

ABOUT THE ORIGIN OF THE *FORMULAE WISIGOTHICAE*

Edorta Córcoles Olaitz

*Profesor Laboral Interino. Área de Derecho Romano.
Universidad del País Vasco/EHU*

RESUMEN:

Dada la escasez de fuentes visigodas de carácter forense o notarial, el conocimiento de la práctica jurídica visigoda viene dado especialmente por una colección de formularios conocida como *Formulae Wisigothicae*. La autoría de dicha colección se atribuye a un notario cordobés que realizó la obra durante la época del rey Sisebuto, por lo que la fecha de elaboración habría que situarla durante las primeras dos décadas del siglo VII. Siendo esto así, las pruebas tenidas en consideración como fundamento para esa hipótesis son en realidad muy endebles, pues provienen de partes de dos formularios que, en teoría, tendrían que estar vacías (lugar y fecha); por tanto, habría que buscar el origen en otro tiempo e incluso, lugar, por lo que la vía a una nueva hipótesis (que tendría, como ha sugerido algún autor, que emplear elementos filológicos) queda expedita.

Palabras clave: *Formulae Wisigothicae* – Sisebuto – Concilios Visigodos – *Lex Wisigothorum*.

ABSTRACT:

Given the shortage of Visigoth sources of forensic or notarial character, the knowledge of the Visigoth juridical practice is given specially by a collection of formularies known as the *Formulae Wisigothicae*. The authorship of the above mentioned collection is attributed to a notary native of Cordoba who realized the work during the epoch of the king Sisebut, for what the date of redaction would necessary be located during the first two decades of the 7th century. Taking this into account, the proofs taken in consideration as foundation for this hypothesis are actually very weak, since they come from parts of two formularies that, theoretically, would have to be empty (place and date); Therefore, there would be necessary to look for the origin in another time and even, place, for what the route to a new hypothesis (that would have, as some author has suggested, to use philologic elements) remains open.

Key words: *Formulae Wisigothicae* – Sisebut – Visigoth Councils – *Lex Wisigothorum*.

*About the origin of the *Formulae Wisigothicae**

1.- INTRODUCTION

As it is well known, one of the main problems posed to the scholar who searches the ins and outs of the Visigothic law in general, is the lack of some specific sources. This is specially true if our intention is to study the juridical praxis, that is, the real implementation of the law and its effectiveness. Even though most of the main juridical testimonies have survived up to our days¹, that cannot be said about other kind of sources, like the historiographic or literary ones². Simply speaking, the laws are well known to us, but the way they were utilized in the everyday practical life remains between shadows.

In this sense, the most important kind of documents written during the middle ages were the formularies where the juridical models were consigned, collected in different compilations across all the Medieval Europe, following an old Roman tradition³. One of the few testimonies of the Visigoth juridical praxis is the collection of 46 formularies related to different businesses⁴, written theoretically in the first few years of the 7th century and used as models for the redaction of private contracts and, in a lesser degree, minutes of public nature⁵.

In spite of the existence of another kind of documents, most of them fragmentarily transmitted⁶, these are the only proper formularies to be found in the whole Visigoth literature/epigraphy that have survived the pass of time⁷. Apart from the *Formulae Wisigothicae*, very few texts are conserved, mostly scrolls and slates⁸, as well as, specially, the different copies of the *Lex Wisigothorum*⁹. The only private documents completely conserved are a donation and a testament (both issued by the same person, Vicente, bishop of Huesca) and a submission pact to the abbot Fructuosus of Braga¹⁰.

1 The three main sources are, the *Codex Eurici Regis* (2nd. half of the 5th. Century; ed. D'Ors 1960), the *Lex Romana Wisigothorum/Breviarium Alarici Regis* (506; ed. Haenel 1849) and the *Liber Iudiciorum/Lex Wisigothorum* (654; ed. Zeumer 1902). The only source not conserved is the revision of the *Codex Eurici* made by Leovigild; it's only known by a notice from Isidore of Seville; See García Gallo, *Consideración crítica de los estudios sobre la legislación y la costumbre visigodas*, pg. 367-368; 398-400.

2 García-Gallo, *Consideración crítica de los estudios sobre la legislación y la costumbre visigodas*, pg. 357-409.

3 Bresslau, *Handbuch der Urkundenlehre für Deutschland und Italien II*, pg. 226-228.

4 Specially, *manumissions* (FW 1-6), *donationes propter nuptias* (FW 14-20) and different kind of last will documents (FW 21-26).

5 These texts, as themselves, had no actual juridical value, John, *Formale Beziehungen der privaten Schenkungsurkunden*, pg. 4.

6 See Canellas, *Diplomática Hispano Visigoda* for a compilation of all those different testimonies.

7 The FW were first known apparently through a *codex* written by the bishop of Oviedo, Pelayo, in the 12th century. That *Códice ovetense de don Pelayo* or *Liber Ithatum* is nowadays lost. The *Códice* was copied in the 16th century, copy which was rediscovered by Knust in Madrid. This *Codex Madritense* was used as base for Zeumer's critical edition; Larraona-Tabera, *El Derecho Justiniano en España*, pg. 107; Canellas, *Diplomática hispano-visigoda*, pg. 17; García-Gallo, *Consideración crítica de los estudios sobre la legislación y la costumbre visigodas*, pg. 400.

8 Although it is almost only directed to the philological research, see about this topic the exhaustive work done by Velázquez, *Las pizarras visigodas*.

9 García López, *Estudios críticos y literarios de la "Lex Wisigothorum"*, pg. 32-37.

10 García Gallo, *Los documentos y los formularios jurídicos en España hasta el siglo XII*, pg. 133.

Even in a fragmentary condition some public documents are conserved, like law confirmations, royal *tomi* (royal propositions to be discussed during the councils), *precepta* of diverse kind, royal orders (directed to functionaries), and different forensic and episcopal documents. Thus, with respect to private documents, practically all are included in the *Formulae Wisigothicae*¹¹. There is no reason to believe that this collection was redacted following an order from the King, as it happens with other Germanic formularies, because there is no trace of that even when Sisebut, who is considered the most cultivated of all Visigoth kings, and Isidore of Seville, the main representative of the Visigoth culture, lived during that period¹²; it is logical to believe that at least a mention to this command should be found in the sources¹³.

The modern doctrine established the presumption that these so-called *Formulae Wisigothicae* (FW) were written in *Corduba*¹⁴ (present Córdoba, in southern Spain) by the time of king Sisebut, son of Gundemar¹⁵. That means that they were written in the time period between 612 and 621¹⁶. For this consideration, two documents contained in the same FW were taken into account¹⁷.

* The first one, is the *formula* number 25, which contains the reference to the place where it was written, the city of Corduba: “*Gesta. Era ill., anno illo, regno gloriosissimi domini nostri ill. Regis, sub die Calendis ill., acta habita Patricia Corduba apud illum et illum principales, illum curatorem, illos magistratos (...)*”¹⁸.

11 Canellas, *Diplomática hispano-visigoda*, pg. 15-17/46-80.

12 As his will was mainly directed to retrieve the ancient Roman heritage, his work, based mainly upon the classical sources, is not so useful to determine the real juridical situation of the epoch; about his life and work see, for instance, Churrua, *Las instituciones de Gayo en San Isidoro de Sevilla*, pg. 25 & foll./131; Fontaine, *Isidore de Séville*, pg. 167 & foll.; idem, *LMA 5*, pg. 677-679; Mitre, *La España medieval*, pg. 44-46; Codoñer, *El “De Viris Illustribus” de Ildefonso de Toledo*, pg. 17 & foll.; Hillgarth, Ireland and Spain in the seventh century, pg. VIII-3/9; we should consider this along with the idea of Sisebut, his protector, being the most cultivated king of the Visigoths, Orlandis, *Historia del reino visigodo español*, pg. 387.

13 Gibert, *Prenotariado visigótico*, pg. 115.

14 In this time *Corduba* was still one of the great cities in western Europe, so it is not surprising to find that the only reference to a city contained in the FW is, precisely, this one; Hübner, *Pauly-Wissowa 4-1*, pg. 1224; Panzram, *Stadt und Elite: Tarraco, Corduba und Augusta Emerita zwischen Republik und Spätantike*, 208-220; Stylow, *Apuntes sobre el urbanismo de la Corduba romana*, pg. 260-263; Singer, *LMA 3*, pg. 230.

15 During this time, Isidore of Seville published his main work; see Brunhölzl, *Geschichte der lateinischen Literatur des Mittelalters I*, pg. 93-95; Fontaine, *Isidore de Séville*, pg. 133-135.

16 More specifically, they could be written between the years 615 and 620. See, for instance, Canellas, *Diplomática hispano-visigoda*, pg. 16-17; Siems, *Handel und Wucher*, pg. 348; Nonn, *LMA 4*, pg. 648; Stoff, *De formulis secundum legem romanam*, pg. 11; Buchner, *Deutschlands Geschichtsquellen im Mittelalter (Vorzeit und Karolinger)*, pg. 51; Larraona and Tabera, *El Derecho justiniano en España*, pg. 108; John, *Formale Beziehungen der privaten Schenkungsurkunden*, pg. 53. According to García Gallo, *Consideración crítica sobre la legislación y la costumbre visigodas*, pg. 400-409, they should be written before 551, due to the lack of references to the legislation after the Byzantine conquest of southern Spain.

17 In any case, they are quite curious documents; the *formula 25* is, together with FW 35, 40 or 41, one of the few public documents present in the collection; 20 is, by far, the longest of all of the *formulae* and the only one which does not show the typical notarial language, using instead of it a poetical style. García Gallo, *Consideración crítica sobre la legislación y la costumbre visigodas*, pg. 402-406, considers that this is not a formularly in the proper sense, but a kind of literary work; for Gibert, *Prenotariado visigótico*, pg. 118, considering its rich juridical contents, that proposition is exaggerated.

18 Apart from serving as reference to the origin of the *formulae*, this document is also interesting due to its public character; it is a certificate of having fulfilled the requisites of publicity for a testament: *Formula 25*: “*Gesta. Era ill., anno illo, regno gloriosissimi domini nostri ill. regis, sub die Calendis ill. acta habita Patricia Corduba apud illum et illum principales, illum curatorem, illos magistratos. Ille dixit: ‘Ante hos dies bonae memoriae domnissimus ill. suam condidit voluntatem, per quam ecclesiabus sanctarum Dei aliqua concessit atque vernulos suos absoluit. Et quia [m]ihi de presenti commissit ut post transitum suum apud gravitatem vestram eam adpublicarem et gestis publicis adcorporarem, proinde quia die isto die [est]*

* The second is the *formula* 20, a “*Morgingeba*”, a text that presents two references: “*Siderea praeclsa Dei virtute tonantis. Principis ac domini Sisebuti gloria nostri*” and “(...) *Carta manet mensis illius conscripta calendis ter nostri voluto domini foeliciter anno glorisi merito Sisebuti tempore regis. Ecce manu propria tribui qua dona illi subscripsi ut longa maneat ac firma per aeo*”¹⁹.

Therefore, these two texts contain the only direct reference to a concrete place or person in the FW. This scarcity of references is completely logical, for an obvious reason: a formulary is conceived as a model to be used by any person, in any place and time; that is why the original writers used to let parts of the text, referred to the subjects who take part in the contract, the goods and the place and time in which it is formalised, empty. They should be filled by the notaries who used them as instruments for actual businesses.

