and a fragment.[27] Introduced as 'the law given by the Lombard and Frankish kings' (*lex a Longobardorum et Francorum regibus edita*), it consists of two chronologically ordered parts. First, the *Edictus* begins with the edict of King Rothari published in 643, before presenting in full the laws given by Grimoald, Liutprand, Ratchis and

[19] P. Majocchi, *Pavia città regia. Storia e memoria di una capitale altomedievale* (Rome, 2008).

[20] Capitulare Olonnense ecclesiasticum primum *a*. 825, c. 6, ed. A. Boretius, *MGH Capitularia regum Francorum* 1 (Hanover, 1883), no. 163, p. 327.

[21] Radding, *The Origins of Medieval Jurisprudence*, pp. 78–84.

[22] For a recent survey, see R.G. Witt, *The Two Latin Cultures and the Foundation of Renaissance Humanism in Medieval Italy* (Cambridge, 2012), pp. 71–115.

[23] D. Rando, 'A partire dalle "Honorantiae civitatis Papiae". Pavia capitale come tema storiografico', in S. Roebert (ed.), *Von der Ostsee zum Mittelmeer. Forschungen zur mittelalterlichen Geschichte für Wolfgang Huschner* (Leipzig, 2019), pp. 197–208.

[24] S. Weinfurter, *Heinrich II. (1002–1024). Herrscher am Ende der Zeiten* (Regensburg, 1999), p. 232.

[25] Wipo, Gesta Chuonradi II, c. 7: *Die Werke Wipos*, ed. H. Bresslau, *MGH SRG*, 3rd edn (Hanover, 1915), pp. 29–30.

[26] 'Liber legis Langobardorum Papiensis dictus', ed. A. Boretius, *MGH LL* 4 (Hanover, 1868), pp. 290–585.

[27] These are: 1) Milan, Biblioteca Ambrosiana, O. 53 sup. (2nd quarter of the 11th cent., northern Italy, probably Pavia), fols 1v–101r and O. 55 sup. (ditto), fols 3r–75v; 2) Paris, Bibliothèque nationale, lat. 9656 (mid-11th cent., northern Italy, see H. Mordek, *Bibliotheca capitularium regum Francorum manuscripta. Überlieferung und Traditionszusammenhang der fränkischen Herrschererlasse*, MGH Hilfsmittel 15 (Munich, 1995), p. 578), fols 1r–104v; 3) Vienna, Österreichische Nationalbibliothek, lat. 471, fols 2v–90v (2nd half of 11th cent., northern Italy, most likely Pavia; see T. Gobbitt, 'Materiality, Stratigraphy and Artefact Biography: Codicological Features of a Late-Eleventh-Century Manuscript of the Lombard Laws', *Studia Neophilologica* 86 (2014), pp. 48–67); 4) Florence, Biblioteca Medicea Laurenziana, Plut. 89 sup. 86 (last quarter of 11th cent.), fols 2r–139v; 5) London, British Library, Add. 5411 (2nd half of 11th cent., northern or central Italy), fols 1r–181v; 6) Modena, Archivio di stato, 130 ('Codex Estensis', 15th cent.; copy of an 11th-century manuscript; see Boretius, *MGH LL* 4, pp. LX–LXI), fols 60v–133r; 7) Padua, Biblioteca del Seminario Vescovile, 528 (early 12th cent., northern Italy), fols 2r–84v. 8) Venice, Biblioteca Nazionale Marciana, MS Lat. V. 81 (2751) (late 11th cent., fragment). For detailed descriptions see the forthcoming study by T. Gobbitt, *The Liber Papiensis in the Long Eleventh Century: Manuscripts, Materiality and Mise-en-page* (Leeds, 2022).

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Aistulf.[28] The laws of the Frankish rulers, which form the *Liber*'s second part, called *Capitulare*, are introduced by the preface to Charlemagne's Herstal capitulary of 779, followed by a sequence of 143 capitulary provisions promulgated by Charlemagne and his successors. The *Liber* is supplemented by laws of later rulers such as Guido I (883–94), Otto I (936–73) and Henry II (1002–24), to which laws of the Salian kings Conrad II (1024–39) and Henry III (1039–1056) are added in some manuscripts. Thus presenting a continuous narrative of law-giving from the Lombard kings into the eleventh century,[29] and also mentioning the imperial title of individual rulers, the *Liber*'s actual focus was the *rex Langobardorum* or *rex Italiae* as the driving force behind legislation. The Lombard laws set the tone for a corpus of ethnically defined law in this law-book, ever more so since the Carolingian kings of Italy and their successors understood many of their laws given for Italy to be additions to Lombard law.

Since the nineteenth century, there has been some debate about the structure and origins of the *Liber Papiensis*, more precisely on the question of whether the diversity of the manuscripts can be traced back to an archetype or not.[30] Some scholars argued that combining the *Edictus* and the *Capitulare* was a decision made by individual scribes rather than the adaptation of a model that contained both parts, since in the oldest manuscript from Milan the *Edictus* and the *Capitulare* appeared to be written separately.[31] Still, that large parts of both sections are 'stable' in most manuscripts seems instead to suggest that there must have been a substantial common source, while the extant manuscripts apparently represent eleventh-century adaptations. Each manuscript is missing individual chapters,[32] while most of them contain additional texts.[33] Thus, to some extent, the *Liber Papiensis* was 'a text in constant evolution'.[34]

28 Some manuscripts present Rothari's prologue with the famous genealogy of the Lombard kings: 'Liber legis Langobardorum Papiensis dictus', p. 290.
29 This contrasts with ninth-century Italian *libri legum* that combine capitularies with several barbarian law codes. See O. Münsch, *Der Liber legum des Lupus von Ferrières* (Frankfurt, 2001).
30 The most important contributions are: J. Merkel, *Die Geschichte des Langobardenrechts. Eine Abhandlung* (Berlin, 1850); A. Boretius in the preface to his edition of the *Liber Papiensis*: *MGH LL* 4, pp. lxxii–lxv and xcvii–xcviii; and on the archetype question, see R. von Nostitz-Rieneck, 'Zur Frage nach der Existenz eines "Liber Papiensis"', *Historisches Jahrbuch* 11 (1890), pp. 687–708, and the forthcoming study by T. Gobbitt.
31 However, see the clarifications by T. Gobbitt: https://thomgobbitt.files.wordpress.com/2016/04/milan-ba-o-55sup.pdf (accessed 13 March 2022).
32 Von Nostitz-Rieneck, 'Zur Frage nach der Existenz', pp. 702–4.
33 See, e.g. Mordek, *Bibliotheca*, pp. 578–9.
34 C.M. Radding, 'Legal Theory and Practice in Eleventh-Century Italy', *Law and History Review* 21 (2003), pp. 377–81, at p. 378.

