FREEDOM AND UNFREEDOM IN THE VISIGOTHIC KINGDOMS: EVIDENCE FROM THE *FORMULAE VISIGOTHICAE*

Senior Thesis by Tao Beloney

Advised by
Professor Nancy Bisaha
Professor Curtis Dozier

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Vassar College
Department of Medieval & Renaissance Studies

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INTRODUCTION

> Slave revolts shook the slave-owning system and hastened its destruction. The feudal mode of production came to replace the slave-owning mode of production; instead of the slave-owning form of exploitation there arose the feudal form of exploitation, which gave some scope for the further, development of the productive forces of society.
>
> – Ostrovityanov et. al., *Political Economy*[1]

Interest in ancient slavery is a relatively recent phenomenon, only picking up in the 1960s and 70s. Up to that point, the consensus was that of Marx and his followers, who posited that the ancient world was characterized by a "slave mode of production" and that it transitioned into a "serf" or "feudal" mode of production around the 5th and 6th centuries.[2] In the Americas, the growing interest in ancient and medieval slavery is largely attributable to the civil rights movement and tended to focus on race and late medieval slavery when it touched on the medieval world at all, but in Europe it was driven by the Cold War.

The European debate began to heat up in 1950 when the Mainz Academy of West Germany began the still-extant *Forschungen zur antiken Sklaverei* (Studies in Ancient Slavery), partly to challenge the dominant Marxian consensus. Eduard Meyer, the scholar on whose work this "Mainz School" was founded, stressed the supposed modernity of the ancient world and argued that ancient Athens "stands under the banner of capitalism" as much as industrial England or Germany.[3] The challenge was met in 1956 by a project of the Ancient History Section of the Institute of History of the USSR Academy of Sciences, and the debate became a microcosm of Cold War tensions and

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[1] K. V. Ostrovityanov et al., *Political Economy*, 2nd ed. (London: Lawrence & Wishart, 1957), https://www.marxists.org/subject/economy/authors/pe/. From the Marxists Internet Archive.

[2] See Noel Lenski, "Ancient Slaveries and Modern Ideology," in *What Is a Slave Society? The Practice of Slavery in Global Perspective*, ed. Noel Lenski and Catherine Cameron, 1st ed. (Cambridge University Press, 2018), 107–8, https://doi.org/10.1017/9781316534908.005.

[3] Moses I. Finley, *Ancient Slavery and Modern Ideology*, ed. Brent D. Shaw, Expanded Edition (Princeton: Markus Wiener Publishers, 1998), 113–14; Eduard Meyer, *Geschichte Des Altertums*, vol. 3 (Stuttgart: J.G. Cotta, 1910), 550, catalog.hathitrust.org/Record/009976355. "*In Wirklichkeit steht Athen im fünften und vierten Jahrhundert ebenso sehr unter dem Zeichen des Capitalismus, wie England seit dem achtzehnten und Deutschland seit dem neunzehnten Jahrhundert."* The translation of the quote comes from Finley.

specifically the conflicts between East and West Germany. This all came to a head at the 1960 International Historical Conference in Stockholm – only one year before the Berlin Wall went up – where Mainz School scholars, in effect, mocked and belittled the work of their Soviet colleagues with very little reason or provocation.[4] M.I. Finley, another pivotal figure in this story, recalls watching one talk: "in the guise of a discussion of ancient slavery, there has been a desultory discussion of Marxist theory, none of it, on either side, particularly illuminating about either Marxism or slavery."[5]

Ultimately it was not the Mainz School but Finley who would dislodge the Soviets. Finley was a Marxist himself, though, having joined the Communist Party of the United States (CPUSA) in 1937/38 and been forced out of his teaching position at Rutgers University by McCarthyites in 1952, so Marxist influences on the field have never really gone away.[6] In a series of writings culminating in his 1980 book *Ancient Slavery and Modern Ideology* (I use the 1998 reprint), Finley proposed the model of the "slave society" as opposed to the "society with slaves," arguing, in short, that the important element to consider when discussing changes in slave systems is not their importance to the economy – in Marxian terms, the extent to which slaves constituted the primary mode of production – but their importance to a society as a whole.[7] It would be difficult to overstate