Out of this point of view, the notarial institution was well known to the Visigoth legislator, devoting a law, LW 7,5,9²⁰ to the protection of their official character. The notaries could have had both public and private functions, but in all cases their public function was directly derived from the king, who appointed them²¹.

So, how can these two mentions be used to establish the place and date of publication of the FW? Theoretically, the references to Sisebut and Corduba shouldn't be

tertia quod ab hac luce fata migravit, spero honorificentiam vestram ut eam vobis ingranter recensere mandetis. SSSSS. DDDDD.: ‘*Voluntas domnissimi ill., quam filius et frater noster ille offert, recensendam suscipiatur et legatur, ut agnita possit in acta migrare*’. Ex officio curiae est accepta et lecta. Cumque lecta fuisset, SSSSS. ad illum DDDDD.: ‘*Ecce voluntas domnis[si]mi illius, quem nobis protulisti relegendam, lecta est et sensibus nostris patefacta, quae iuxta liberalitatis eius arbitrium plenissimam in se continet firmitatem. Qui nu[n]c fieri desideras, edicto*’. Ille dixit: ‘*Rogo gravitatem vestram ut haec quae acta vel gesta sunt publicis haereant monumentis*’. [S]SSSS. DDDDD.: ‘*Quae acta v[e]l gesta sunt publicis contin[e]antur inserta*’. Ille dixit: ‘*Auctorum peto potestatem*’. SSSSS. DDDDD.: ‘*Describe ill. ex [pp]*’. *Gesta apud nobis habita subscripsit ill., magister ill. conscripsit*”. For more information about the characteristics of the Visigothic testament and its evolution, see García Gallo, *Del testamento romano al medieval*, pg. 457-459.

19 See complete text *infra*.

20 Canellas, *Diplomática hispano-visigoda*, pg. 38-39. The *Lex Wisigothorum* does not use the term *tabellio* in regard of this kind of scribe, even though the notarial institution is well known through the ecclesiastical administration, Fenger, *Notarius Publicus. Le notaire au moyen âge latin*, pg. 92.

21 LW 7,5,9 (Law of unknown origin, included in the Zeumer edition; it seems that it is not *Antiqua* nor *Reccesvindiana*, Zeumer, *Leges Visigothorum*, pg. 308. Perhaps a remain of Leovigild's *Codex Revisus*?): “**De his qui citra notarios publicos iussiones ac leges principum recitare vel scribere ausi fuerint: Quorumdam illicita actionum perversitas exigit legem ponere pro futuris, ut eos, quos verbi disciplina non corrigit, saltim legalis censura coercendos emendet. Et quia plerosque cognovimus iussiones regias non solum scribere, sed etiam recitare atque scriptas exhibere notariis roborandas, unde diversa in ipsis preceptionibus regni nostri introductes, vel dictantes atque scribentes capitalia etiam ipsa addi conantur; que nec a nostra celsitudine ordinationis moderamine disponuntur, nec populo Dei congrua cernuntur, nec institutio recte veritatis precipienda decernit, unde et gravissimis damnis atque spoliis vel fatigiis populos ditioni nostre subiectos prospeximus molestari, obinde huius novelle sanctionis edicto censemus: ut modo et deinceps nullus ex notariis quorumlibet seu cuiuslibet gentis et generis homo extra notarios publicos vel proprios regie celsitudinis eorumque pueros atque illos, quos principalis instituerit preceptionis alloquium, iussiones sive diversas institutiones, que ex nomine regio prescribuntur, recitare audeat, nullus scribere presumat, nullus recitatum vel scriptum cuiuslibet notario ad roborandum dare intendat; sed tantum notarii publici ac proprii nostri aut nobis succedentium regum, vel qui a nostra clementia vel ipsis fuerint ordinati, iussiones vel quascumque regias preceptiones recitare et licenter scribere intendebunt. Quicumque tamen ex his cunctis vetitis extiterit deprehensus, utrum ingenuus an fortasse sit servus, principium vel iudicium instantia ducentis flagellorum verberibus cesus, turpiter decalvatus ac insuper pollice in manu dextra absciso se caruisse condoleat pro eo, quod contra huius institutionis edicta non sibi licitas conaverit exercere actiones**”. About the evolution of this institution see Ankum, *Les tabellions romains*, pg. 5 & foll.; Hatto, *Der kleine Pauly*, pg. 476-478; Carbonetti, *LMA* 8, pg. 391-392; Bono, *Historia del Derecho Notarial español* 1, pg. 45 & foll.

there²²! Following the form of the other formularies, we should find expressions like *sub die Calendis in loco ill. / locum illum* (for the first one) or *regno gloriosissimi domini nostri ill. Regis / nostri ill. Regi* (for the second)²³.

The only real information that could be taken out of this, is that two documents (perhaps based at the same time upon two formularies in the proper sense of the word) were used: a.- to write someone's will in Corduba, and b.- for a donation in the time of the king Sisebut, and later were incorporated to the collection as formularies (being numbered 20 & 25); but someone (almost sure, the one who compiled the texts together) forgot to delete this references taken from the documents used as models for the generic *formula* which was to be incorporated. What we have here are not two plain formularies, but two actual documents, related to two real businesses the information about which was not completely deleted, and which were incorporated to the collection as formularies²⁴. Could a notary commit this mistake? Possibly, but I would better attribute that to someone who did not know anything about law, for whom a mistake like that would be more likely to commit, like the copyist/s (the material compiler) in charge of doing this job for a notary, who probably was the one who commissioned the job.

That does not mean that this two *formulae* are not useful for determining the time and place of writing of the FW. On the contrary, if we consider them part of the Visigoth juridical work, in spite of being almost useless to determine the exact date of elaboration of other texts, they give us the time limit in which the FW were written, and a clue about the area in which they were used. Thus, considering this we can affirm that undoubtedly, at least some FW were written, at the latest, at the time of the death of king Sisebut (621), and that they were known at least for the notaries of the city of Corduba.

To negate the actual theory about the origin of the FW is easy, but the problem is that we must formulate another one which should serve as a valid substitute. The lack of direct sources about this topic (as happens with almost all the topics related to the Visigothic law!) makes of this a very difficult task.

I think that two are the logical ways to approach the problem. On one hand, we should try to extract all the elements (like the philological ones) that in that respect could be found in the FW themselves. In some way the texts must hide some information related to the time period in which they were written. On the other, a comparison with other texts, and specially formularies, from the same time period should be done, to find the possible common elements which could contribute to the understanding and solution of this problem²⁵.

22 Normally instead of blank parts in the text, like in the modern formularies, we find generic references to "place", "goods/money", "time" or "name", like, *locum illum, ill.(e/a), DDDDD* (for *dies*), *auri solidi num. tot, nostri ill. Regi*, etc. See the text of *formula* 25 for a clear example.

23 Phrases found, respectively, in *formulae* 7, 43, 25 and 34.

24 These are not the only *formulae* to have some information instead of blank spaces, surplus of the real contract contained before the text was integrated in the collection. For instance, the *formula* 44: "*Cartula mutui: (...) ut mihi quinque solidos propter mea necessaria praestares (...)*"; or the 20 itself, apart from the reference to king Sisebut: "*(...) Ecce decem inprimis pueros totidemque puellas/Tradimus atque decem virorum corpora equorum/Pari mulos numero damus inter caetera et arma/Ordinis ut Getici est Moringeba vetusti (...)*".

25 The importance of the *Formulae Andecavenses*, due to their antiquity (they are probably the first ones to be written), for this task was already pointed out in 1932 by Schwering, *Sobre las fórmulas visigóticas y las andecavenses*.

2.- THE ROMAN CONNECTION

I think that a couple of strokes of the brush about the relation between the Roman and the Visigoth formularies could be a good starting point in order to establish the framework of the present study²⁶.

That the Visigoths were successors of the roman juridical tradition is out of question. They not only took that tradition, but adapted it to their historical and social background. In this tradition is included the juridical vocabulary used by the different Germanic peoples, which was derived from the Roman sources, specially the *Codex Theodosianus*²⁷. Thus, king Euric, the first great Visigoth legislator, appears as the true heir of the roman rulers²⁸.

Out of this point of view, one of the numerous interesting references which should be taken into account are the so called *Tablettes Albertini*, which were found in 1928 in North Africa (in the present border between Algeria and Tunisia). They are a collection of 45 *tabulae* related to private businesses, written in the vandal kingdom of Africa, about the years 484-496, during the reign of king Gunthamund²⁹. They are strongly influenced by roman law, since they take the roman formularies as models for their own ones. So, we could say that there is a parallelism between this texts and our FW: they are two Germanic compilations of juridical documents written by peoples strongly influenced by their Roman predecessors. That is evident at the first glance, because of some obvious resemblances³⁰ in spite of the great distance that separated the Visigothic and Vandal kingdoms³¹.

Apart from these *Tablettes Albertini*, there are a lot of different testimonies which clearly state that the German writers were the direct successors of their Roman predecessors. This can be noticed not only in the vocabulary used, but in the structure of the formularies³². A couple of examples will suffice to obtain a general view of the question³³: *Papyris Ravennatibus* (572): “*Scripsi ego Johannis forensis rogatus et peditus a Domino, ... pso praesente, adstante mihiq; dictante... et subter manu propria... signum feciente*”, are seen as model for the Frankish *tabulario Sangallensi* (847): “*Scripsi ego Laveso presbiter rogitus et peditus a filios Pociarii... ipsos presentes mihi adque dictantes et manus suas proprias subterfirmantes*”. Reminiscences of this stile can be observed if we compare both texts with the *formula* number 1: “*Cartula libertatis (...)* Ego ill. hanc cartulam libertatis in praedictorum personas a mea voluntate collatam

26 Zeumer, *Formulae II*, pg. 574.

27 One of the most important instruments to spread this knowledge out across Europe, was the *Breviarium Alarici Regis* (507), more specifically, the interpretation to the *Codex Theodosianus* contained in almost all the constitutions transferred to Alaric's compilation, Frezza, *L'influsso del diritto romano giustiniano nelle formole e nella prassi in Italia*, pg. 57-58.

28 According to D'Ors, *El código de Eurico*, pg. 2-4, the Code of Euric was published as an edict, thus effectively acting as the substitute of the prefect of Arles.

29 Väänänen, *Étude sur le texte et la langue des Tablettes Albertini*, pg. 5-7.

30 Like in the way the documents are dated: “*Anno (illo) domini regis Gunthamundi (sub) die (illa)*”. Compare it, for example, with the beginning of the *formula* 25. See the reference to the expressions used in the *Tablettes Albertini* in Väänänen, *Étude sur le texte et la langue des Tablettes Albertini*, pg. 18-19.

31 About the quick integration of the Vandals in the Roman life, see Clover, *The symbiosis of Romans and Vandals in Africa*, pg. 57-73. Although the Vandals at first established in southern Spain, their Iberian kingdom lasted only for less than twenty years, so is hard to believe that they were specifically influenced by the Roman tradition in that time period.