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In most manuscripts of the *Liber Papiensis*, beginning with the earliest from Milan, not all space available on the parchment was used. Apparently this followed the scribes' deliberate intention to leave room for later comments on the margins, although the written law itself was regarded as a largely canonized text, the wording of which should remain unaltered. Indeed, in most manuscripts of the *Liber Papiensis*, the margins are full of comments expanding into ample glosses of legal commentary. The two most famous, the *Walcausina*, written in the 1070s,[35] and the *Expositio ad librum Papiensem*, also from the later eleventh century,[36] provide legal comments on the complete *Liber Papiensis* and illustrate how the old law was reinterpreted, often by reference to Roman law.[37]

All manuscripts contain further independent texts added to the law-book that clearly antedate the two glosses mentioned. Not being part of the original law-book, these additions were considered relevant for their practical use at the time the manuscripts were written. Already in the Milan manuscript of the *Liber Papiensis*, the two parts of which were written in the second quarter of the eleventh century[38] in the main by a Pavese notary called Secundus,[39] some sort of separate legal commentary is transmitted, the so-called *Quaestiones and Monita*.[40] It provides a lengthy Q & A on practical problems arising in court: how are sureties to be selected according to Roman law? How does the law of succession in Salic law differ from that in Roman law? How long is the period of prescription according to Roman, Lombard and Salic law? What differences have to be observed in oath-swearing if a culprit is supposed to be a *Romanus homo*? At what age can an infant be regarded as adult according to what law? In which cases and contexts can legal conflicts be solved by judicial combat?[41] It is in this context that the non-Lombard *leges* come into play, since judges in

35 Paris, Bibliothèque nationale, lat. 9656; Vienna, Österreichische Nationalbibliothek, lat. 471. See C.M. Radding, '*Petre te appellat Martinus*. Eleventh-Century Judicial Procedure as Seen Through the Glosses of Walcausus', in *La giustizia nell'alto medio evo, secoli IX–XI* (Spoleto, 1997), vol. 2, pp. 827–61.

36 Napels, Biblioteca Nazionale, Brancat. II. B. 28 which does not, however, transmit the *Liber Papiensis*, but the Lombarda. See G. Diurni, *L'Expositio ad Librum Papiensem e la scuola giuridica preirneriana* (Rome, 1976).

37 See Radding, 'Legal Theory and Practice in Eleventh-Century Italy', p. 380; *idem* and A. Ciaralli, *The Corpus Iuris Civilis in the Middle Ages. Manuscripts and Transmission from the Sixth Century to the Juristic Revival* (Leiden, 2006), pp. 35–65.

38 Milan, Biblioteca Ambrosiana, O. 53 sup. and O. 55 sup.

39 According to a colophon in ms. O. 55 sup., fol. 75v: *Secundus notarius scripsit oc manus suas*.

40 Milan, Biblioteca Ambrosiana, O. 53 sup., fols 101–104r and O. 55 sup., fols 1r–2v and 76r–77r. The abbreviated text has been reconstructed by F. Bluhme, in *MGH LL* 4 (Hanover, 1868), pp. 590–4.

41 On this text and its possible date (between 967 and 1019), see M. Conrat, *Geschichte der Quellen und Literatur des römischen Rechts im früheren Mittelalter*, vol. 1 (Leipzig, 1891), pp. 274–6.

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northern Italy were faced with legal pluralism, with many people living according to Salic, Bavarian or other laws. In addition, each part of the manuscript contains a list of kings and emperors ruling Italy that calculated indictions and offered precise dates for their regnal and imperial years.[42]

Another addition relevant to legal pluralism, known as the Lombard *Cartularium*,[43] is contained in three manuscripts of the *Liber Papiensis*.[44] It contains more than twenty formularies for making donations, sales, manumissions, drafting of charters, etc. Clauses and other elements suggest that the documentary practices reflected in this collection may well reach back into the ninth century. The *Cartularium* also contains *placita*, that is, dialogues in court that transmit the wording of oral declarations, as well as questions a judge would have to ask, such as: 'According to what law shall this man be questioned? According to what law shall he be banned? According to what law shall he prove his innocence?'.[45] Legal practice following Lombard law seems to dominate the texts of the *Cartularium*, but several of them provide models to conduct legal procedure according to Roman, Salic, Ripuarian, Alaman, Bavarian, Burgundian and even Gothic law.[46] Designed for practical purposes, the collection was aiming to conduct legal action in an ethnically mixed society and thus corresponds with the numerous declarations of personal law (*professiones iuris*) extant in north Italian charters from the 820s onward.[47]

Two manuscripts give an idea of how legal pluralism was explained and legitimized in a more general sense, as they include a remarkable text of Merovingian origin known under the misleading title 'Prologue

[42] Milan, Biblioteca Ambrosiana, O. 53 sup., fols 100r–101r and O. 55 sup., fols 78r–79r. Editions: 'Catalogi regum Italicorum Oscelenses', ed. G. Waitz, *MGH Scriptores rerum Langobardicarum et Italicarum saec. VI–IX* (Hanover, 1878), pp. 519–20; 'Catalogi regum Italicorum et imperatorum Oscelenses (Ambrosiani)', ed. C. Cipolla, Monumenta Novaliciensia vetustiora, vol. 1 (Rome, 1898), pp. 413–16.

[43] Ed. Boretius, *MGH LL* 4, pp. 595–602.

[44] Paris, Bibliothèque nationale, lat. 9656, fols 104v–108v (nos. 17–25); Vienna, Österreichische Nationalbibliothek, lat. 471, fols 91r–92v and 139v–141v (nos. 3–15, 17–23, 1–3); Padua, Biblioteca des Seminario Vescovile, 528, fol. 1r–1v (no. 1). See also Naples, Biblioteca Nazionale, Brancat. II. B. 28, fols 195v–199v.

[45] On the *placita* see also Radding, 'Eleventh-Century Judicial Procedure', p. 847.

[46] See, e.g., *Cartularium* nos. 1 and 2: *MGH LL* 4, p. 595.

[47] Classical studies include G. Padelletti, 'Delle professioni di legge nelle carte medioevali', *Archivio storico italiano*, ser. 3, 20 (1874), pp. 431–48; Neumeyer, *Die gemeinrechtliche Entwicklung*, pp. 85–6; M. Roberti, 'Intorno alla scomparsa delle professioni di legge straniera in Italia', *Rivista Internazionale di Scienze Sociali*, ser. 3, 9 (1938), pp. 720–37; and more recently C. Storti Storchi, 'Ascertainment of Customs and Personal Laws in Medieval Italy from the Lombard Kingdom to the Communes', *Rechtsgeschichte – Legal History* 24 (2016), pp. 257–65.

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to the Bavarian Law Code'.[48] This text, which can be found in more than forty extant manuscripts of Bavarian, Alaman, Salic, Ripuarian and even Roman law,[49] narrates a world history of legislation with a Judeo-Christian framing that starts with Moses. It repeatedly refers to obstacles to legislation, but eventually the emperor Theodosius II managed to have a Christian codification of Roman law produced. Up to this passage, the whole text is a literal adaptation of the chapter *De auctoribus legum* of Isidore of Seville's Etymologies.[50] However, in what follows, the text departs significantly from Isidore by stating: 'Then each people developed their own laws from their customs' (*deinde unaquaque gens propriam sibi ex consuetudine elegit legem*).[51] The Frankish kingdom marks the beginnings of the age of ethnically defined legal pluralism, since each people under Frankish rule was provided with a written compilation of their respective laws. According to the prologue this happened first under King Theuderic for the Franks, Alamans and Bavarians.[52]

It was important to emphasize this, as Franks, Alamans and Bavarians had played an important role in the Frankish conquest in Italy, while their descendants continued to be relevant in the military, administrative and social elite of Italy.[53] Charlemagne and his successors guaranteed them that when staying in Italy, they should be judged in court according to their native law.[54] The practical effects of the Carolingian introduction

[48] Paris, Bibliothèque nationale, lat. 9656, fol. 109r (incomplete); Modena, Biblioteca Estense, Codex Estensis, fol. 139v. *Lex Baiwariorum*, ed. E. von Schwind, *MGH LL nat. Germ*. 5.2 (Hanover, 1926), pp. 197–203. The Paris manuscript also has a large excerpt from the Lex Salica (Karolina emendata) on fols 109r–115r; the 'Codex Estensis' contains the Lex Salica on fols 139r–153r.