[4] Brent D. Shaw, "'A Wolf by the Ears': M.I. Finley's *Ancient Slavery and Modern Ideology* in Historical Context," in *Ancient Slavery and Modern Ideology*, by Moses I. Finley, ed. Brent D. Shaw, Expanded Edition (Princeton: Markus Wiener Publishers, 1998), 5–6; Finley, *Ancient Slavery and Modern Ideology*, 123–32. Shaw says the initiative began in 1951, but he's wrong. Their own website puts the founding in December 1950 (https://www.adwmainz.de/index.php?id=323).

[5] Finley, *Ancient Slavery and Modern Ideology*, 130; Daniel P. Tompkins, "What Happened in Stockholm? Moses Finley, The Mainz Akademie, and East Bloc Historians," in *ΧΑΡΑΚΤΗΡ ΑΡΕΤΑΣ: Donum Natalicium Bernardo Seidensticker Ab Amicis Oblatum*, Hyperboreus: Studia Classica 20 (Munich: C.H. Beck, 2014), 436–52.

[6] Lenski, "Ancient Slaveries and Modern Ideology," 112–13; Emily (Grace) Kazakevich, "M.I. Finley: A Note on His Life and Work," ed. Sergei Karpyuk, *Journal of Ancient History* 76, no. 3 (2016): 781, https://www.academia.edu/28742350/Kazakevich_Grace_Emily_M_I_Finley_A_Note_on_His_Life_ans_Work.

[7] Interested readers should consult Noel Lenski, "Framing the Question: What Is a Slave Society?," in *What Is a Slave Society? The Practice of Slavery in Global Perspective*, ed. Noel Lenski and Catherine Cameron, 1st ed. (Cambridge University Press, 2018), 15–18, https://doi.org/10.1017/9781316534908.002 before reading Finley.

the extent to which this model, of course modified over the course of the past 40 years, has set the terms of the debate up to today.[8]

Finley was sensationalizing in his description of the Stockholm conference, but he gives a good demonstration of one of the key strengths of his theory over the historical materialist model: it allows us to think not just about economics and politics but also about the social and cultural impacts of slavery.[9] The Mainz School and the Soviets were using slavery to talk about their respective ideologies, not to discuss slavery itself. Scholars have a term for this – "thinking with slaves." Sandra R. Joshel uses it to describe the ways in which "Roman authors borrowed the vocabulary of slavery, its practices, and masters' assumptions about slaves' experience to figure other forms of domination" but clearly, moderns do it as well.[10] One of Finley's major contributions to the debate up to that point was simply to point out how political conflicts were driving scholarship.

However, despite the shift in frame, the actual questions involved in the debate have changed very little in recent years. Finley, the Soviets, and the Mainz School were arguing over questions of framing, not of fact. However we choose to characterize it, the scholarly consensus remains that in Europe, at some point between the height of the Roman Empire and the height of the middle ages, the dominant social, political, and economic order changed from one in which slavery was central into one in which it was not (and then back again in the colonial period). Because of this, the fundamental questions of when, where, why, and how this order changed (or didn't) remain the same whether we choose to speak of modes of production or slave societies.

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[8] See Lenski, 19–24.
[9] See Shaw, "A Wolf by the Ears," 54–55 n.11 on sensationalism and Finley's characterization of the Mainz School.
[10] Sandra R. Joshel, "Slavery and Roman Literary Culture," in *The Cambridge World History of Slavery: Volume 1: The Ancient Mediterranean World*, ed. Keith Bradley and Paul Cartledge, vol. 1, The Cambridge World History of Slavery (Cambridge: Cambridge University Press, 2011), 230, https://doi.org/10.1017/CHOL9780521840668.013.

But still, the debate has most of the same pitfalls as it did in 1960 – eurocentrism, an overfocus on economics, and an ignorance of women.[11]

When I first set out to write this thesis, I had intended for it to address these pitfalls. It has not developed along that path. Ultimately, while I hope that an awareness of the problems with the state of the debate has informed my thoughts and writing, this thesis largely follows the mainstream debate.