32 See general examples in Stouff, *De formulis secundum legem romanam*, pg. 24 & foll.

33 Stouff, *De formulis secundum legem romanam*, pg. 28-29.

relegi, cognovi et subscripsi. Sunt dies et annos et era, quae supra. Ille, rogitus a domino et fratre illo, in hanc cartulam libertatis ab ipso factam testamentum superscriptum, die, anno, et era, qua supra". Examples like this can be found in most Roman documents³⁴: **Gesta de aperiundo testamento** (474): "(...) *Fl. Constantinus v(ir) h(onestus), tinct(or) publicus, procedens sanus sana mente integroque consilio, cogitans condiciones humanas et repentini casus, praesentibus testibus numero competenti, in hac cartula testamentum feci, idque scribendum dictavi Domitio Iohanni for(ensi), cuique ipse, literas ignorans, subter manu propria signum feci; quod testamentum meum, si quo casu civili seu praetorio vel alia quaelibet iuris ratione valere non potuerit, etiam ab intestato vice codicellorum meorum valere illud volo, hac valeat, ratamque hanc voluntatem meam esse cupio et iubeo: Pascasia, h(onesta) f(femina), iugali[s] mea heres mihi esto*", could be compared with formula 21: "**Cartula testamenti**: *Ill. sana mente sanoque consilio, lectulo quidem infirmitate detentus, evitans causalem mortis eventum, hanc voluntatis meae epistolam fieri elegi, quam ad ius praetorium et urbanum valere decerno. Quod si ad ius praetorium et urbanum supra valere non potuerit, ab intestato vice codicillorum aevo eam valere volo et iubeo, quam etiam tibi, fili ill., scribendam mandavi, ita ut post transitum meum die legitimo hanc voluntatis meae epistolam apud curiae ordinem gestis publicis facias adcorporare. Et ideo, cum e rebus humanis accessero obitumve naturae reddidero, tunc ad ecclesiam domini mei ill. martiris, ubi corpusculum meum sepeliendum mandavi, volo pertinere locum illum ad integrum, cum mancipiis rusticis et urbanis, terris, vineis, aedificiis, silvis, aquarumque ductibus, hortis, pascuis, paludibus omnique iure loci ipsius, quod situs est in territorio ill. Ill. et ill. liberos esse volo, quorum pro confirmanda ingenuitate donare eis elegi et dono hoc et illud. Ea tamen interposita conditione, ut, quousque me Deus omnipotens vivere permiserit, hoc quod ecclesiabus contuli, vel quod unicuique concessi, sive mancipia, quae libera esse constitui, a me universa possideantur; post diem vero obitus mei omnes secundum huius voluntatis meae tenorem addendi, habendi, tenendi reddidero. Tunc dulcissimis filiis meis ill. et ill. volo esse concessum hoc et illud, quod sibi aequaliter dividentes, addendi, habendi liberam habeant potestatem*". It is clear that the Roman text was a paradigm for the Visigoth³⁵.

Apart from this, we should also take into consideration the vital role played by the *curiae* in the conservation of the roman tradition³⁶. Being the *curia* the place were most documents (both public and private) were consigned³⁷, and considering that at first the new Germanic rulers conserved them with almost the same functions, we could consider them as one of the most important strongholds for the roman law³⁸. Exactly, in the

34 The following text is taken from Bruns, *Fontes Iuris Romani Antiqui*, pg. 319.

35 It was seen from the beginning by Zeumer himself, see *Formulae Visigothicae*, pg. 585; Halban, *Das römische Recht in den germanischen Volksstaaten I*, pg. 202-203; John, *Formale Beziehungen der privaten Schenkungsurkunden*, pg. 15-31; Kirn, *Zum Problem der Kontinuität zwischen Altertum und Mittelalter*, pg. 129-131.

36 Regarding to Italy, but the same principle can be applied to all Europe, Frezza, *L'influsso del diritto romano giustiniano nelle formule e nella prassi in Italia*, pg. 18.

37 For the function of the *curia* in *Hispania* in the late Roman empire, see, for instance, Kübler, *Pauly-Wissowa* 8-2, pg. 2350; Ganghoffer, *L'évolution des institutions municipales en occident et en orient au bas-empire*, pg. 138 & foll.; Arce, *El último siglo de la España romana : 284 – 409*, pg. 100 & foll.; Curchin, *The local magistrates of Roman Spain*, pg. 115-120; Bono, *Historia del Derecho Notarial español I*, pg. 80-82.

38 It could have no sense to change all the system. That is why the Germanic kingdoms founded in the old imperial soil used the roman model, Bresslau, *Internationale Beziehungen im Urkundenwesen des Mittelalters*, pg. 19-20; idem, *Handbuch der Urkundenlehre für Deutschland und Italien II*, pg. 228; Kirn, *Zum Problem der Kontinuität zwischen Altertum und Mittelalter*, pg. 131; Blok considers the possibility of continued existence of this Roman tradition not only as pure formalism, but also through the direct survival of the Roman law, *Les formules de droit romain dans les actes privés du Moyen Age*, pg. 21-28.

case of the Visigoths, the *curiae* fulfilled the function as registry office at least until the 7th century- thus, could be said that they were so utilized at the time of the theoretical redaction of the FW³⁹.

But not later, because the *Lex Wisigothorum* (654) says nothing about the *curiae*⁴⁰, so probably sometime between the time of publication of the FW⁴¹ and the *Lex*, the very concept of the *curia* changed, to the extent of its extinction. Its function was, from then on, accomplished above all by the church, a situation finally generalized all around Europe⁴². If we have this mentions to the *curia* in the FW, I think that this cir-

39 So is stated in the *Breviarium Alarici*: LRW CTh 4,4,3,2: “*Nec enim novum promulgamus, sed divi Constantini sanctionem et inclytæ recordationis sententiam patris serenitatis nostræ nostraque super huiusmodi causa, quæ sunt ex antiquioribus propagata, secuti decreta statuimus, iis, qui extremas ordinant voluntates, hæc esse servanda, ut et præsentibus videant subscriptores, et ii, cur venerint, non ignorent, etiamsi iisdem scripturæ continentia non fuerit intimata*”; or LRW CTh 4,4,4: “*Idem aa. Africano pf. u. testamenta omnium ceteraque, quæ apud officium censuale publicari solent, in eodem reserventur, nec usquam permittatur fieri ulla translatio. Mos namque retinendus est fidelissimæ vetustatis, quem si quis in hac urbe voluerit immutare, irritam tñuorum < mortuorum > videri faciet voluntatem. Dat. VI. kal. oct. constantinopoli, Caesario et Attico coss. Interpretatio: testamenta omnia vel reliquas scripturas apud censuales in urbe roma voluit publicari, hoc est, ut in reliquis regionibus apud curiæ viros testamenta, vel quaecumque scripturæ actis firmari solent, gestorum allegatione muniantur. Si vero mortuorum voluntates actis reservatæ non fuerint, nihil valebunt*”. Although the concept of the Roman *curia* suffered a degeneration along the time, it is out of doubt that when the FW (or at least, some of them) were written, it maintained this function as city archives, so in FW 21: “**Testamentum. Ill. sana mente sanoque consilio, lectulo quidem infirmitate detentus, evitans causalem mortis eventum, hanc voluntatis meæ epistolam fieri elegi, quam ad ius praetorium et urbanum valere decerno. Quod si ad ius praetorium et urbanum supra valere non poterit, ab intestato vice codicillorum aevo eam valere volo et iubeo, quam etiam tibi, fili ill., scribendam mandavi, ita ut post transitum meum die legitimo hanc voluntatis meæ epistolam apud curiæ ordinem gestis publicis facias adcorporare. Et ideo, cum e rebus humanis abscessero obitumve naturæ reddidero, tunc ad ecclesiam domini mei ill. martiris, ubi corpusculum meum sepeliendum mandavi, volo pertinere locum illum ad integrum, cum mancipiis rusticis et urbanis, terris, vineis, aedificiis, silvis, aquarumque ductibus, hortis, pascuis, paludibus omnique iure loci ipsius, quod situs est in territorio ill. Ill. et ill. liberos esse volo, quorum pro confirmanda ingenuitate donare eis elegi et dono hoc et illud. Ea tamen interposita conditione, ut, quousque me Deus omnipotens vivere permiserit, hoc quod ecclesiabus contuli, vel quod unicuique concessi, sive mancipia, quæ libera esse constitui, a me universa possideantur; post diem vero obitus mei omnes secundum huius voluntatis meæ tenorem addendi, habendi, tenendi reddidero. Tunc dulcissimis filiis meis ill. et ill. volo esse concessum hoc et illud, quod sibi aequaliter dividentes, addendi, habendi liberam habeant potestatem**” and 25: “**Testamentum apud acta conditum. Gesta. Era ill., anno illo, regno gloriosissimi domini nostri ill. regis, sub die Calendis ill. acta habita Patrici[a] Corduba apud illum et illum principales, illum curatorem, illos magistratos. Ille dixit: ‘Ante hos dies bonæ memoriæ dommissimus ill. suam condidit voluntatem, per quam ecclesiabus sanctarum Dei aliqua concessit atque vernulos suos absoluit. Et quia [m]ihi de presenti commissit ut post transitum suum apud gravitatem vestram eam adpublicarem et gestis publicis adcorporarem, proinde quia die isto die [est] tertia quod ab hac luce fata migravit, spero honorificentiam vestram ut eam vobis ingrabanter recensere mandetis’.** SSSSS. DDDDD.: ‘*Voluntas dommissimi ill., quam filius et frater noster ille offert, recensendam suscipiatur et legatur, ut agnita possit in acta migrare*’. Ex officio curiæ est accepta et lecta. Cumque lecta fuisset, SSSSS. ad illum DDDDD.: ‘*Ecce voluntas domnis[si]mi illius, quem nobis protulisti relegendam, lecta est et sensibus nostris patefacta, quæ iuxta liberalitatis eius arbitrium plenissimam in se continet firmitatem. Qui nu[n]c fieri desideras, edicito*’. Ille dixit: ‘*Rogo gravitatem vestram ut hæc quæ acta vel gesta sunt publicis hæreant monumentis*’. [S]SSSS. DDDDD.: ‘*Quæ acta v[e]l gesta sunt, huic corpori contin[e]antur inserta*’. Ille dixit: ‘*Auctorum peto potestatem*’. SSSSS. DDDDD.: ‘*Describe ill. ex [pp]*’. Gesta apud nobis habita subscripsit ill., magister ill. conscripsit”.

40 Köbler, *Wörterverzeichnis zu den Leges Visigothorum*.

41 Strictly speaking, the redaction of FW 21 and 25.

42 LW 2,5,14 (Flavius Chindasvintus Rex): “**Ut defuncti voluntas ante sex menses sacerdoti vel testibus publicetur. Scripta voluntas defuncti ante sex menses coram quolibet sacerdote vel testibus publicetur. Et si quis eandem qualibet fraude subpresserit, tantum illis, in quibus testatus est, de proprio cogatur exolvere, quantum eiusdem scripture serie conquirere potuerant vel habere**”. The general influence of the church in the development of the law, and especially the formularies, was great, as it is demonstrated by the penal clauses introduced to most formularies, including the FW. For instance FW 1: “(…) *Sit ille Deo reus, sit a sancta communione alienus, sit a consortio iustorum extraneus, sit a grege catholico segregatus; atque*

cumstance could also be taken as a point of reference at the moment of proposing a possible date of writing.