[49] See von Schwind, *Lex Baiwariorum*, pp. 187–8 and 197 with an (incomplete) list of manuscripts.

[50] Isidore of Seville, Etymologies V.1: *Isidoro de Sevilla, Etimologías Libro V De legibus – De temporibus*, ed. V. Yarza Urquiola and F. Javier Andrés Santos (Paris, 2013), pp. 11–15. See C. López Bravo, 'El legado iusfilosófico de San Isidoro de Sevilla. Ley y derecho en el libro V de las *Etimologías*', *Isidorianum* 12 (2002), pp. 9–44; L. Loschiavo, 'Isidore of Seville and the Construction of a Common Legal Culture in Early Medieval Europe', *Clio@Thémis* 10 (2016), pp. 1–21, at p. 2. – On Isidore seen as 'father of "international law" as it is understood today' for his redefinition of *ius gentium*, see A. Fear, 'Isidore of Seville on Law and Kingship', in *idem* and J. Wood (eds), *A Companion to Isidore of Seville* (Leiden, 2020), pp. 332–58, at p. 333.

[51] *Lex Baiwariorum*, ed. von Schwind, pp. 200–3.

[52] *Lex Baiwariorum*, ed. von Schwind, pp. 200–3: 'Ipso autem dictante iussit conscribere legem Francorum et Alamannorum et Baioariorum unicuique genti qui in eius potestate erat.' In the Paris manuscript lat. 9656, which contains a large portion of the Lex Salica, this is supplemented on fol. 109r by a marginal branching diagram: *Legunt Theodorici regis alia est Francorum, alia Alamannorum, alia Baivariorum*. On such diagrams see Radding, '*Petre te appellat Martinus*', pp. 838–9.

[53] E. Hlawitschka, *Franken, Alemannen, Bayern und Burgunder in Oberitalien (774–962)* (Freiburg, 1960); A. Castagnetti, *Teutisci fra gli immigrati transalpini nella Langobardia carolingia* (Verona, 2006).

[54] Hoppenbrouwers, '*Leges nationum* and Ethnic Personality of Law'.

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of the principle of personality of law can be traced in north Italian private charters containing a *professio iuris*, a solemn declaration of an individual's law by birth.[55]

The Frankish recension of the prologue *De auctoribus legum* thus explained why legal culture became reframed through ethnically defined legal pluralism. The Franks wanted to be seen as warrantors of legal pluralism and as paying respect to legal traditions anteceding their rule in a given region. Appending this text to the *Liber Papiensis* also made sure that what the Frankish rulers had done with the laws of the Alamans and Bavarians, their successors could by analogy be expected to do, also with the laws of the Lombards.

In sum, a look at the concomitant texts added to the *Liber Papiensis* in manuscripts reveals how the Lombard laws, which formed the core of this law-book, were reframed in the context of legal pluralism. To judge from the additions to the *Liber Papiensis*, but also from further legal manuscripts, there were seven different ethnically defined laws (Lombard, Roman, Salic, Ripuarian, Bavarian, Alaman and Burgundian) in the *regnum Italiae* that could play a role at court. Far from being confined to Frankish legal ideology alone, the principle of personality of law was applied in the real world of legal and notarial practice, as hundreds of extant charters document.

The *Liber iudicum popularis* and legal culture in early eleventh-century Catalonia

The legal culture of Catalonia is best characterized as predominantly Visigothic. Indeed, most manuscripts of the seventh-century Visigothic *Liber iudiciorum* extant today are from Catalonia.[56] The oldest refers to an Arab raid on the city of Girona, where the manuscript was apparently written in 827.[57] A miscellany manuscript produced in the monastery of Santa Maria de Ripoll contains a 'vulgate' version of the

[55] See above n. 47.

[56] *Leges Visigothorum*, ed. K. Zeumer, *MGH Leg. nat. germ.* 1 (Hanover, 1902), pp. 33–456. See P. D. King, *Law and Society in the Visigothic Kingdom* (Cambridge, 1972), pp. 17–22; C. Martin, 'Le *Liber iudiciorum* et ses différentes versions', in T. Deswarte (ed.), *Le droit hispanique latin du VIe au XIIe siècle – El derecho hispánico latino de los siglos VI al XII* (Madrid, 2011), pp. 17–34. See A.M. Mundó, 'Els manuscrits del *Liber iudiciorum* de les comarques Gironines', in J. Portella i Comas (ed.), *La formació i expansió del feudalisme català* (Girona, 1985), pp. 77–86.

[57] Paris, Bibliothèque Nationale, lat. 4667. See Mundó, 'Els manuscrits', pp. 79–80 and J. Alturo, 'El *liber iudicum* manuscrito latino 4667 de la Biblioteca nacional de Francia. Análisis paleográfico', *Historia Instituciones Documentos* 30 (2003), pp. 9–54. See also Barcelona, Arxiu de la Corona d'Aragó, Ripoll 46 (9th cent.).

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Liber iudiciorum.[58] From the late twelfth century we have a fragment of a Catalan translation of the *Liber iudiciorum* illustrating its practical importance.[59] Also the oldest written versions of local customary law, the *Usatges de Barcelona*, which reach back into the eleventh century,[60] show deep influence from Visigothic laws,[61] which they originally sought to supplement rather than to replace.[62] Indeed, Catalonian charters are full of references to the Visigothic laws, which they sometimes quote according to book, chapter and paragraph.[63] In a late tenth-century formulary collection of Santa Maria de Ripoll, individual documents refer to Visigothic law, while their dating follows the regnal years of Frankish rulers.[64]

The Visigothic *Liber iudiciorum* was certainly not considered to be the sole source of legal authority, as royal diplomas, Frankish law, oral custom and ecclesiastical law contributed to Catalonia becoming a region characterized by a plurality of legal sources.[65] Still, Visigothic law is referred to in some tenth- and eleventh-century texts as *lex nostra*. It became an identity-shaping legal tradition for Catalonia[66] and neighbouring Septimania,[67] not least because the Carolingian rulers willingly guaranteed its validity and application by local judges.[68] The

[58] Barcelona, Biblioteca de Catalunya, Ms. 944 (written *c*.1100). See G. Martínez Díez, 'Un nuevo codice del *Liber iudiciorum* del siglo XII', *Anuario del Derecho Español* 31 (1961), pp. 651–94 and Mundó, 'Els manuscrits', pp. 83–4.

[59] Biblioteca de l'Abadia de Montserrat, Ms. 1109: http://www.cervantesvirtual.com/obra-visor/fragment-duna-versio-catalana-del-liber-iudiciorum-visigotic-manuscrit-forum-iudicum--0/html/005a1e6c-82b2-11df-acc7-002185ce6064_2.html (accessed 11 March 2022). See A.M. Mundó, 'Fragment d'una versió catala del *Llibre jutge*', in *Miscellània Aramon i Serra 4* (Barcelona, 1984), pp. 155–93. Another such fragment comes from Urgell: C. Baraut Obiols and J. Moran, 'Fragment d'una altra versió catalana antiga del *Liber Iudiciorum* visigòtic', *Urgellia* 13 (1996/7), pp. 7–35.