The late antique and early medieval periods are typically thought of as periods of change. I argue against this interpretation, at least with respect to the topic of slavery. I argue for continuity between Roman and Visigothic law, practice, and thought about slavery. Through an analysis of the documents in the *Formulae Visigothicae* which pertain to slavery, I argue that the character of Visigothic slavery and of Visigothic thought about slavery was very similar to the slavery and the thought about slavery of their Roman predecessors. Not only were Visigothic laws about slavery similar to Roman laws, but the practice of slavery resembled Roman practice, and even when practices diverged, the divergence was often driven by philosophical ideas about slavery that were inherited from the Romans. Even when they were not thinking about slaves, the Visigoths continued to think with slavery, and it continued to shape their conception of the world. It colored their relationships with power, each other, and with God in much the same way it did for the Romans. Crucially, I argue *not* that the Visigoths were like the Romans, but that the Romans were like the Visigoths, that the things we see as evidence of serfdom or a transition to it which are generally said to distinguish the ancient from the medieval in fact have their roots in Rome.

[11] See Sally McKee, "Slavery," in *The Oxford Handbook of Women and Gender in Medieval Europe*, ed. Judith M. Bennett and Ruth Mazo Karras (Oxford, United Kingdom: Oxford University Press, 2013), 182–294 on women; Lenski, "Framing the Question," 24–52 on eurocentrism and the model's failings as a comparative tool.

PART I: FORMULAS, FORMULARIES, & THE *FORMULAE VISIGOTHICAE*

> Before slavery people simply could not have conceived of the thing we call freedom. Men and women in premodern, nonslaveholding societies did not, could not, value the removal of restraint as an ideal.
> – Orlando Patterson, *Slavery and Social Death: A Comparative Study*[12]

A major obstacle to the study of the *Formulae Visigothicae*, or really any formulas, is that it requires rather a lot of background information. Formulas, especially the *Formulae Visigothicae*, while certainly not unknown to scholars, remain marginal in discussions. Certainly there are no English-language discussions about the *Formulae Visigothicae* as a collection, even if they are known to most scholars in the field. Similarly, there are very few critical translations of any of the formula collections. Those looking for an in-depth introduction to the Frankish formulas and to approaches to studying them should consult Alice Rio's excellent book *Legal Practice and the Written Word in the Early Middle Ages: Frankish Formulae, c.500–1000.*

Formulas and legal evidence are tricky to work with even when they are translated and well studied. Because part of my project is to use the *Formulae Visigothicae* to problematize existing interpretations of law, I devote a not insignificant amount of space here to introducing formulas, medieval law, and Visigothic law. I begin with a discussion of formulas and formula collections (collections of formulas are called formularies, but for clarity's sake I will avoid the term whenever possible), what they are, what they are useful for, and how they should be treated. I then move on to a brief introduction to Visigothic law and the entanglement of legal and social status within Visigothic society, focusing on unfreedom. Finally, I offer an introduction to the *Formulae Visigothicae* as a collection, considering both what it is and the problems and open questions that exist about it.

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[12] Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge, Mass.: Harvard University Press, 1982), 340.

WHAT ARE FORMULAS AND HOW SHOULD WE READ THEM?

Alice Rio describes formula collections as "books of model legal documents compiled by early medieval scribes for their own use and that of their pupils."[13] The formulas contained within these collections were typically documents or letters scrubbed of identifying information (with varying levels of success) and used as models for future legal documents, as teaching resources, or simply as records.[14] The vast majority of the surviving formulas come from the central Frankish kingdoms, but there are two surviving Iberian sources: a late tenth-century Catalonian collection from the Santa Maria de Ripoll monastery discovered and edited by Michel Zimmerman in 1982, and the subject of this thesis, the *Formulae Visigothicae* from Cordoba.[15]