3.- OTHER GERMANIC FORMULARIES

Therefore, the existence of a Roman strong influence in the configuration of the FW, and in the society which gave them life, is easy to demonstrate. But, more concretely, to fill the historiographic/juridical gap that exists between the 6th and 7th centuries is not an easy task. That was the time in which theoretically the FW were written, something logical, if we take into consideration the fact that it was a time of Visigothic intellectual and juridical splendour. But here comes the question about their origin- the data contained in the texts are not directly useful to give a definite answer, so we should resort to another sources in order to complete this lack of information⁴³.

Following the theory of Schwering, the starting point for this research should be found in other texts of similar characteristics, starting with, concretely, the *Formulae Andecavenses*. According to this author, the two compilation of formularies, the Frankish and the Visigothic, could have a common origin. Making an interpretative effort, one could have been the model for the other⁴⁴, in spite of the differences between them⁴⁵. Thus, the Visigothic formularies, or at least a nowadays unknown collection of formularies written around the *Lex Romana Wisigothorum*, could have been took as model for the *Andecavenses*⁴⁶. Should this theory be correct (what Schwering seems not to believe), the date of redaction of the Merovingian *Formulae Andecavenses* would give us another point of reference in the attempt to establish the date and place of redaction of the FW.

dum ille tremendae examinationis iudicique dies illuxerit, inter impiorum cruciamenta sortis Iudae damna substineat, inter crepitantibus flammis aeternis conflagretur incendiis sitque erga hominibus manendo obnoxius, illa parti vestrae suppleat, quae de maculanda ingenuitate legalis sonat sententia, hunc vero factum nostrum nequaquam disrumpere valeat (...)". The inclusion of biblical texts is a clear proof of this influence, not only with regard to the writing of the texts, but especially, to the transmission and homogenization process, John, *Formale Beziehungen der privaten Schenkungsurkunden*, pg. 10-13; Studtmann, *Die Pönformel der mittelalterlichen Urkunden*, pg. 276-279; Brunner, *Zur Rechtsgeschichte der römischen und germanischen Urkunde I*, pg. 50 & foll./139-144; Boye, *Über die Poenformeln in den Urkunden des früheren Mittelalters*, pg. 101; Gibert, *Prenotariado visigótico*, pg. 121. Regarding the influence upon the conciliar normative see Dove, *Diritto romano e prassi conciliare ecclesiastica*, pg. 150. Most of the formularies written in this epoch, were so written by members of the church, another proof about the all out importance of this institution in the transmission of Roman law; for instance, Marculf, one of the few known writers of the Frankish formularies, was a monk, Bresslau, *Handbuch der Urkundenlehre für Deutschland und Italien II*, pg. 229. So says the introduction of the Marculfi *Formulae*: "**In Dei Nomen Incipit Prefatio Libri Huius**: Domino sancto, meritis beatissimo et apostolico semper honore suscipendo omnique preconio laude celebrando domino ac reverentissimo pape Landerico Marculfus, ultimus ac vilissimus omnium monachorum". Most of the knowledge about the Roman formularies was conserved, although in a sometimes rudimentary fashion, in the monasteries, Frezza, *L'influsso del diritto romano giustiniano nelle formule e nella prassi in Italia*, pg. 106-108.

43 John, *Formale Beziehungen der privaten Schenkungsurkunden*, pg. 5-11.

44 Schwering, *Sobre las fórmulas visigóticas y las andecavenses*, pg. 178-179.

45 This differences are both structural and material: The FW are organised following thematic criteria; the *Andecavenses* are not. For other side, almost all of the FW are related to private law; the *Andecavenses* to process law. Schwering, *Sobre las fórmulas visigóticas y las andecavenses*, pg. 180.

46 Schwering, *Sobre las fórmulas visigóticas y las andecavenses*, pg. 189; Studtmann, *Die Pönformel der mittelalterlichen Urkunden* pg. 279; Buchner, *Deutschlands Geschichtsquellen im Mittelalter (Vorzeit und Karolinger)*, pg. 51.

These *formulae* are only the first step in a long succession of publications of formularies which characterised the Frankish juridical culture; at the end of the 7th were written the *Formulae Marculfi*, subsequently completed by the *Formulae Marculfinae aevi Karolini*⁴⁷. Later, in the 8th century, the *Formulae Turonenses*, *Arvernenses*, *Salicae Bignonianae*, *Salicae Merkelianae*, *Salicae Lindenbrogiana*, the *Cartae Senonicae* and the *Collectio Flaviniacensis* were published⁴⁸. The importance of the Frankish collections of formularies is out of doubt, being the most numerous of all. Thus, following this theory, if the *Andecavenses* took the FW as model, these should be the most ancient of all the different conserved collections⁴⁹: The *Formulae Andecavenses* are considered one of the oldest collection of formularies, belonging to a time period that some author has defined as the “Merovingian Renaissance”⁵⁰. They were published sometime between the 6th and 7th centuries⁵¹, probably in the first half of the 7th; except from the last three, which were written after 678⁵².

But, after all, the comparison between the two collections shows that the coincidences are not strong enough to become a key to the understanding of FW; I think that the *Andecavenses* are not a reliable element to search for the origin of the Visigothic formularies. Even if they took the FW as model, the structural differences between both are big enough to think that, probably, the coincidences between them are more attributable to a common origin or, better, a common tradition.

Another collection written in this time (end of 7th century), are the *Formulae Marculfi*, which, out of this point of view, present similar characteristics with the *Andecavenses*. They are composed by 96 formularies, divided in two parts, almost all of them related to public issues. The second of these parts is the one which presents more resemblances with FW due to the fact that contains more private formularies. Some of them have clear similarities with the FW⁵³. But, in spite of these similarities, we clash with the same obstacle: these resemblances are due to a Visigothic influence, or to a common origin? I will subscribe the second possibility. Why? Specially because a terminological mat-

47 These formularies are specially relevant not only due to their official character, but also because they were models for later documents, Sarrablo, *Nociones de diplomática*, pg. 62-63.

48 Siems, *Handel und Wucher im Spiegel frühmittelalterlicher Rechtsquellen*, pg. 348-349. For a complete resume, Bresslau, *Handbuch der Urkundenlehre für Deutschland und Italien II*, pg. 235 & foll.

49 John, *Formale Beziehungen der privaten Schenkungsurkunden*, pg. 55.

50 Schlosser, *Grundzüge der neueren Privatrechtsgeschichte*, pg. 10.

51 Nonn, *LMA 4*, pg. 646-648; Siems, *Handel und Wucher im Spiegel frühmittelalterlicher Rechtsquellen*, pg. 348.

52 Bresslau, *Handbuch der Urkundenlehre für Deutschland und Italien II*, pg. 235.

53 For instance, FW 15: “**Dote Puellae**: Dulcissimae coniugi meae ill. ill. Donationis semperque futurae coniunctionis causa fieri, legum solemnitas et Iulia decrevit auctoritas; ideoque, patrocinante Deo, parentum tuorum tuisque consensus accessit, ut petitam te mihi in coniugem copularem. Ideoque donare me tibi censui et dono ill. et ill., quod exinde habendi, tenendi et possidendi nostrisque posteris derelinquas, liberam in Dei nomine habeas potestatem. Quod etiam iuratione.” and Formula Marculfi 16: “**Si aliquis puella invita traxerit**: Dulcissima coniuge mea illa ille. Dum et te per voluntatem parentum tuorum habui disponatam, et absque tua vel parentum tuorum voluntate rapto scelere coniugium sociavi, item: Dum et te, fatiente coturno, contra voluntate parentum tuorum rapto scelere coniugium sociavi, unde vitae periculum incurrere debui, sed, intervenientes sacerdotes vel bonis hominibus, vitam obtenui, sic tamen, ut quod tibi in tanodo vel in dotis titulum ante die nupciarum, si te dispostam habuissem, conferre debueram, per hanc epistolam conposcionalem, aut, si convenit, cessionem, firmare deberim; quod ita et feci. Ideoque dono tibi locello nuncupante illo, situm in pago illo, cum domibus ad manendum condignis, vel omnia intrinsecus utensilia necessaria, cum terris, accolabus, mancipia tanta, viniis, silvis, pratis, pascuis vel reliquis quibuscumque beneficiis, caballus tantos, boves tantos, grege equorum, grege armentorum, grege porcorum, grege ovium, inter aurum, argentum, fabricaturas, drappus in soledos tantos. Haec omnia superius comprehensa a die presente in tua tradedi potestate et dominatione possedendum; habendi, tenendi vel quicquid exinde elegeris faciendi liberam habeas potestatem. Si quis vero et cetera”.

ter. The *Formulae Marculfi* present differences with the FW, specially in the influence of the Frankish language. The meaning of this could be, precisely, that both collections have a common origin, but the Frankish one evolved in a different way, being less romanized and thus, included more Germanic words⁵⁴ and suffered a different phonetic evolution⁵⁵. But also due to the completely different structure; they are divided in two parts, contain formularies of different subject matters, and are not so clearly classified as in the FW⁵⁶.

Taking this into account, I will say that as in the case of the *Andecavenses*, the *Formulae Marculfi* probably share a common, tradition based, origin with the FW, but they are not directly taken as model.

Thus, following these two meaningful examples, could be said that the formularies corresponding to the time when the FW were theoretically written are not a so good reference to establish the date of redaction of the Visigoth collection, due to the fact that, probably, the different coincident elements that could be found are based in a common origin and tradition, more than in the usage of some of the collections as models for the others.

4.- THE TEXT OF THE FORMULAE

Apart from the FW 20 and 25, the other texts of the collection may offer some direct information about this origin, specially regarding their catholic⁵⁷ or directly gothic nature. Let's have a short look:

- FW 1⁵⁸: This formulary contains clear references to the Catholicism, like in *sit a grege catholico segregatus*, so it should be written after 589, the year of the

⁵⁴ *Formula Marculfi I* 13, refers to "lesaeumwerpo", donation formality (see Zeumer, *Formulae I*, pg. 51); 18 to "antrustio", supporter; 24 to "mundeburde", protection; 40 to "leodesamio", companions; on the other hand *Formula Marculfi II* 12 refers to "alode", personal property; or 36 to "gasindo", armed retainer; for all the definitions except the first, Niermeyer, *Mediae Latinitatis Lexicon Minus*. See next footnote.

⁵⁵ Specially remarkable is the transformation of the *t* in *c* in the 7th century, a phenomenon that started to be frequent in Spain from the 10th century on, Stotz, *Handbuch zur lateinischen Sprache des Mittelalters I*, pg. 91. For instance, *Formulae Marculfi II*, 2, "donacionem"; 6, "donacione" or 9 "obnoxiationis", Zeumer, *Formulae I*, pg. 69.

⁵⁶ Remember that the 46 FW are divided in different groups, each of one contains formularies of similar nature. Someone (García Gallo, *Los documentos jurídicos y los formularios jurídicos en España hasta el siglo XII*, pg. 138-139) has seen two parts, because almost all of the last 19 formularies are not included in any group; but this should be attributed to the fact that they are the only formularies of their class (independent ones), so they could not be included in such groups.

⁵⁷ Conrat, *Geschichte der Quellen und Literatur des römischen Rechts*, pg. 266-267.