[60] *Usatges de Barcelona. El codi a mitjan segle XII*, ed. J. Bastardas i Parera (Barcelona, 1984).

[61] F. Udina i Martorell and A.M. Udina i Abelló, 'Consideracions a l'entorn del nucli originari dels *Usatici Barchinonae*', in J. Portella i Comas (ed.), *La formació i expansió del feudalismo català* (Girona, 1986), pp. 87–104.

[62] See R. Collins, '*Sicut lex Gothorum continet*. Law and Charters in Ninth- and Tenth-Century León and Catalonia', *English Historical Review* 100 (1985), pp. 489–512, at p. 510.

[63] M. Zimmermann, 'L'usage du droit wisigothique en Catalogne du IXe au XIIe siècle. Approches d'une signification culturelle', *Mélanges de la Casa de Velázquez* 9 (1973), pp. 233–81, at p. 237.

[64] M. Zimmermann, 'Un formulaire du Xe siècle conservé à Ripoll', *Faventia* 4 (1982), pp. 25–86; on the date see Chandler, *Carolingian Catalonia*, p. 213.

[65] Bowman, *Shifting Landmarks*, pp. 33–51; on custom see also M.A. Kelleher, 'Boundaries of Law: Code and Custom in Early Medieval Catalonia', *Comitatus* 30 (1999), pp. 1–10.

[66] Bowman, *Shifting Landmarks*, pp. 19, 34, 52 and 55.

[67] W. Kienast, 'Das Fortleben des gotischen Rechtes in Südfrankreich und Katalonien', in *Album Joseph Balon* (Namur, 1968), pp. 99–115; Zimmermann, 'L'usage du droit wisigothique'; Collins, '*Sicut lex Gothorum continet*'; J.M. Salrach, 'Práctica judiciales, transformación social y acción politica en Cataluña (siglos IX–XIII)', *Hispania* 47 (1997), pp. 1009–48; *idem*, *Justícia i poder a Catalunya abans de l'any mil* (Vic, 2013), pp. 19–44.

[68] An important point made by Chandler, *Carolingian Catalonia*, pp. 11, 75–6 and 85.

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counts of Barcelona, whose position depended on the Frankish kings and who had ties to Frankish noble families,[69] played a crucial role within this Frankish policy to enforce the rule of local law. Under Wilfrid 'the Hairy' (878–97) a comital dynasty emerged that also brought the neighbouring counties of Girona, Urgell and Osona under its control, also extending its influence north of the Pyrenees.[70] Oliba (971–1046), abbot of Santa Maria de Ripoll from 1008 and bishop of Vic from 1018, was a member of this family.[71] Networks of the comital family and the Carolingian policy to warrant local law thus constituted a multi-layered framework of legitimacy.

The Catalonian *Liber iudicum popularis*,[72] a legal compilation produced in Barcelona under Count Raimund Borrell (992–1017), incorporated fully the Visigothic *Liber iudiciorum*. A law-book destined for judicial practice as well as for legal training, the only full version of it today is an eleventh-century manuscript kept in the Escorial.[73] However, Anscari Mundó traced at least four more partial manuscripts of the *Liber iudicum popularis*,[74] among them a small fragment from the episcopal library of Vic written under the auspices of Bishop Oliba.[75] This suggests that Raimund Borrell intended to spread the use of the *Liber iudicum popularis* over larger parts of the Spanish March.

A comparison of the layout of the Vic fragment and of the same chapter in the Escorial codex[76] reveals that both copies left much space not only on the margins, but also between the lines. Again, as in case of the *Liber Papiensis*, we may assume that reserving space for comments and annotations was an overriding consideration when the law-book was being compiled. Scribes made ample use of this feature by inserting glosses in much smaller letters in brown ink clearly

[69] See Collins, *Caliphs and Kings*, p. 227, and Chandler, *Carolingian Catalonia*, pp. 74–85 and 96–110.

[70] Collins, *Caliphs and Kings*, p. 235; Chandler, *Carolingian Catalonia*, pp. 153–88. For the social and possessory history of tenth-century Catalonia see Bonnassie, *La Catalogne du milieu du Xe à la fin de XIe siècle*; and Jarrett, *Rulers and Ruled*, pp. 129–65, on fortifications.

[71] On Oliba and his age, see most recently M. Sureda i Jubany (ed.), *Oliba episcopus. Millenari d'Oliba, bisbe de Vic (Catàleg de l'exposició)* (Vic, 2018).

[72] *Liber iudicum popularis. Ordenat pel jutge Bonsom de Barcelona*, ed. J. Alturo *et al.* (Barcelona, 2003), based on the Escorial manuscript with all its concomitant texts and glosses.

[73] El Escorial, Real Biblioteca del Monasterio de San Lorenzo, Z. II. 2. (11th cent.), written in Barcelona, and transferred to the Escorial by a donation of Johannes Baptista Cardona, bishop of Vic (1581–7) to King Philipp II of Spain. See A.M. Mundó, 'El còdex Escorial Z. II.2.', in *Liber iudicum popularis*, ed. Alturo *et al.*, pp. 125–35, at pp. 128–9.

[74] A.M. Mundó, 'Els manuscrits del *Liber iudicum popularis* de Bonsom', in *Liber iudicum popularis*, ed. Alturo *et al.*, pp. 119–24.

[75] Vic, Arxiu i Biblioteca Episcopal, Fragment XV/3 (11th cent.): Liber iudicum popularis, Lex Visig. II.1.1 (cf. *Leges Visigothorum*, ed. Zeumer, pp. 45–6). Illustration: M.S. Gros i Pujol (ed.), *La Biblioteca episcopal de Vic. Un patrimoni bibliogràfic d'onze segles* (Vic, 2015), no. 23, p. 38.

[76] El Escorial, Real Biblioteca del Monasterio San Lorenzo, Z. II. 2., fol. 19r.

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recognizable as additions to the text, while the wording of the Visigothic laws was regarded as canonical and was expected to remain unaltered. In the Escorial manuscript we find continuous explanations of legal terms between the lines that were intended to facilitate the understanding of the text by the user.[77] Consequently, the *Liber iudicum popularis* is concluded by a very detailed glossary (*glossula ablata*) that shows that the law-book as a whole was also conceived with didactic purposes in mind.[78]

The *Liber iudicum popularis* was composed by Bonhom, a legal expert and judge, whose activities are attested in more than 120 legal documents from the comital palace in Barcelona, Vic cathedral, and the monasteries Sant Cugat and Sant Pere de les Puelles.[79] A short editorial note at the beginning of the codex makes clear that Bonhom began the compilation 'to hear and decide judicial cases' (*ad discernendas causas iudiciorum*) in the reign of the Capetian king Robert II (987/96–1031) and finished it on the 10 July 1011, on the initiative of a certain Sinfred, whose identity is unclear.[80] The education of Bonhom, who identifies himself as *laeuita et iudice* here, was clearly ecclesiastical, but as a judge he undertook wide-ranging activities. His name, clearly derived from Latin *bonus homo*, might reminiscent of the *boni homines*, those lay judges often attested in early medieval sources.[81] In Catalonia around this time, lay judges consulted written legal texts, while lay notaries drafted charters that referred to the Visigothic Code.[82]

The law-book apparently sought to address a new social elite of lay judges, as Jeffrey Bowman has suggested, interpreting the *Liber iudicum*

77 For an edition of the interlineary and marginal glosses, see: *Liber iudicum popularis*, ed. Alturo *et al.*, pp. 705–85.