Formulas were used from antiquity until the early tenth century. Although no formula collections from the Roman period survive, Roman documents are often highly standardized. For example, two of the slave sale documents in the Oxyrhynchus Papyri, written around 79 BC by different scribes, follow nearly identical patterns.[16] Additionally, some common phrases in Roman law are said to be "formulaic," for example, the formula for the so-called Aquilian Stipulation "have, hold, and possess" (*habes tenes possides*) commonly used in contracts is said to be given in Justinian's *Digest* and *Institutiones*.[17] But these are a far cry from the entire documents which are preserved in the medieval formula collections, although medieval collections do occasionally preserve commonly used parts of documents like introductions. The specific practice of redacting

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[13] Alice Rio, *Legal Practice and the Written Word in the Early Middle Ages: Frankish Formulae, c.500–1000*, Cambridge Studies in Medieval Life and Thought: Fourth Series (Cambridge: Cambridge University Press, 2009), i; 20, https://doi.org/10.1017/CBO9780511581359.

[14] Warren Brown, "When Documents Are Destroyed or Lost: Lay People and Archives in the Early Middle Ages," *Early Medieval Europe* 11, no. 4 (2002): 339–42, https://doi.org/10.1111/j.0963-9462.2002.00115.x; Rio, *Legal Practice and the Written Word*, 20.

[15] Rio, *Legal Practice and the Written Word*, 186; Michel Zimmermann, "Un Formulaire Du Xème Siècle Conservé à Ripoll," *Faventia* 4, no. 2 (1982): 67–86.

[16] Amin Benaissa, "Two Slave Sales from First-Century Oxyrhynchus," *Zeitschrift Für Papyrologie Und Epigraphik* 177 (2011): 222–28.

[17] Forentinius, *Digest* 46.4.18; *Institutiones Justiniani* 3.29.2.

existing documents for use as formulas seems to be unique to the medieval period. However, for methodological reasons that will be discussed in detail later, it is difficult if not impossible to give specific dates – or, for that matter, locations – for any given formula or formulary.[18]

Formulas had a wide variety of different applications. They are unique compared to other legal sources like charters and capitularies because they overwhelmingly deal with laypeople and show laypeople, including the relatively disempowered and (we assume) uneducated, using, engaging with, and demonstrating a sophisticated understanding of the law to record transfers of property and settle disputes in much the same way as the ecclesiastical elites for whom so much more evidence survives.[19] Examples include models for giving estates to churches, documents for resolving horse thefts, marriage and divorce documents, dispute settlements, and even settlements for crimes like murder.[20] Early Visigothic legal proceedings produced large numbers of written records, sometimes multiple copies of the same document, and this process may have been expedited by the use of formulas.[21] This also suggests the existence of a sizeable number of competent legal bureaucrats, although Ian Wood notes that the compilation of formula collections may be a mark of their decline (and the declining importance of formulas in general), as these scribes and officials lost the knowledge required to produce the documents and increasingly needed to consult manuals to do so.[22] The formulaic nature of Roman documents combined with the lack of formulas for them seems to confirm this thesis.

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[18] Rio, *Legal Practice and the Written Word*, 16; 40–44; 185–87; Brown, "When Documents Are Destroyed or Lost," 339.
[19] Rio, *Legal Practice and the Written Word*, 21–23; Rosamond McKitterick, *The Carolingians and the Written Word* (Cambridge: Cambridge University Press, 1989), chap. 6, https://doi.org/10.1017/CBO9780511583599.
[20] Rio, *Legal Practice and the Written Word*, 22–23; Brown, "When Documents Are Destroyed or Lost," 339.
[21] Roger Collins, "Visigothic Law and Regional Custom in Disputes in Early Medieval Spain," in *The Settlement of Disputes in Early Medieval Europe*, ed. Wendy Davies and Paul Fouracre, 1st ed. (Cambridge: Cambridge University Press, 1986), 86–90, https://doi.org/10.1017/CBO9780511562310.007.
[22] Ian Wood, "Administration, Law and Culture in Merovingian Gaul," in *The Uses of Literacy in Early Mediaeval Europe*, ed. Rosamond McKitterick (Cambridge: Cambridge University Press, 1990), 64, https://doi.org/10.1017/CBO9780511584008.005.