⁵⁸ FW 1: "*Cartula libertatis*: "... posterum denique, ne inquietudo in vos aliqua incumbat, aut contra hoc factum nostrum irrita adversitas impugnet, tali maluimus iudicio presenti tramiti poena subiungere: Sit ille Deo reus, sit a sancta communione alienus, sit a consortio iustorum extraneus, sit a grege catholico segregatus; atque dum ille tremendae examinationis iudicique dies illuxerit, inter impiorum cruciamenta sortis Iudae damna substineat, inter crepitantibus flammis aeternis conflagretur incendiis sitque erga hominibus manendo obnoxius, illa parti vestrae suppleat, quae de maculanda ingenuitate legalis sonat sententia, hunc vero factum nostrum nequaquam dirumpere valeat. In quam rem, vi doloque secluso, praesens praesentibus stipulatus sum et spondi, supter manu mea subscripsi et testibus a me rogitis pro firmitate tradidi roborandam, Aquiliam quippe commemorans legem, qui omnium scripturarum suo vigore iugiter corroborat actos".

Facta cartula libertatis in civitate illa sub die Calendis, ill., anno ill. ill. regnante, era ill.

Ego ill. hanc cartulam libertatis in praedictorum personas a mea voluntate collatam relegi, cognovi et subscripsi. Sunt dies et annos et era, quae supra.

Ille, rogitus a domino et fratre illo, in hanc cartulam libertatis ab ipso factam testamentum suprascriptum, die, anno, et era, qua supra".

conversion of Reccared⁵⁹. Also, could be said that the references to the *era* are a characteristic way to indicate the time in the Visigothic documents⁶⁰.

- FW 4⁶¹: *Fidelium famulorum servitia immaculata mentis obedientia ministranda (...) and inoffensibilem servitiorum vestrarum sedulitatem pensantes nobisque ante Deum sortem beatitudinis acquirere cupientes*, could also be considered traces of a Catholic origin.
- FW 5⁶²: This formulary shows, apart from other typical expressions, one of the most characteristic Catholic signs⁶³, as is the curse cast upon the one who breaks the terms of the contract and does not respect the new situation of the *libertus*: *primitus iudicium Dei incurrat et a sacrosancto altario efficiatur extraneus, et sicut Datam et Abiron vivus in infernum descendat et cum Iudam Scarioth participium sumat*⁶⁴. Like

59 Considering the tensions between Catholicism and Aryanism in this time, is difficult to figure that a reference so explicit to one of the key elements of the Catholicism was included due to a direct copy from a Roman Catholic formulary; it should be done consciously.

60 Following the Roman custom of referring the year in relation with the consuls, in the middle ages quite often the role of this magistrates was substituted by the kings, Schuler, *LMA* 5, pg. 277. Generally speaking, the *era* is considered a reference to any given date (Consular or Olympic year, city foundations, temple inaugurations, etc.). In this particular case the reference is obviously made to the *Era Hispana*, a way of counting the years that appeared in an undetermined time probably in some place of the Cantabric coast. The first historian known to use it, is Isidore of Seville, in his *Historia Gothorum, Vandalorum et Suevorum* (year 620), although epigraphic testimonies set the starting point of its use at least in the 3rd century. The origin of the concept is seemingly based in the Roman Consular *era*, and took the year 38 b.C. as fixed reference. The reason why this date is taken is not clear, but probably it could be attributed to an identification of the birth of Christ with some happening in relation with Augustus; even though it is said, like Mommsen (*Neues Archiv* 18 [1892]), that possibly at least the origin of the word was Iberic. Its use lasted in Portugal until the 15th century. Schlögl, *LMA* 1, pg. 833; Kubitschek, *Paulys Realencyclopädie der Classischen Alterumswissenschaft* I,1, pg. 611-613/639-640; Niermeyer, *Mediae Latinitatis Lexicon Minus*, pg. 379; García Gallo, *Los documentos y los formularios jurídicos en España hasta el siglo XII*, pg. 136.

61 FW 4: “*Alia. Fidelium famulorum servitia immaculata mentis obedientia ministranda condigna merito libertatis beneficia consequuntur. Haec enim nunquam sunt naefanda commercia, quandoquidem fideliter servientibus provocamur recompensare dignissima praemia. Et ideo, inoffensibilem servitiorum vestrarum sedulitatem pensantes nobisque ante Deum sortem beatitudinis acquirere cupientes, mercedis intuitu compellimur, debitum vobis relaxare servitium et splendidum idoneumque conferre libertatis statum. Quapropter ingenium te civemque Romanum esse constituo atque decerno, ut, abstersa a vobis omne originali macula ac fece servili, perfectu gradu fervendo, nullius reservato obsequio, in splendidissimo hominum coetu atque in aulam ingenuitatis plerumque vos esse congaudeat; ita ut ab hac die, ubi ubi”.*

62 FW 5: “*Alia. Ill. dilectis meis ill. libertis salutem. Quia semper sunt apud Deum quaerenda animae remedia et salutifero consilio bonorum est operum devotio celebranda, qui et peccato exiliit et augeat merito, et ideo servitii conditio est praemio muneranda, ut ad aeternam perveniat libertatem. Pro qua re vestrae devotionis contemplamus servitia, ingenuos civesque Romanos vos esse decerno; et ideo relaxato omni peculio, quod habere visi estis, in vestro maneat iure; et donamus vobis de propria facultate nostra propter confirmandam ingenuitatem vestram in loco ill. hoc et illud, quod nobis ex munificentia gloriosi domini nostri illius in iure advenit; ita tamen, ut, quousque advixerit, ut ingenui obsequium mihi prestare debeatis; post obitum vero meum, ubi ubi larem vobere volueritis, liberam habeatis potestatem. Quod etiam iuratione confirmamus per divini nominis maiestatem et regnum gloriosissimi domini nostri ill. regis, quia mihi nunquam licebit, contra hunc mercedis mee factum venire, neque a quacumque infringi unquam persona. Quod si forte, quod fieri non credo, contra hanc libertatem aut ego aut quicumque venire temptaverit, primitus iudicium Dei incurrat et a sacrosancto altario efficiatur extraneus, et sicut Datam et Abiron vivus in infernum descendat et cum Iudam Scarioth participium sumat, et insuper inferat vobis auri libras tantas, et nec sic quoque hanc libertatem intrumpe permittatur. In quam rem”.*

63 Beneyto Pérez, *Las Fórmulas Visigodas. Judas, Datán y Abirón*, pg. 196-197.

64 See also FW 24. The way to cast the curse is practically identical to that used by Ervig in LW 12,3,15: “(...) veniant etiam super me et super domum meam et filios meos omnes plage Egypti et percussiones eius, et ad terrorem ceterorum ita iudicium Dathan et Abiron super me veniat, ut viventem me terra deglutiat, sicque, postquam hac caruero vita, sim eternis ignibus mancipandus, sim diabolo vel suis angelis sociandus, sim habitatoribus Sodome et Iude particeps in penali supplicio conburendus, et dum ante tribunal metuendi et gloriosi iudicis Domini nostri Iesu Christi pervenero, in ea parte adnumerer, quibus idem terri

in other formularies⁶⁵, the eternal condemnation of the soul is deserved to the offender⁶⁶ (along with a more pragmatical monetary fine).

- FW 6⁶⁷: As it is the manumission of an ecclesiastic serf, the whole text is plenty of Catholic references.
- FW 7, 8, 9, 10: Donations to the Catholic church. Apart from the curses, the FW 7 shows other references to Catholicism, like the one to a Martyr and, specially, to the *cultores*⁶⁸, an ecclesiastical office⁶⁹. As in many *formulae*, we find again

bilis et gloriosus iudex minando dicitur est dicens: Discedite a me maledicti in ignem eternum, qui preparatus est diabolo et angelis eius. Late condictionis sub die. Observe that the last sentence uses the language of a formulary.

65 1st or 7th *Formulae*.

66 Taken from the Bible, Psalms 105,17,1 and 105,18,1: “*aperta est terra et deglutivit Dathan et operuit super congregationem Abiron et exarsit ignis in synagoga eorum flamma conbusit peccatores*”, it is quite frequent to use this saying in excommunication *chartulae*, Du Cange, *Glossarium mediae et infimae latinitatis III*, pg. 11.

67 FW 6: “*Alia. Ill. in Christi nomine episcopus ill. liberto nunc salutem. Quoniam quisquis ille meretur suam in Domino percipere palmam, tunc demum a Divinitate ingeruntur desiderii lucra, ut deprecanti sibi quae quaerit inveniat, et alii mobeantur corda famulati officiositatem dignam impertire salutem, ut divinitus compungat fortuitu accedente corda, quo et annis senibus vires auget, et intra clausuram cordis obstrusae ianuae separentur. Et quoniam divina praecepta sanxerunt, ut plenissime fidelitatis statum, abstersa obscuritate, apti luminis faecundissime lumen conscendas; proinde ut ab angulo sanctae ecclesiae ill., qui nos cathedram apostolicae doctrinae, imperante domino Iesu Christo, propitius elegit conscendere, omni voto integritatis hoc maluimus hordinare, ut exutos vos ab omni fece conditionis, in splendidae ingenuitatis florentissimo cursu vos cognoscatis fuisse ingressos, nec unquam a successoribus nostris, quos catholica fides venerabilis eligere et conservare iuvebit antistes, humilitatis nostrae praemia, quae prona largitate vobis noscitur contulisse, inrumpere conabuntur; quibus repromissa misericordia suis caelitus reservat temporibus. Ergo estote ab hac die liberi, estote ingenii civesque Romani et, genitale nube detera, ad splendidiora pervenite misteria, quae divina faciente misericordia vobis probantur fuisse indulta, quibus opto, ut tam fratribus quam filiis in auribus grata perpatescant. Et ut vobis aula ingenuitatis fortissime roboretur, necessarium nobis est, ut muneris prosequente largitate huius paginae textus in omnibus suppleatur. Pro qua re donamus vobis ex privilegio sanctae ecclesiae ill., cui Deo auctore deservimus, hoc et illud cunctoque peculio vel peculiare vestro, sive quod nunc habere videmini, seu quod in diebus vitae nostrae profligaveritis, omnia, ut diximus, vobis concedimus; quod per huius confectae libertatis paginam habeatis, teneatis, possideatis, iure vestro in perpetuum vindicetis ac defendatis, vel quidquid ex hac re vobis tradita voluntas fuerit, faciendi perpetim habeatis potestatem, sacramenti fide interposita per hoc et illud, quia hoc firmum perpetuumque mansurum esse, quod prona largitate vobis constat fuisse concessum, nec quispiam contra factum meum venire conabit. Si quis vero, quod fieri non reor, ex adverso consurgens contra huius epistolae materiam venire conaverit, sacrilegii crimine teneatur obnoxius, et nec sic huius paginae valeat fundamenta dirumpere. Cui rei, vim doloque secluso, praesens praesentibus vobis stipulatus sum et spondendi, atque Aquilianae legis innodatione subinterfixa, qui omnium scripturarum solet adicere plenissimam firmitatem. Quam cartulam manu mea subscripsi*”.