78 El Escorial, Real Biblioteca del Monasterio San Lorenzo, Z II 2, fols 265r–280r; *Liber iudicum popularis*, ed. Alturo *et al.*, pp. 637–704. See J. Alturo, 'Les glosses i el glossari del manuscrit Z. II.2 de El Escorial', *ibid.*, pp. 256–70.

79 For the following, see Mundó, 'El jutge Bonsom', in *Liber iudicum popularis*, ed. Alturo *et al.*, pp. 101–18, and Bowman, *Shifting Landmarks*, pp. 84–94. The Vic fragment was apparently also written by Bonhom. On his hand, see A.M. Mundó, 'El jutge Bonsom de Barcelona, calligraf i copista del 979 al 1024', in E. Condello and G. de Gregorio (eds), *Scribi e colofoni. Le sottoscrizioni di copisti dalle origine all'avento dell stampa* (Spoleto, 1995), pp. 269–88.

80 El Escorial, Real Biblioteca del Monasterio San Lorenzo, Z. II. 2., fol. 1v. Mundó, 'El jutge Bonsom', p. 107 identifies Sinfred with a deacon named Sindered. However, the name is too common for this identification to be conclusive.

81 See K. Nehlsen-von Stryk, *Die boni homines des frühen Mittelalters unter besonderer Berücksichtigung der fränkischen Quellen* (Berlin, 1981); M. Bourin, 'Les *boni homines* de l'an mil', in C. Gauvard (ed.), *La justice en l'an mil* (Paris, 2003), pp. 53–66; Bowman, *Shifting Landmarks*, pp. 111–13; W. Davies, '*Boni homines* in Northern Iberia. A Particularity That Raises Some General Questions', in R. Balzaretti *et al.* (eds), *Italy and Early Medieval Europe: Papers for Chris Wickham* (Oxford, 2018), pp. 60–72.

82 See Bowman, *Shifting Landmarks*, pp. 90–9 and A.J. Kosto, 'Laymen, Clerics and Documentary Practices in the Early Middle Ages: The Example of Catalonia', *Speculum* 80 (2005), pp. 44–74; see also above n. 63, and J.M. Font i Rius, 'L'escola jurídica de Barcelona', in *Liber iudicum popularis*, ed. Alturo *et al.*, pp. 67–100.

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popularis partly as a mirror for judges.[83] In fact Bonhom added to the Visigothic laws several texts of a more moralizing nature, which referred to the conduct of judges. For instance, a prologue used Old and New Testament examples on justice and jurisdiction to emphasize that the idea of law originated from Moses, whereas grace and truth reach back to Jesus Christ.[84] Chapters on evil rulers and on the proper (or improper) conduct of judges were excerpted literally from the writings of Isidore of Seville,[85] whose paramount authority[86] also becomes apparent from an appended list of his most important writings, possibly for further reading.[87] Another list, of mostly negative stereotypes of various peoples (*de moribus gentium*), ends with the timeless fortitude and virtue of the Goths.[88] Moreover, the *Liber* contains three chapters from the *Ars geometrica* of Gisemund,[89] a ninth-century treatise based on the *Corpus Agrimensorum Romanorum*,[90] one of which deals with 'the fixation and signs of borders'.[91] Its relevance at the time of compilation is suggested by the fact that in 1010, Count Raimund Borrell, after having been confronted with military expeditions by al-Manṣūr,[92] launched a successful campaign against Cordoba,[93] so that clarification of possession over regained territories and the fixing of borders had become an important issue in the Spanish March.[94]

83 See Bowman, *Shifting Landmarks*, pp. 85–90.
84 *Liber iudicum popularis*, ed. Alturo *et al.*, pp. 297–8.
85 *Liber iudicum popularis*, ed. Alturo *et al.*, pp. 298–305. See Bowman, *Shifting Landmarks*, pp. 85–9, who also assumes some Frankish sources.
86 See A.M. Mundó, 'La introducció de Bonsom i les seves fonts', in *Liber iudicum popularis*, ed. Alturo *et al.*, pp. 223–30. On the Catalonian reception of Isidore, see M. Zimmermann, *Écrire et lire en Catalogne (IXe–XIIe siècle)* (Madrid, 2003), vol. 2, pp. 632–48. See also above n. 48.
87 *Liber iudicum popularis*, ed. Alturo *et al.*, pp. 337–8.
88 *Liber iudicum popularis*, ed. Alturo *et al.*, p. 301: *fortia Gothorum fuit et est usque hodie*.
89 *Liber iudicum popularis*, ed. Alturo *et al.*, pp. 301–4.
90 See R. Andreu Expósito, *Edició crítica, traducció i estudi de l'Ars gromatica siue Geometria Gisemundi* (Tesi Doctoral de Ciències de l'antiguitat i de l'edat mitjana, Universitat Autònoma de Barcelona, 2012). Its oldest manuscript is Barcelona, Arxiu de la Corona d'Aragó, Ripoll 106 (9th cent.), apparently of Iberian origin; see Expósito, *Edició crítica*, pp. 33–8.
91 El Escorial, Real Biblioteca del Monasterio San Lorenzo, Z. II. 2., fol. 5r–v. See Expósito, *Edició crítica*, pp. 28–33. On the transmission of legal chapters within texts on land-surveying, see W. Kaiser, 'Spätantike Rechtstexte in agrimensorischen Sammlungen', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* 130 (2013), pp. 273–347.
92 On al-Manṣūr and his sons, see D.J. Wasserstein, *The Caliphate in the West. An Islamic Political Institution in the Iberian Peninsula* (Oxford, 1993), pp. 17–19; Collins, *Caliphs and Kings*, pp. 185–204. On the sack of Barcelona in 985 and the historiographical tradition around it see G. Feliu i Montfort, *La presa de Barcelona per Almansor: història i mitificació; discurs de recepció* (Barcelona, 2007).
93 Cf. Collins, *Caliphs and Kings*, pp. 198–200, 237.
94 As suggested by Bowman, *Shifting Landmarks*, pp. 26, 156–8, 162–3.

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In the Visigothic *Liber iudiciorum*, the material had not been arranged chronologically according to kings, but systematically according to subjects. It thus gave orientation for using the manuscript that Bonhom included as a full list of the Visigothic kings and successive rulers.[95] As in the Italian law-book, Roman emperors are not mentioned here, as the list begins with King Alaric (395–410), who had led the Visigoths to Gaul, and Athaulf (410–15), who brought them to Spain and died in Barcelona. Following on, a continuous list of all Visigothic monarchs is presented that gives the length of each reign. It ends with Roderic (710/11), who lost his life and kingdom to the Arabs, the list then noting: *Et ingressi sunt Sarraceni in Spania*, 'and then the Saracens invaded Spain'.[96] This taciturn remark makes clear that the author considered the Saracen rule illegitimite, as none of their rulers is mentioned by name. Only with the Carolingian invasion and establishment of the county of Barcelona in 801 did the history of Catalonia continue in any noteworthy sense.[97] The Visigothic king list is followed by a catalogue of the Carolingian monarchs and continues through the West Frankish dynasty, extended by the compiler to the reign of Lothar III (954–86), a most important ruler from a Catalonian perspective.[98] Duke Hugh Capet, whose surreptitious grip on royal power (987) is noted, heads a list of the Capetian kings, which a later scribe even continued to the reign of Philipp II Augustus (1180–1223).[99] The construction of legitimacy is amply clear: nobody except the Frankish rulers were the legitimate successors of the Visigothic kings.