Formulas are a troublesome source, however, and they have become unpopular with scholars as valid skepticism of legal sources has come to dominate the field of social and legal history. Early scholars in the 19th century were happy to accept formulas as straightforward evidence of the functions of medieval legal systems, but we now understand the law as a tool for the expression of power, and tend to look less at laws themselves and more at their surrounding contexts, the values they express, and the projects their writers were engaged in. Since these contexts are often invisible or blurred in formulaic evidence – indeed, because removing this context is part of the point of making a formula in the first place – they can be difficult to work with and scholars tend to ignore them. Simply put, the questions that a scholar would typically ask of a document – who, what, when, where, why – are often unanswerable or hopelessly vague when asked of formulas.[23]

Formulas are difficult to pin to a place or time in large part because of their survival patterns. Because copies of individual formulas from a given collection are found across space and time, sometimes in multiple places and almost always lacking an original, it is difficult if not impossible to tell when a formula or formulary was originally composed and it's even harder to determine how long a given formula remained in use. Individual copyists picked relevant formulas out of collections to copy into archives in ways that reveal their interests and priorities.[24] But if we want to learn about the documents themselves, and not the people who owned them, information is frustratingly scarce. The problem is further compounded by the methods of Karl Zeumer, the original 19th-century editor of the *Monumenta Germaniae Historica* which is the most popular edition of most surviving formulas.[25] Zeumer's project was to reconstruct the formula collections

[23] For more detailed discussion see Rio, *Legal Practice and the Written Word*, chaps. 1 & 2.
[24] Brown, "When Documents Are Destroyed or Lost," 343.
[25] See Karl Zeumer, ed., *Formulae Merowingici et Karolini Aevi*, Monumenta Germaniae Historica, Legum Sectio V (Hannover, 1886), http://clt.brepolis.net/eMGH/pages/Toc.aspx?title=M_BJO__NMA.

as (he assumes) they would have originally been published, but in doing so he largely ignored the manuscripts themselves, recording very little about them if anything at all. Because of this, a lot of information about the dates, locations, and provenance of the surviving manuscripts is lost to history. In some sense, many formula collections as they exist today are 19th-century constructs and may not accurately reflect the ways that they were used and disseminated in practice.[26]

It is also difficult to tell when a document has been derived from a formula. For one, most surviving documents are charters pertaining to land, so we are limited in our body of potential candidates. But also, many documents are broadly similar to formulas, enough that it becomes difficult to separate coincidences from actual textual links. As Rio says, "A degree of adaptation was presupposed by the very nature of the genre, and one should not therefore expect the use of a formula to leap off the page."[27] I will suggest that this difficulty also reflects a degree of circularity in the process of making documents and formulas. We know that documents could be derived from formulas, but we also know that formulas could be derived from documents that were understood to be representative of their genre.[28] Over time, this process could have produced a degree of standardization: as documents derived from formulas derived from documents derived from formulas proliferated, the language within them would have become increasingly similar, even if a given document was textually unrelated to a given formula. This is especially true of the highly standardized openings and closings of documents. So, in general we should focus less on the potential connections between formulas and specific documents (though they are revealing when they can be shown clearly), and more on what formulas can tell us about the legal culture.

[26] For more on Zeumer see Brown, "When Documents Are Destroyed or Lost," 342–43; 354–58; Rio, *Legal Practice and the Written Word*, 27 is more concise.
[27] Rio, *Legal Practice and the Written Word*, 27–29; 40–44; 185. Forgery is also a problem here.
[28] Brown, "When Documents Are Destroyed or Lost," 339.

All of this makes formulas, which have, as Rio says, "a loose anchorage in space and time," difficult to work with, and so "formulae tend to be treated as poor cousins of charters: the general opinion seems to be that although they often contain interesting information, it is made virtually useless because it cannot be tied down to a specific time and place in the way that charters can."[29] However, as Rio herself points out, to compare formulas to charters is to largely miss the point. We ought to engage with formulas on their own terms: "The transferability of formulae should be seen as their strength as a source, not their weakness. We should take advantage of the fact that their *raison d'être* is to draw the general out of the specific, and to transcend local contexts."[30] In fact, the difficulty in assigning formulas dates and times is a testament to their usefulness for this kind of analysis. The breadth of spaces and times across which formulas are found is one of the key advantages of studying them: looking at formulas, we can sketch out the baseline from which more local legal practices were derived.