68 FW 7: “*Cartula Oblationis. ... et unitas indivisa et regnum gloriosissimi domini mei ill. regi gentique suae salutem, quia hoc, quod prona et propria voluntate sinceraque devotione obtulimus, omni stabilitate esse mansurum et neque a me neque ab heredibus vel proheredibus meis neque ex transverso in lite veniente persona hoc aliquatenus esse solvendum. Si quis sane, quod fieri non reor, contra hanc nostrae oblationis cartulam venire conaverit, stante huius cartulae firmitate, aliud tantum, quantum obtulimus ecclesiae vestrae, ex suo proprio gloriae vestrae vel ad cultores vestros persolvat et iudicium Iudae Scariotis sumat, ut in eius condemnatione communem habeat participium ac in adventum Domini sit anathema maranatha vel in hoc seculo exors ab omni coetu catholicae religionis, Gyezi lepra percuciat, qui nostrae oblationis cartulam sacrilega mente inervare voluerit. Haec transgressor, divina ulciscente severitate, suscipiat, nulla tamen ratione huius nostrae oblationis formam inervare valeat. In quam cartulam praesens praesentibus stipulatus sum et spondendi, et quia literas ignoro, rogavi et dominum et fratrem ill., qui pro me suscriptor accessit, ego vero manu mea signum feci et testibus a me rogatis, bene natis viris, pro firmitate tradidi roborandam, Aquilianam quippe commemorans legem, qui omnium scripturarum plenissimam tribuet firmitatem.*

Facta cartula oblationis sub die calendis, in loco ill., anno ill. regnante ill., era ill.

Ill., rogatus a domino et fratre ill. quia ipse literas ignorat, pro eum scriptor accessi et hanc oblationem ab eius voluntate factam pro confirmationem suae personae subscripsi; ipse vero subter manu sua signum fecit, sub die, anno et era, quae supra.

Signum ill., qui hanc oblationis cartulam cum rebus conlatis sancto martiri ill. spontanea voluntate contulit.

69 Niermeyer, *Mediae Latinitatis Lexicon Minus*, pg. 286, *cultor* as administrator. Since the classical times the *cultor* is related to the religion; so, Jupiter as (*Iovi Cultori circenses missus*, in CIL I2 pg. 260,

the utilization of the concept *era*. The FW 8 refers directly to the bishop⁷⁰, and, in this sense, determines the destiny of the donated funds, lighting of the church, charity and serf payment⁷¹. The FW 9 not only makes a new direct reference to the Church, but also, through a really unlucky expression (*sic Deus Gotorum gentem et regnum usque in finem seculi conservare dignetur!*), mentions the gothic nature of the donor⁷². The FW 10 refers, one more time, directly

see Aust, *Paulys Realencyclopädie der Classischen Alterumswissenschaft* 4,2, pg. 1753; generally speaking, it is used with the sense of guardian, scholar or worshiper, Sigwart, *Thesaurus Linguae Latinae* 4, pg. 1317-20. In the Visigoth society, the *cultor* was the equivalent of the present day sacristan. So is stated in LW 9,3,4 (*Antiqua*): “Eos, qui ad ecclesiam vel ad ecclesie porticos confugerint, nullus contingere presumat, sed presbitero vel diacono repetat, ut reformet; et seu debitor sive reus, qui confugerat, si non meretur occidi, apud repentem ecclesie cultor interveniat, ut ei veniam det, et exoratus indulgeat (...)”.

70 FW 8: “*Alia. Dominis sanctis atque gloriosissimis et post Deum nobis fortissimis patronis, venerandis illis martiribus, quorum reliquiae in basilica, qui in loco illo fundata est, requiescunt, ill. et ill. peccatores, servi vestri. Piaculorum nostrorum cupientes expiare flagitia et peccatorum nostrorum oneris praegravationem orationum vestrarum desiderantes adiutorio sublevari, parba pro magnis offerimus munuscula. Nullius quidem in hoc seculo hominum vos indigere censum, scimus, quia iam per sanctificationem Dominus noster suo in regno propitio dictatos munere cumulavit. Ergo pro luminaria ecclesiae vestrae atque stipendia pauperum, vel qui in aula beatitudinis vestrae quotidianis diebus deservire videntur, donamus gloriae vestrae in territorio ill. loco ill. ad integrum, sicut a nobis nunc usque noscitur fuisse possessum, cum mancipiis nominibus designatis, id est ill. et ill. cum uxore et filii, similiter aedificiis, vineis, silvis, pratis, pascuis, paludibus, aquis aquarumque ductibus vel omni iure loci ipsius, ut diximus, gloriae vestrae deservientes pro luminaria ecclesiae vestrae atque stipendia pauperum vel substantia sua, absque episcopali impedimento, post iure gloriae vestrae perpetuo tempore debeant vindicare. Et nec vendere nec donare nec modicum aliquis alienare praesumat, sed integrum, ut nostrae oblationis continet forma, perpetuo tempore cultores ecclesiae vestrae post vestro vindicent iure. Quod si quispiam ex cultores basilicae vestrae ex hoc, quod prona voluntate et sincera devotione obtulimus, per tepiditate naufragaverit, aut per quolibet contractu vel modicum a iure sanctae ecclesiae vestrae alienari presumpserit, nullatenus valeat, sed ubi hoc successor eius primum esse repererit, ut legis est exinde sententia, nullius expectato iudicio, sine alicuius controversia in iure sancto vestro faciat revocare. Quod etiam iuratione.”.*

71 The patrimony of the Church was clearly divided in three parts, 7th canon of the first council of Braga (a. 561): “*De rebus ecclesiae: [De rebus ecclesiasticis quot portiones fiant]:* Item placuit, ut ex rebus ecclesiasticis tres aequae fient porciones, id est una episcopi, alia clericorum, tertia in recuperationem vel in luminaria ecclesiae; de qua parte sive archipresbyter sive archidiaconus illam administrans episcopo faciat rationem”. See Beneyto Pérez, *Las Fórmulas Visigodas*. Judas, *Datán y Abirón*, pg. 195 for more examples of the general use of this expressions.

72 FW 9: “*Alia, quam facit rex, qui ecclesiam aedificans monasterium facere voluerit) Domino glorioso ac triumphatori beatissimo ill. martiri ill. rex. Si beneficiis divinitus nostra compensetur oblatio, parvi penditur quod offerimus, qui, quod sumus, quod vivimus, quod veri capaces quodque regno praediti et rerum domini sumus, caelesti largitate percepimus; sed quoniam omnis oblatio pro fidei quantitate et sinceritate pensatur, non putamus esse menima, que magna fides Deo consecrat. Superno enim nobis dono praestitum congaudemus ecclesiam tuam, gloriose martir ill., novis fundamentis novisque culminibus sublimasse. Hac dum sit nostra erga omnibus sanctis familiaris oblatio, omniumque martirum patrocina sedulis officiositatibus expectamus, voto tamen consilioque cessimus evidenti parientia et clarioribus factis vestrum, beatissime martir, implorare favorem. Ergo, ut nobis et apud Deum et apud vestram dignationem sors beatitudinis commodetur, congregationem monachorum in eundem locum, quo sacrosancti vestri corporis thesauri conquiescunt, esse decrevimus, quibus iugiter Deo vestraeque memoriae condigne servientibus, vel iuxta patrum more, qui monachis normam vitae posuerunt, conversantibus, sit votum nostrum consumata mercede firmissimum et perpetuitate temporum propagatum. Offerimus ergo gloriae vestrae de patrimoniis nostris pro reparationem eiusdem ecclesiae, pro luminaribus iugiter accendendis, pro adolendis odoribus sacris et sacrificiis Deo placabilibus immolandis, pro victu regularium vel vestitu eorum monachorum, qui in vestro monasterio morabuntur, pro susceptione peregrinorum et sustentationibus pauperum, possessionem cui vocabulum est ill. cum mancipiis, terris et vineis omnique iure eius atque adiunctionibus ad memoratum locum pertinentibus, et loco ill. et ill. Quarum possessionum ius semper et usus pro nostrae perpetuitatis mercedem nostrisque abluendis delictis vestro sit nomine dedicatus, nihil exinde quolibet sacerdote ad ius ecclesiasticum commutante nihilque abbate in quamlibet personam quolibet contractu transferentem; sed quod offerimus ea sola ministeria suppleant et officia, quae a nobis manent taxata. Hoc divino testimonio per etates succiduas futuros praemonemus abbates, nec votum hoc nostrum sua qualibet tepida conversatione dissolvant; quod si a rectitudine regulari vel abbates vel congregatio ipsa declinare tentaverint, sacerdotali censura correpti, ad normam regularem ducantur. Obtestamur etiam eos, quibus post faelicissimis*

to the Catholic nature of the church. The style of this formulary is so particular, that rarely it could be attributed to the same author/s of the previous texts. So, both the structure and, specially, the language used have a strong literary component. For Zeumer, it is a *formula* through which the king⁷³ made pious donations or proceeded to the foundation of new churches⁷⁴.

- FW 16⁷⁵: Apart from the mention to the religious element, the *formula* determines that the act which originates the contract must be written *quatenus et antiqua consuetudo conscribatur in cartis*, sentence which poses the problem about its possible Roman or Gothic origin. Obviously, at the time of the redaction of this texts, the writer sees it as an own, Visigothic, custom. Taking into consideration the time elapsed between the origins of the process of Visigothic Romanization and the redaction of the *formulae*⁷⁶, and the non existence of a written proof of a pure Visigothic origin, is more than admissible to consider this as a Roman tradition, which suffers a *gothization* process along the pass of the centuries. But see FW 20 regarding the *Morgengabe*.
- FW 19⁷⁷: The same problem appears in this *formula*, which should be connected with, in relation to the mention of the *Lex Iulia de Maritandis*, the FW 14⁷⁸. More than a Gothic reminiscence, it should be seen as a Roman one.
- FW 20⁷⁹: Two elements made us to consider this text as Visigoth. One, the direct reference in the first sentence to the *Geticae Stirpe*. Second, as we have already

temporibus nostris regnum dabitur, per aeterni Regis imperium – sic Deus Gotorum gentem et regnum usque in finem seculi conservare dignetur! -, ut de nostris oblationibus cunctis, quibus Deo placere studuimus, nihil auferre, nihil emutillare praesumant, dum nos evidentius constet pro nostram et pro Gotorum salutem talibus Deo placere voluisse muneribus. Si quas autem deinceps auctoritates devotio nostra glorioso vestro conscripserit nomini, huius auctoritatis vigore constabunt. Suscipe hoc munus, gloriose martir ill., meritisque tuis divinis vultibus offerre”.

73 LW 5,2,2 (Flavius Chindasvindus Rex, Ervig): “**De donationibus regis:** Donationes regie potestatis, qui in quibuscumque personis conferuntur sive conlate sunt, in eorum iure persistent, in quorum nomine eas potestas contulerit regia; ea videlicet ratione, ut ita huiusmodi regalis munificentie conlatio adtributa in nomine eius, qui hoc promeruit, transfusa permaneat, ut, quicquid de hoc facere vel iudicare voluerit, potestatem in omnibus habeat. Quod si etiam his, qui hoc promeruit, intestatus discesserit, debitis secundum legem heredibus res ipsa successionis ordine pertinebit, et infringi conlate munificentie gratia nullo modo poterit; quia non oportet principum statuta convelli, que convellenda esse percipientis culpa non fecerit”. The reform of Ervig is referred specially to the effects related to the law of successions. About the origin of this law, see D’Ors, *El Código de Eurico*, pg. 240-241.