In Bonhom's view, Frankish rule over Catalonia was also relevant in terms of legislation. The introductory part of the *Liber iudicum popularis* also contains the *Prologus de auctoribus legum*, which we have already encountered in two manuscripts of the *Liber Papiensis*.[100] The Isidorian Judeo-Christian history of legislation from Moses to Theodosius II is also here presented in a seventh-century Frankish recension that stresses the engagement of the Frankish kings with legal pluralism and the drafting of non-Frankish law.[101] It seems that in the

95 El Escorial, Real Biblioteca del Monasterio San Lorenzo, Z. II. 2., fol. 6r–v.

96 *Liber iudicum popularis*, ed. Alturo *et al.*, p. 306.

97 *Liber iudicum popularis*, ed. Alturo *et al.*, p. 307: 'Anno notati quando domnus Ludoicus rex prendidit Barchinona. Era DCCC XXX VIIII regnante domno Karulo imperatore, anno ordinationis sue in regno XXXIIII introiuit rex Ludoychus filius eius in ciuitate Barchinona, expulso inde omni populo Sarraceno, qui eam retinebant'.

98 See J. Jarrett, 'Caliph, King or Grandfather: Strategies of Legitimization on the Spanish March in the Reign of Lothar III', *The Mediaeval Journal* 1 (2011), pp. 1–22.

99 *Liber iudicum popularis*, ed. Alturo *et al.*, p. 307.

100 *Liber iudicum popularis*, ed. Alturo *et al.*, pp. 338–40; the text seems to be misplaced here between the table of contents of the *Liber iudiciorum* and its first book.

101 El Escorial, Real Biblioteca del Monasterio San Lorenzo, Z. II. 2., fols 9v–10v.

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Carolingian period the Frankish narrative of law-giving was reintroduced into Catalonia, where it was augmented by further excerpts taken from Isidore's Etymologies.[102] Unsurprisingly, this prologue is not to be found in any of the *Liber iudiciorum* manuscripts produced in the Christian kingdoms of Asturia and León,[103] as it documents a typical Frankish handling of non-Frankish law: following the codification of Roman law under Theodosius II, each people (*unaquaque gens*) chose their own law (*propria lex*), based on custom, since 'an old custom should be regarded as an equivalent of law' (*longa enim consuetudo pro lege habetur*). The Frankish mission to provide each people under its rule with a written law code is traced back to the time when a Frankish king called Theuderic was on the Catalaunian fields (*Theuderichus rex Francorum, cum esset Catalaunis*) – a narrative that could easily be associated with the name Catalonia.[104] In this sense, the *Prologus de auctoribus legum* also legitimatized the application of Frankish and other law in Catalonia.

Against the backdrop of legal pluralism it is interesting to see how the compiler handled the problem that the Visigothic Code had once imposed territorial law.[105] For King Reccesvinth, in a law of 654, had explicitly forbidden the use of any other law-books at court:[106]

> Concerning the removal of the laws of foreign nations. We permit and even desire people to be steeped in the laws of foreign nations (*alienae gentis*) for purposes of utilitarian exercise; but we object to and prohibit their use in the hearing of legal business (*ad negotiorum uero discussionem*). Indeed, although they display powerful eloquence, they nonetheless create impediments because of their difficulties. Therefore, because both the investigation of legal reasoning and the arrangement of suitable language known to be contained in this code are sufficient for the fulfillment of justice, from this time forward we wish that no one bother themselves with either Roman

[102] Isidore of Seville, *Etymologiae* V.1–4 and 10–14. See Mundó, La introducció de bonsom', pp. 228–9.

[103] M.C. Díaz y Díaz, 'Da *lex Visigothorum* y sus manuscritos', *Anuario del Derecho Español* 46 (1976), pp. 163–244; W. Graf von Plettenberg, *Das Fortleben des Liber Iudiciorum in Asturien/León (8.–13. Jahrhundert)* (Frankfurt, 1994); Y. García López, *Estudios criticos y literarios de la 'Lex Wisigothorum'* (Alcalá, 1996), pp. 127–54; J. Alvarado Planas, 'La pervivencia del *Liber iudiciorum* en el Reino de León', in R. López Valladares (ed.), *El Reino de León hace mil áos. El Fuero de 1017* (León, 2018), pp. 141–52.

[104] *Lex Baiwariorum*, ed. von Schwind, pp. 197–203.

[105] P.D. King, 'Chindasvinth and the First Territorial Law-Code of the Visigothic Kingdom', in E. James (ed.), *Visigothic Spain. New Approaches* (Oxford, 1980), pp. 131–57.

[106] El Escorial, Real Biblioteca del Monasterio San Lorenzo, Z. II. 2., fol. 35r.

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> laws or the legal precepts of foreigners (*siue Romanis legibus seu alienis institutionibus*).[107]

When Bonhom included Reccesvinth's law in the Liber iudicum popularis (Fig. 1), he felt he should add two marginal commentaries that allowed for an adjustment. The first explained what the law 'of foreign nations' (*alienae gentis*) meant, the application of which Reccesvinth had forbidden:

> the (law) of the Roman, Salic and any other people with the sole exception of the Gothic.[108]

With Gothic law to be applied at court alone, it needed to be clarified now that the prohibition not only referred to Roman law, but to the laws of the Franks and other peoples, too. Although up to now, no *Lex Salica* manuscript has come down to us from Catalonia,[109] Jeffrey Bowman has pointed to donation charters from the ecclesiastical province of Narbonne (Agde, Lézat-sur-Lèze, Carcassonne), stating that 'manifold authority and Roman, Salic and Gothic law' (*multa declarat auctoritas, et lex Romana sive Salica sive Gothica*) authorized individuals to alienate property.[110] Possibly a passepartout clause, it clearly ranked Salic law among the recognized legal sources. Since the Franks had introduced the principle of personality of law in Aquitaine following their conquest in order to protect their own legal interests,[111] it would be surprising if they had not done so after the conquest of Catalonia. It thus appears as if the glossator of the *Liber iudicum popularis* was eager to update Reccesvinth's law by excluding Frankish laws from application.

However, it is the crucial second marginal commentary that allows us to understand exactly what this meant. Framed like an announcement, and illuminated in the same colours as the main text (Fig. 1), the annotation was flagged as an official statement relating to the

[107] L. Vis. II.1.8 [10]: *Leges Visigothorum*, ed. Zeumer, p. 58 (I would like to thank Damián Fernández and Noel Lenski for allowing me to quote here from their forthcoming translation of the *Liber iudiciorum*).

[108] El Escorial, Real Biblioteca del Monasterio San Lorenzo, Z. II. 2., fol. 35r: 'Tam Romane quam Salice uel cuiuscumque gentis nisi solum modo Gotice' (my translation).

[109] For an overview of the manuscript transmission of the Lex Salica in the 'Bibliotheca legum' see: http://www.leges.uni-koeln.de/lex/lex-salica/ (accessed 13 March 2022).

[110] C. De Vic and J.J. Vaissète (eds), *Histoire générale de Languedoc avec des notes et les pièces justificatives*, vol. 5, 2nd edn (Toulouse, 1875), nos. 89, 173, 211. See Bowman, *Shifting Landmarks*, pp. 41, 52–3, 61–2.