The point of all of this is that it is mostly counterproductive to look for specifics in explicitly nonspecific documents. In general, we ought to look at formulas as products and producers of a broad legal culture. Precisely because of their loose anchorage in time, formulas are excellent sources for the legal and social backgrounds of the societies that created and used them. This is the approach I take in this thesis, viewing the documents in the *Formulae Visigothicae* less as legal sources and more as social ones. Because they represent broad views and actual practice, they are excellent sources for the ways in which the Visigoths used and thought about law and legal status on a day-to-day basis and are especially instructive when contrasted with the highly specific law codes.

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[29] Rio, *Legal Practice and the Written Word*, 1–4. Rio and some other scholars refer to formulas with the Latin plural *formulae,* however I prefer to anglicize terms whenever possible to avoid confusion.
[30] Alice Rio, "Freedom and Unfreedom in Early Medieval Francia: The Evidence of the Legal Formulae," *Past & Present* 193, no. 1 (November 1, 2006): 15, https://doi.org/10.1093/pastj/gtl017.

Leges Romani et Visigothorum: Slavery, Status, and Visigothic Law

Just as in Rome, slaves were ubiquitous in Visigothic society, and they are unusually present in the law. Between 40 and 46% of all the chapters in the *Leges Visigothorum* reference slaves, (depending on one's interpretation of "reference slaves") a staggeringly high number either way compared to earlier Roman codes.[31] The overall picture we get from the legal sources alone is that of a highly stratified society where the enslaved and other low-status individuals were treated with marked contempt, though this treatment appears to soften somewhat over time.[32] However, the legal evidence does not give us a full picture of Visigothic society or even of Visigothic power relations. Rather, both the surviving evidence itself and modern ideas about the purpose and nature of law tends to obscure the actual ways that law and legal relationships were used. Formulas are useful in large part because, as functional documents, they can illustrate the ways in which the law was actually used and interpreted in ways that static legal codes cannot.

Visigothic law is usually understood to have been somewhat unique among contemporary legal cultures for having been "very Romanising".[33] The definitive Roman Law collection among the post-Roman medieval West was for centuries the Breviary of Alaric, (also called the *Leges Romana Visigothorum*) a reproduction of large parts of the Theodosian Code with *Interpretatio* sections added in order to make it more applicable to the Visigothic context. Simon Corcoran identifies the Breviary of Alaric as a key source for the Theodosian Code in the writings Carolingian jurist, theologian, and archbishop Hincmar of Rheims (806 – 882).[34] Fragments of the

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[31] Noel Lenski, "Slavery among the Visigoths," in *Slavery in the Late Antique World, 150 – 700 CE*, ed. Chris L. de Wet, Maijastina Kahlos, and Ville Vuolanto, 1st ed. (Cambridge University Press, 2022), 255, https://doi.org/10.1017/9781108568159.014 says 40%; Luis A. García Moreno, "From Coloni to Servi: A History of the Peasantry in Visigothic Spain," *Klio* 83, no. 1 (2001): 206, https://doi.org/10.1524/klio.2001.83.1.198 says 46.
[32] Lenski, "Slavery among the Visigoths," 278–79.
[33] Alice Rio, "Self-Sale and Voluntary Entry into Unfreedom, 300-1100," *Journal of Social History* 45, no. 3 (March 1, 2012): 670, https://doi.org/10.1093/jsh/shr086.
[34] Simon Corcoran, "Hincmar and His Roman Legal Sources," in *Hincmar of Rheims: Life and Work*, ed. Rachel Stone and Charles West (Manchester University Press, 2015), 130, http://www.jstor.org/stable/j.ctt1729w7z.15.