74 Zeumer, *Formulae Visigothicae*, pg. 580.

75 FW 16: “**Alia.** Cum in principio Dominus noster cuncta generaliter ordinasset, disposito perfectoque omnium elementorum opere, hominem suae imaginis similem plasmare dignatus; inde dilectio coniugum, inde dulce gratia liberorum. Ob hac re oportunitum est, ut, quicquid prona voluntas depromet, in titulis saltim perfecte ostendatur immeritis, quatenus et antiqua consuetudo conscribatur in cartis; et quicquid benigna voluntate offertur, gratanter suscipi amplectique delectet gratia coniugis, qui nihil in coniuge dando quis efficitur pauper aut exul a rebus redditur suis, dum sponte illud nititur offerre, quod sua dignissima potest fama coniungi. Ob hoc donare me indulgentiae tuae profiteor et dono hoc et illud.”

76 Heather, *Goths and Romans*, pg. 71-193.

77 FW 19: “**Alia.** Regulam antiquae constitutionis, quae est de ordinatione matrimonii legibus constituta, evidentius observantes, quod pro dignitate natalium communium elegimus in Dei nomine faciendum, ut condignis atque consuets vos cumulemur praemiis. Quam ob rem donare me indulgentiae tuae profiteor et dono”.

78 FW 14: “(…) Sponsalitia largitate donare me tibi ad diem votorum promitto hoc et illud, quod ex lege Popeam Popeam et ex legem Iuliam, quae de maritandis ordinibus lata est”.

79 FW 20: “**Insigni merito et Geticae de stirpe senatus/Illius sponsae nimis dilectae ille./Praemia nubentium ratio praescribere cartis/Provocat, et magnis laudem praeferre puellis./Optima quantum certe sinit doctrina pudoris./Aut amor exigii et placidus in corde reponit./Est datus antiqui facilis hic corde parentis./Temporibus quem cuncti haberent pro lege futuris./Cum dudum caelsi dominus et rector Olimpi/Formasset immensa hominum pietate priorem./Protinus auxilium latere de sacro virili/Dextera**

seen, it contains the name of the king who reigned in the time in which it was written, Sisebut. Apart from this, we can find a very curious mention to a Germanic institution, the *Morgengabe*: *Ordinis ut Getici est et morgingeba vetusti*. I say curious, because this is the only reference to this institution to be found in the whole Visigothic juridical literature⁸⁰. It is surprising that, being the only mention, it is described as *vetusta*.

As happens with many Germanic institutions, the knowledge about the *Morgengabe* is scarce and dark⁸¹. Generally speaking, it seems that it was some kind of donation made by the man or his family, to the bride, with undetermined effects⁸², even though probably (almost regarding the Visigothic Law) it was not an essential element for the validity of the marriage⁸³; as a matter of fact, the donations made by the bride or her family to the fiancé are also known with this name⁸⁴. Generally, they were made at the morning of the wedding day; that explains the denomination. Possibly, its main function was of protective nature, assuring the support of the widow after the death of the husband⁸⁵. Frequently, the *Morgengabe* as the gift of a patrimony to the bride appears along

faemineum telluris fecit in orbem./Maxima crescendo transcurrit pectoris etas./Dilubio, labaret quo cunctum crimina mundum./Noe salbare voluit cum prole beatum./Qui potuit reparare genus ex coniuge priscum./Innumera crevit hominum postinde caterba./Oppida qui habitant, vicos et moenia cuncta./Abraham quippe Deum cupiens cum Sarra supernum./Cernere promeruit seque offerendo ministrum./Cuius Isaac dispensandi de semine voto./Exortus geminam genuitque ex coniuge plebem./Iacob bis septenos famulabit in annos./Ut Rachel acciperet pulcherrime corpora pacis./Idem semper summo venerandus honore./Genitibus indixit grata connubia cunctis./Praeteritis muniti patribus vestigia nostris./Insequimur laeti thalamos et foedera usa./Querimus aethereis cerbices subdere iussis./Dispares et sexus membra efficiamur in unum./Eximior cum sit de toto gratia munus./Et magnos non aurum animos, sed vota decorent./Praecedant nostris titulus et praemia portent./Qua superant omne pretiosum dona metallum./Pascimur ecce tui tantum dulcedine amoris./Ut, si immensa tuae contradam munera formae./Nihil nobis melius quam nostri gratia vultus./Nullis enim quisquam rebus efficitur exul./Vel aliquod dando reponet in coniuge pauper./Si coniux proprium diligit servare maritum./Unde praecare meis studui per carmina verbis./Ut, quia nostrorum placuit haec causa parenti./Laeta, peto, teneas in votis pectora nostris./Quod tua dulcedo poscit, quod grata voluntas./Quod amor egregius, quod...nostra meretur./Optima namque tibi dona sum offerre paratus./Et dare, quod retinet praesentis forma libelli./Ecce decem inprimis pueros totidemque puellas./Tradimus atque decem virorum corpora equorum./Pari mulos numero damus inter caetera et arma./Ordinis ut Getici est et morgingeba vetusti./Rusticos impendam famulos per nostra manentes./Rura tibi, terris, vineis et praedia, olivis./Omnibus in rebus, silvis ac pascuca, lymphis./Immobiles res seu mobiles, tam omne pecusque./Argentum, aes, byssum, vas fictile et aurum./Quidquid intra vel extra nunc corpore cuncto./Nos in iure [constat] titulus ex multis habere./Amplius aut Christi dederit quod gratia nobis./Ordine diverso per nostrae tempora vitae./Te dominam in mediis cunctisque per omnia rebus./Constitutio donoque tibi vel confero, virgo./Singula quippe supra vultu conscripta iucundo./Adpraehendas, habeas, teneas, post multa relinquis./Secula posteris in iure, carissima, nostris./Aut inde facere vestra quodcumque voluntas./Elegerit, directa tibi est vel certa potestas./Aeternum tamen ut habeat haec carta vigorem./Ecce sacramentum malui conectere magnum./Siderea praecelsa Dei virtute tonantis./Principis ac domini Sisebuti gloria nostri./Meque meum numquam hunc penitus dirumpere factum./Nec nostris aditum manebit haeredibus ullum./Dehinc qui possit minimam contingere partem./Nisus aut exteterit nostra convellere dona./Bis auri mille vestrae nummos iste parti./Inferat, et huius valeat conscriptio cartae./Cui omne scripturae malum de mente dolorem./Expolietantis quos texui probare mores./Omnia promittens spondi involuta manere./Unde meum subter libens nomenque notavi./Et testes speravi alios subscribere dignos./Post certe Aequiliam memini contextere legem./Qui cunctos rerum iugiter corroborat actos./Carta manet, mensis illius conscripta Calendis./Ter nostri voluto domini faeliciter anno./Gloriosi merito Sisebuti tempore regis./Ecce manu propria, tribui quia dona illi./Subscripsi, ut longa maneat ac firma per aevum”.

80 It can not be found in the LW or CE, Köbler, *Wörterverzeichnis zu den Leges Visigothorum*.

81 Ogris, *LMA* 6, pg. 837.

82 Niermeyer, *Mediae Latinitatis Lexicon Minus*, pg. 705; Merêa, *Estudos de Direito Visigótico*, pg. 25. In fact, one of the most important contributions of the Visigoths in this sense, should be the creation of a marital dowry, García Garrido, *El régimen jurídico del patrimonio uxorio en derecho vulgar romano-visigótico*, pg. 420.

83 Merêa, *Estudos de Direito Visigótico*, pg. 46-48.

84 Ogris, *LMA* 6, pg. 837-838.

85 Quack, *Die Morgengabe in den ältesten angelsächsischen, sächsischen und westgotischen Rechtsaufzeichnungen*, pg. 44; this circumstance had a reflection in the Eurician tradition, CE 319: “*Maritus si uxori suae aliquid donaverit, et ipsa post obitum mariti sui in nullo scelere adulterii fuerit conversata sed*

with the dowry⁸⁶. This last characteristic could explain the existing confusion between the Roman concepts of dowry and *ante nuptias* donation that the Visigothic jurists had, because in the oldest own juridical tradition⁸⁷ they were institutions of similar nature⁸⁸.

So, the mention of the *Morgengabe* could be owed to the survival of an old tradition not mentioned in the “official” law⁸⁹ but used in the normal life.

- FW 21⁹⁰: It contains, in its second part, many references to the Catholic nature of the *deciuis*.
- FW 25⁹¹: As it is already explained, this text is one of the two used to configure the theory about the origin of the collection.
- FW 34⁹²: As in other few FW, this one mentions the trinity, so its Catholic nature is clearly shown, *per Patrem et Filium et Spiritum sanctum, qui est Trinitas inseparabilis et una maiestas*.
- FW 35⁹³: This text appears to have been written in the original *Codex* immediately following the preceding one⁹⁴, so it should be considered to have the

in pudicitia permanserit, aut si de certe ad alium maritum honesta coniunctione pervenerit, de rebus sibi a marito donatis possidendi et post obitum suum relinquendi cui voluerit habeat potestatem. Sin autem per adulterium seu inhonestam coniunctionem se miscuisse convincitur, quidquid de facultate mariti sui fuerat consecuta, totum incunctanter amittat, et ad heredes donatoris legitimos revertatur. Merêa, *Estudos de Direito Visigótico*, pg. 24 y 26; Ogris, *LMA* 6, pg. 838. Probably it was only known in the context of high class families, Dahn, *Westgothische Studien*, pg. 118.

86 Merêa, *Estudos de Direito Visigótico*, pg. 27 y ss; Ogris, *LMA* 6, pg. 838.

87 Quack, *Die Morgengabe in den ältesten angelsächsischen, sächsischen und westgotischen Rechtsaufzeichnungen*, pg. 47-48. The oldest reference to the Visigothic *Morgengabe* can be found in a passage from Gregory of Tours referred to the marriage of the Visigothic princess Gailesvintha with the Frankish king Chilperic, *Historia Francorum*, 9,20: “*Tam in dote quam in morgangegyba, hoc est matutinalen donum, in Francia veniens certum est adquisisse*”.

88 It could be interesting to remember the words of Isidore from Seville, who saw both institutions as a whole, *Etymologiarum*, 5,24,25-26: “*Donatio est cuiuslibet rei transactio. Dictam autem dicunt donationem quasi doni actionem, et dotem quasi do item. Praecedente enim in nuptiis donatione, dos sequitur. Nam antiquus nuptiarum erat ritus quo se maritus et uxor invicem emebant, ne videretur uxor ancilla, sicut habemus in iure. Inde est quod praecedente donatione viri sequitur dos uxoris*”.

89 We should remember that the LW is the most romanized of all the Germanic laws, so the lack of pure Gothic or Germanic terminology could be the cause of not using this word. As has been seen, in fact, the use of Germanic or Roman terminology does not matter, because the institution is probably the same. In this case, the question lies in determining if the use of the term could be the consequence of some kind of Frankish influence or if it was retaken from the old Gothic traditional terminology.