[111] Pippini Capitulare Aquitanicum *a*. 768, c. 10: 'Ut omnes homines eorum legis habeant, tam Romani quam Salici, et si de alia provincia advenerit, secundum legem ipsius patriae vivat' (*Capitularia regum Francorum* 1, ed. Boretius, no. 18, p. 43).

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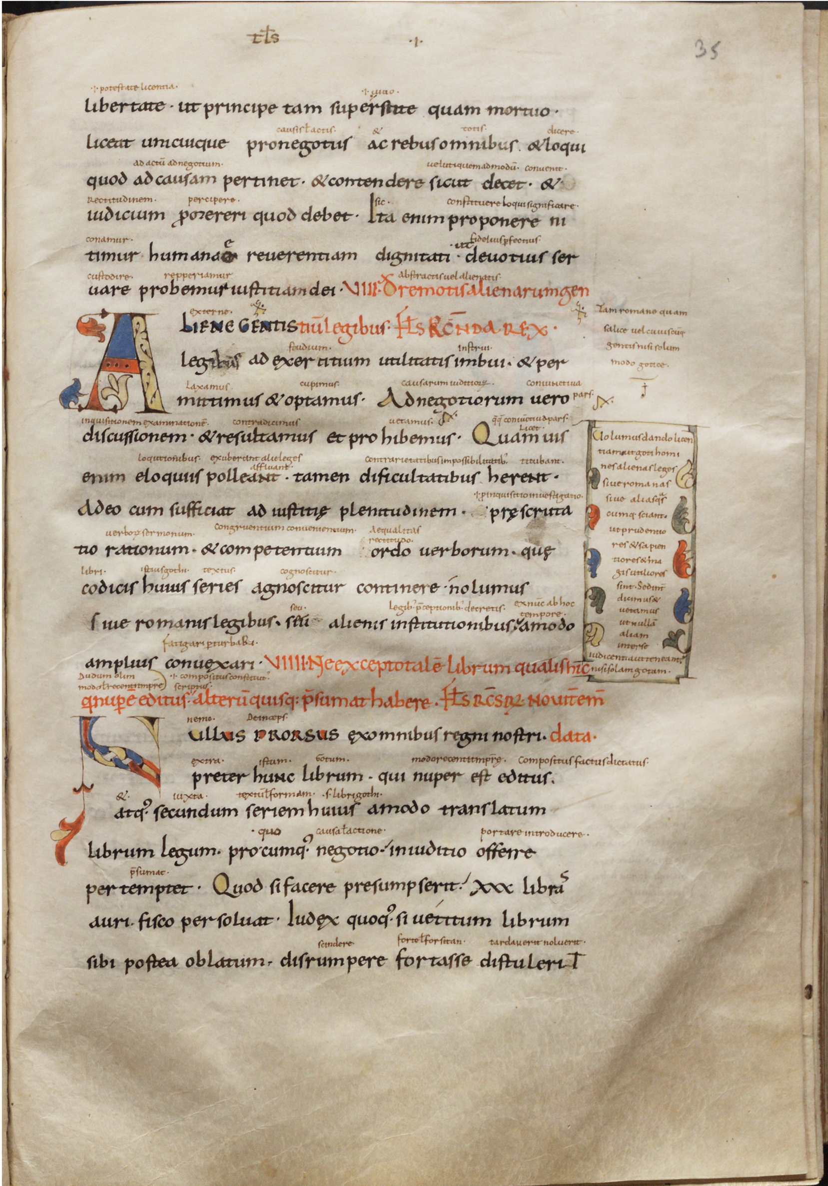

Fig. 1 El Escorial, Real Biblioteca del Monasterio San Lorenzo, Z. II. 2. (11. Jh.), fol. 35r: Liber iudicum popularis, Lex Visig. II, 1, 8 (10) (*De remotis alienarum gentium legibus*) with two marginal notes on the right [Colour figure can be viewed at wileyonlinelibrary.com]

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prohibition on the use of the laws of foreign nations 'in the hearing of legal business' (*ad negotiorum vero discussionem*):

> We want, by giving licence, that Gothic men know alien laws, be they Roman or other, as far as they prove to be more prudent and wise and more useful. But we prohibit and forbid them to judge or accept among themselves anything other than Gothic law.[112]

Using the *pluralis majestatis* here to invoke a legislative tone, the glossator spoke as a mouthpiece of the count of Barcelona or, indeed, the Frankish king. For on closer inspection, it becomes evident that the mere addition of *inter se* ('among themselves') limited the general application of the Visigothic Code to cases in which both parties were Goths. One may conclude by analogy from other regions of the Carolingian empire that in an ethnically mixed context things were to be handled differently, that is, according to the principle of personality of laws. This could well include Frankish law, if one of the two parties was Frankish. This was matched by integrating the Frankish recension of the prologue *De auctoribus legum* into the manuscript.

Further evidence shows that Frankish legislation also played a role in Catalonia around 1000, although this is not reflected in the *Liber iudicum popularis* with its emphasis on Catalonia's Gothic legal identity. The Archive of the Crown of Aragón harbours an important law manuscript that contains capitularies of Charlemagne, Louis the Pious and Charles the Bald, along with the capitulary collection of Ansegis of Fontenelle and excerpts from Benedictus Levita's collection, followed by a dossier of texts relating to conflicts involving Archbishop Hincmar of Reims.[113] The codex, whose model originated in Orléans, was copied around 1020 in the monastery of Santa Maria de Ripoll under Abbot Oliba, who requested many manuscripts from France and is also known to have used texts from Ansegis' collection.[114] The Ripoll codex is thus quite close to the *Liber iudicum popularis* in time and provenance and

[112] El Escorial, Real Biblioteca del Monasterio San Lorenzo, Z. II. 2., fol. 35r: 'Uolumus dando licentiam, ut Goti homines alienas leges sive Romanas sive aliasquascumque sciant, ut prudentiores et sapientiores et magis utiliores sint. Sed interdicimus et uetamus ut nullam aliam inter se iudicent aut teneant nisi solam Gotam' (my translation).

[113] Barcelona, Arxiu de la Corona d'Aragó, Ripoll 40 (11th cent.), described by Mordek, *Bibliotheca*, pp. 19–27; see also K. Ubl, 'Handschrift des Monats August 2021: Barcelona, Arxiu de la Corona d'Aragó, Ripoll 40 (Bc)', in *Capitularia. Edition der fränkischen Herrschererlasse*: https://capitularia.uni-koeln.de/blog/handschrift-des-monats-august-2021/ (accessed 19 March 2022).

[114] See A.M. Mundó, *Les Bíblies de Ripoll. Estudi dels mss. Vaticà, Lat. 5729 i París, BNF, Lat. 6* (Vatican City, 2002), pp. 80–2.

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shows that in addition to Visigothic law, Frankish capitulary law was also used and applied in Catalonia.[115]

Some further final evidence suggesting a degree of Frankish influence in the *Liber iudicum popularis* is in the use of ordeals. The Visigothic king Egica (687–702) had inserted into the revised Liber iudiciorum a novel entitled *Quomodo iudex per examen caldarie causam perquirat*.[116] Through this he introduced the hot water ordeal into Visigothic law, the use of which is occasionally attested in Iberian probatory practice.[117] The Escorial manuscript of the *Liber iudicum popularis* adds two exorcistic prayer texts for use during the hot and cold water ordeals, which closely resemble Frankish prayers.[118] However, the introduction of ordeals may have also had its limits, as we find the judicial trial by combat rejected in some sources as not in accordance with Gothic law.[119]

In sum, it may be said that ethnically defined legal pluralism is not so obvious in the *Liber iudicum popularis* as in the manuscripts of the *Liber Papiensis*, which show this as a pervading phenomenon in Italy. Still, that legal pluralism was relevant in Catalonia and mattered a great deal to the compiler Bonhom, becomes clear from the Frankish prologue *De auctoribus legum* and the glosses added to Reccesvinth's law, which qualified the former territorial applicability of the Visigothic *Liber iudiciorum* into a 'pluralistic' direction.