90 See text *supra*.

91 See text *supra*.

92 FW 34: “*Cartula mancipationis. Dulcissimo filio meo ill. ill. Prisca consuetudo et legum decreta sanxerunt, ut patres filios in potestate habentes tempore, quo perfectos in eos esse praespexerint annos, postulata a patribus absolute, percipiant, quod tamen patres ipsi, si voluerint, concedant. Unde ambiguum non est, quod obedientiae vestrae sagacitas nostrum compellet animum, ut te a nostro dominio corpore relaxare debeamus. Unde paternae potestatis intuitu decernimus, ad instar personae nostrae tuum gaudeas pervenisse statum. Oblatos autem a te quinque nummus distractionis atque mancipationis causa me suscepisse agnosco et melioratum autem te gaudeo. Unde, quicquid te malui, volui, contuli et habere decrevi, totum tibi per hanc mancipationis meae cartulam confirmo, hanc roboro et concedo: per Patrem et Filium et Spiritum sanctum, qui est Trinitas inseparabilis et una maiestas, per regnum gloriosissimi domini nostri ill. regi gentique suae salutem vel omnium sacerdotum coronas*”.

93 FW 35: “*... quia rem iuris mei debitam, quam ille suo vitio extra discussionem iudicantis violentius usurpatione de meo dominio abstulit, nullos in eodem loco profligat labores, certe nec quicquam inibi augmentat, dum interim, manente iustitia, per legum statuta appetendo iudicariam potestatem inter partes de veritate silentium imponatur; quod si, transcendens hanc coniurationem nostram, hoc quod in iure nostro pertinet in aliquod augmentaverit, sciat, se per iustitia, dum nostro dominio hoc ipsum probaverimus, debere secundum legum instituta de invasione vel singulis annis frugum collectione ac sumptus per litis expensas nobis satisfacere et hoc, quod inibi profligavit, amittere. Factum libellum-*”

94 Zeumer, *Formulae Visigothicae*, pg. 590.

same origin as FW 34. Aside from that, it has been interpreted that the reference to the *statuta legum* can not be other than the renewed law of Chindasvinth LW 8,1,5⁹⁵.

- FW 39⁹⁶: As a religious oath, the text is in itself a Catholic declaration, which includes all the elements expected to be found in a document of this kind, including the characteristic mention to the trinity. There is also a reference to the Visigothic era.
- FW 45⁹⁷: The same character has this one, as the document which certifies the admission of a monk in a monastery.

Even though almost all of the FW show some kind of Christian influence, with mentions to Christ or God⁹⁸, only the aforementioned ones have “pure” catholic references, specially the ones which mention the Trinity. This is important to distinguish

95 Zeumer, *Formulae Visigothicae*, pg. 590-591; idem, *Leges Visigothorum*, pg. 315.

96 FW 39: “**Conditiones sacramentorum.** *Conditiones sacramentorum, ad quas ex ordinatione illud iudicium iurare debeant: ‘Iuramus primum per Deum patrem omnipotentem et Iesum Christum filium eius sanctumque Spiritum, qui est una et consubstantialis maiestas. Iuramus per sedes et benedictiones Domini. Iuramus per Cherubim et Seraphim et omnia Dei secreta misteria. Iuramus per signum sanctae ac venerandae crucis, quod ipsius fuit patibulum. Iuramus per tremendum atque terribilem futuri iudicii diem et resurrectionem domini nostri Iesu Christi. Iuramus per omnia sacra corpora gloriosaque martirum coronas omnesque virtutes caelorum vel haec sancta quatuor euangelia et sacrosancto altario domini nostri illius martiris, ubi has conditiones superpositas nostris continemus manibus. Iuramus per dextram Domini, qua sanctos coronat et impios a iustis separat eosque mittit in camino ignis inextinguibilis, ‘ubi erit fletus et stridor dentium’. Iuramus per cardines caeli et fabricam mundi, quae ipse virtute verboque fundavit. Iuramus per sacra misteria et sancta sacrificia. Iuramus per omnes caelestes virtutes et cuncta eius mirabilia. Iuramus per sanctam communionem, quae periuranti in damnatione maneat perpetua: quia nos iusta iurare et nihil falsum dicere, sed nos scimus, inter ill. et ill. hoc et illud in tempore illo actum fuisse. Quod si in falsum tantam Divinitatis maiestatem ac deitatem taxare aut invocare ausi fuerimus, maledicti efficiamur in aeternum; mors pro vita nobis eximetur et lutus in consolatione assiduus descendat igne rumphea caelestis ad perditionem nostram; oculi nostri non erigantur ad caelum; lingua nostra muta efficiatur; omnis interiora viscera nostra obduret et arescat, atque in breves dies spiritus diaboli periurantem arripiat, ut omnes periuri metuant, et sinceri de tam celeri Domini vindicta congaudeant. Et quemadmodum descendit ira Dei super Sodomam et Gomorram, ita super nos, extuantibus flammis, eruat mala et lepra Gyges, vivosque terra obsorbeat, quemadmodum obsorbuit Datan et Abiron viros sceleratissimos, ut videntes omnes supernae irae Dei iudicium talibus hominibus terreantur exemplo./ Latæ conditiones sub die ill., anno ill., era ill./ Ill., vicem agens illustrissimi viri comitis ill., has conditiones ex nostra praeceptione latas subscripsit./ Ill. Has conditiones nostra coram praesentia latas subscripsi”.*

97 FW 45: “**Placitum.** *Sanctissimo domino meo ill. episcopo ill. servus vester. Suggestio parvitas nostrae sancto pontificatus vestro deprecavit auditus, ut me in cellam monasterii sancti domini mei illius martiris cenobiale agendo vitam perpetuo tempore permanendum praeciperes. Unde et beatitudo vestra intuitu mercedis, petitionem meam placidissimo suspiciens animo, in eundem sacratissimum locum ut habitarem, vestra gloriosa perpatuit voluntas. Unde mihi placuit hunc spontanea voluntate emitte placitum, per cuius texti formam sincerissima promitto devotione, me diebus omnibus, quibus in hac potuero durare vita, praedictae sanctae ecclesiae dignis Deo ministrando officii totamque animi mei voluntatem in summo caritatis atque humilitatis splendore ministrare, et ita, patrocinante divina misericordia, per omni gratiae faborem, remota omni discordia, seu diversarum famulationes nefandarum operum aemulationes transire animis meis temptandi erit facultas, sed, ut dixi, suprafactae cellae vestrae omnibus diebus vitae meae ministrare servitium. Quod si, immutata voluntate, ab ea que promitto declinare tentavero et ad alia loca transire ausus fuero, iuratim dico per aeternitatem supernae Potentiae suumque terribilem futuri iudicii diem, quia habeat vestra potestas vestrique successores, incautum meam persequi voluntatem et ad ius revocare sanctae censurae decus. Si quis vero ex aliis personis in domum suam me recipere aut retinere voluerit, et adubi cognoverit monitionem vestram et minime me consignare vobis intenderit, sed e contrario continere vel defendere nituerit, communicatio illius irrita sit, a diabulo aeterna damnatione confusus, sententia anathematorum puniatur et cum Iudam Scarioth aeterno iudicio concrematur; nec ulli hominum religiosorum seu laicorum me apud se audeat retinere; quod si fecerit, supra scripta divina damnatione incurrat, et me apud se retinere non valeat. In quo placito, stipulatione subnixâ, manu mea subscripsi et testibus a me rogatis pro firmitate tradidi roborandum./Factum placitum-”*

98 See Velázquez, *Elementos religioso-bíblicos en fórmulas y documentos de época visigoda*, pg. 559-565.

them from the texts which could have been redacted before the official conversion of the Kingdom to the Catholicism; that is, the catholic forms should have been used after 589, the year in which Reccared abjured from Aryanism⁹⁹. So, considering the abundance of this Catholic references, we could say that most of the texts were written after 589 or, more precisely, after the time of Leovigild (573), the king who started to consider the religious unification of the kingdom¹⁰⁰.

From the other side, we find many references to the Gothic nature of the texts, demonstrating that many of them were undoubtedly written by Visigoths.

So, the key question should not be to discover if the FW are really Visigothic or, *au contraire*, were compiled from an unknown source in the 12th century, but to determine if they appeared in this compiled and united form from the beginning¹⁰¹. At least some of them are Visigothic; and other Catholic. But there is no sign of a systematization desire in the collection; probably, contradicting theories like that of G. Gallo¹⁰², and specially considering texts like the FW 20 (which presents both stylistic and terminological particularities), *they were written by different hands*. Could be said, lacking a deep philological study¹⁰³, that the time of redaction of the FW as a collection is completely impossible to know, simply because probably they were never written in the proper sense of the expression: they are one footstep more in the process of copying and adapting the Roman models¹⁰⁴. We should even consider that the first source (the Código Ovetense) was probably incorrectly (and only partially) copied¹⁰⁵. We should not talk about the date of redaction or publication, but about the date in which the collection was compiled¹⁰⁶. Most probably the FW, in their present form, were not known in the time of the Visigoths.

99 About Aryanism, *Lexikon für Theologie und Kirche 1*, pg. 988-989; *The Encyclopedia of Religion 1*, pg. 405-06; *Reallexikon der Germanischen Altertumskunde 1*, pg. 402-403.

100 It seems that this idea was seriously considered after the Catholic rebellion of Hermenegild in Seville, Orlandis, *Historia del reino visigodo español*, pg. 273-74. To this period (576) corresponds the testament of Vicente, bishop of Huesca, one of the few testimonies which can be undoubtedly qualified as Visigothic, in which a strong Roman influence is detected, Ortuño Pérez, *Un documento jurídico visigótico: El testamento de Vicente, obispo de Huesca*, pg. 158; Merêa, *Estudos de Direito Visigótico*, pg. 108-109.

101 Mentxaka, *En torno a formulae visigothicae 44*, pg. 828-829.

102 García Gallo, *Los documentos jurídicos y los formularios jurídicos en España hasta el siglo XII*, pg. 138.

103 The differences between the written and the spoken latin in the Visigothic kingdom were not so big at this time, so the language used in the FW could be another useful reference, Stotz, *Handbuch zur lateinischen Sprache des Mittelalters I*, pg. 100. For instance, one of the characterising elements of the evolution of the medieval latin language specifically in the Iberian Peninsula, was the prompt transformation of the intervocalic *v* in *b*, Stotz, *Handbuch zur lateinischen Sprache des Mittelalters I*, pg. 102; -idem, *Handbuch zur lateinischen Sprache des Mittelalters III*, pg. 268-269. According to Zeumer, this is one of the most remarkable linguistic elements of the FW, Zeumer, *Formulae II*, pg. 575. Thus, the time in which this transformation was progressively generalized should serve as an objective reference.

104 Beneyto, *Las Fórmulas Visigodas. Judas, Datán y Abirón*, pg. 193.

105 The work of the copyist of the XVI century, Ambrosio de Morales, could not be so exhaustive, due to the simple fact that he was obliged to travel all around Spain seeking for all kind of physical testimonies (mostly documents and relics), which often were copied, as is our case, with difficulty. Gil, *Miscellanea Wisigothica*, pg. X-XVI. This imprecision could be considered a sign of a not very deep analysis of the source from the beginning, which could contaminate all the studies made taking this text as testimony.

106 For Díaz y Díaz, this could have happened around the time after the Arab conquest of Spain, by mozarab writers, Díaz y Díaz, *Un document privé de l'Espagne Wisigothique sur ardoise*, pg. 52-71.

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