Legal traditions, plurality of law, and post-Carolingian constructions of legitimacy

The legal vision that becomes apparent in the law-books from Barcelona and Pavia points to a new appreciation of 'old law' around 1000. In the Italian case the Lombard laws and later legislaton relating to them, and in Catalonia the Visigothic laws, were regarded as canonical in their wording. The manuscripts' layout, leaving ample space for annotation and commentaries, would suggest that both law-books sought to

[115] The vulgate version of the *Leges Visigothorum* (above, n. 58) contains an unidentified addition in Book XII authorized as *Ex libro sumptum Karoli imperatoris*: *Si quis autem inventus fueri[n]t semetipsum periurio interemisse aut manum perdat aut C illan (=illam) solidis remiat (= redimat)*. See Martínez Díez, 'Un nuevo codice', pp. 672, 677.

[116] Lex Vis. VI.1.3: *Leges Visigothorum*, ed. Zeumer, pp. 250–1. See García López, *Estudios criticos*, pp. 513–54, esp. pp. 519–21 on the Escorial manuscript.

[117] See W. Davies, 'Small Worlds Beyond Empire. The Contrast between Eastern Brittany and Northern Iberia', in T. Kohl *et al.* (eds), *Kleine Welten. Ländliche Gesellschaften im Karolingerreich* (Ostfildern, 2019), pp. 385–409, at p. 402.

[118] *Liber iudicum popularis*, ed. Alturo *et al.*, pp. 793–9. Cf. Ordines iudiciorum Dei, in *Formulae Merowingici et Karolini aevi*, ed. K. Zeumer, *MGH LL Sect. 5: Formulae* (Hanover, 1886), pp. 599–722; see also *ibid*. pp. 612–15. Cf. García López, *Estudios criticos*, pp. 520–1 with n. 26.

[119] On this, see the balanced remarks by Bowman, *Shifting Landmarks*, pp. 60, 107–8, 126, 201–7.

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address lay judges and legal experts, albeit in different ways. In the *Liber Papiensis* the space on the margin would soon be used for juristic comments and explanations, whereas most of the marginal and interlinerary glosses of the *Liber iudicum popularis* are best explained as destined for more elementary legal training and practice.[120]

Despite branding northern Italy as predominantly Lombard and the Spanish March as mainly Visigothic in terms of legal identity, both law-books reveal the long shadow the Carolingian empire cast on its successors in terms of authority and legitimacy. Under Carolingian domination, both regions had operated within a much more complex model of rule, both geographically and ethnically. The primary aim of the principle of personality of laws was to protect the legal interests of minorities, while at the same time accepting the validity of the laws obeyed by the large majority of the population. It allowed for the mobility of functional groups within the Carolingian empire and intended to establish a supraregional rule of law despite ethnic and legal fragmentation.[121] The interests of particular groups and the sheer diversity of laws continued to pose challenges in the post-Carolingian period. Thus, in both law-books, the glosses and concomitant texts indicate that ethnically defined legal pluralism was an important issue around 1000, although to a different degree. Naturally, the *regnum Italiae* was much larger than the Spanish March at that time. It comprised more cities, and its societies appear as far more complex and mixed in comparison to Catalonia, due to the fact that a huge number of north Alpine immigrants from different areas had settled in Italy after the Carolingian conquest, maintaining their law of birth there. While some scant traces of legal plurality can also be found in Catalonia where Franks and renegade *Hispani* as a privileged military elite added to the population that lived according to Visigothic law,[122] Italian legal pluralism appears as a multi-faceted and indeed pervading phenomenon. Moreover, in Italy the Carolingian rulers had adopted the title *rex Langobardorum* for themselves, and issued exclusive capitularies for Italy, which were in substance 'Capitularia legibus Langobardorum

[120] The glosses quoted (above, nn. 108 and 112) are exceptions to this rule.

[121] See Esders and Reimitz, 'Diversity and Convergence'.

[122] On the *Hispani* see I. Sorhagen, *Die karolingischen Kolonisationsprivilegien in Spanien und im südlichsten Frankenreich* (Göttingen, 1976), pp. 136–43; P. Depreux, 'Les precepts pour les *Hispani* de Charlemagne, Louis le Pieux et Charles le Chauve', in P. Senac (ed.), *Aquitaine-Espagne (VIIIe–XIIIe siècle)* (Poitiers, 2001), pp. 19–38; C.J. Chandler, 'Between Courts and Counts. Carolingian Catalonia and the *aprisio* Grant', *EME* 11 (2002), pp. 19–44; J. Jarrett, 'Settling the Kings' Lands: *Aprisio* in Catalonia in Perspective', *EME* 18 (2010), pp. 320–42; Chandler, *Carolingian Catalonia*, pp. 79, 210; C. Haack and T. Kohl, 'Teudefred and the King. On the Manuscript Carcassonne G 6 and the Intertwining of Localities and Centre in the Carolingian World', *EME* 30 (2022), pp. 209–35.

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addenda'. By contrast, no capitularies were given exclusively for the Spanish March that were conceived as novels to the Visigothic laws, the privileges for the *Hispani* being different in character.

A comparative study of the two law-books in their manuscript contexts allows us to bring empire-wide processes of legal, intellectual and cultural exchange into clearer focus – processes that had been inaugurated when these regions were part of the Carolingian empire. The law-books with their concomitant texts can also be seen as reflecting the sophisticated way in which the Carolingians had stabilized their rule in regions with different legal traditions that anteceded their dominion. In lists of kings, compilers presented the Carolingian rulers as lawful successors to the Lombard and Visigothic kings respectively. That we find the Frankish, 'legal-pluralistic' recension of Isidore's Prologue *De auctoribus legum* inserted into manuscripts of both the *Liber Papiensis* and the *Liber iudicum popularis* reveals a great deal about how Frankish legal policy was perceived and appropriated much later by local authorities in their desire to propagate the rule of law. When describing the character of legal culture around 1000 it thus seems advisable to avoid antagonistic juxtapositions between 'centre and periphery', 'theory and practice', 'de iure dependence vs. de facto independence'. Rather, the two law-books and their concomitant texts point to the multi-layered structures of legitimacy that local authorities needed to respond to when creating a balance between the maintenance of local or regional traditions, and the wider horizons and aspirations immediately associated with Carolingian rule. For the period around 1000, it thus makes sense to adopt a more nuanced local perspective and see some kind of 'negotiation' and individual 'agency' being exercised by local elites engaged in various functions, of whom some were more or less closely entwined with the empire. In such a context, the two law-books demonstrate how imperial power and prestige could work in local legal contexts, and how general patterns were generated or reaffirmed by specific 'local' needs.[123]

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[123] For a comparison, see J. Escalona, 'In the Name of a Distant King: Representing Royal Authority in the County of Castile, *c.*900–1038', *EME* 24 (2016), pp. 74–102.

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