Breviary are frequently found in surviving manuscript collections containing formulas and other legal documents in Francia and beyond.[35] It was actively used for well over six hundred years, and it was even translated into early vernacular Spanish by Fernando III of Castille (r. 1217 – 1252) as the *Fureo Juzgo.*[36] The practice of emulating Roman law codes continued well into the 13th century, by that point potentially intended to invoke the memories of both a Roman and a pre-Islamic (i.e., Visigothic) golden age.[37]

However, even if Visigothic law was uniquely Romanizing, we should be careful in describing it as unique compared to other contemporary legal cultures. C.R. Whittaker has shown that in Roman Italy, the practical distinctions between the disenfranchised, both free and unfree, had begun to collapse in ways that are invisible in the legal sources as early as the 2nd century, and Rio notes that, although our picture of late Roman law, especially in the provinces, is blurry, regional variations aside it is not clear that it was markedly different from medieval legal systems.[38] And Roman law never died outside of Iberia, early 11th century Lombard jurists used it to make sense of and fill gaps in the Lombard laws and invoked it in appeals to the Holy Roman Emperor Conrad II.[39] The spread of the Breviary of Alaric into Carolingian law collections is a testament to the interconnectedness of the post-Roman West and to the similarities of their legal systems.[40] Thus we should be careful when discussing the implications of Roman influences on Visigothic law, and we should not assume that it was drastically different from other contemporary legal cultures.

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[35] Brown, "When Documents Are Destroyed or Lost," 355; Rio, *Legal Practice and the Written Word*, 116..
[36] Collins, "Visigothic Law and Regional Custom," 85..
[37] Joseph F. O'Callaghan, *Alfonso X, the Justinian of His Age* (Cornell University Press, 2019), 8, http://www.jstor.org/stable/10.7591/j.ctvfc54h0.
[38] C. R. Whittaker, "Circe's Pigs: From Slavery to Serfdom in the Later Roman World," *Slavery & Abolition* 8, no. 1 (May 1987): 98, https://doi.org/10.1080/01440398708574928; Rio, *Legal Practice and the Written Word*, 210.
[39] Maya Maskarinec, "Annulling Inherited Contracts: Legal Possibilities and Strategies at Early Medieval Italian Monasteries," *Frühmittelalterliche Studien* 56, no. 1 (2022): 212–16.
[40] Rio, *Legal Practice and the Written Word*, 201.

In any case, the Romanizing law should not be surprising. Brassous describes late Roman Iberia as an "integrated periphery" – relatively well-organized and well-off but spared by its position at the edge of the empire from most of the politics and violence that marked the 5th and 6th centuries.[41] In large part because of this, the early Visigoths inherited an Iberia with the Roman social order more or less intact. Thus they "maintained a scaled-down version of Roman administrative and fiscal apparatus," modifying the existing power structures to suit their needs rather than building their own out of whole cloth.[42] Given this, it should not strike us as terribly remarkable that the Visigoths also chose to modify Roman law codes to suit their needs instead of crafting new ones out of whole cloth.

Rome also cast a long shadow over the Visigoths. The Goths in general tended to define themselves against Romans and "Gothic" as opposed to "Hispano-Roman" ethnic identity was an important marker in elite Visigothic society, though it was far more fluid than the modern term "ethnicity" typically implies – as Manuel Koch puts it, "one did not become elite by being Goth; one could become Goth by being part of the elite."[43] The Visigoths maintained a legal distinction between the *Romani* and *Gothi* (sometimes *Goti*), who were not technically allowed to intermarry until 654, although this is one example of the dangers of legal evidence: it is an anachronistic holdover from early 5th century Roman law that the Visigoths inherited, and was never strictly enforced, especially among the upper classes.[44] There was also the problem of the continued

[41] Laurent Brassous, "Late Roman Spain," in *The Visigothic Kingdom*, ed. Sabine Panzram and Paulo Pachá, The Negotiation of Power in Post-Roman Lberia (Amsterdam University Press, 2020), 50, https://doi.org/10.2307/j.ctv1c5cs6z.6.
[42] Lenski, "Slavery among the Visigoths," 252–53.
[43] Manuel Koch, "Who Are the Visigoths?: Concepts of Ethnicity in the Kingdom of Toledo: A Case Study of the *Vitas Sanctorum Patrum Emeretensium*," in *The Visigothic Kingdom*, ed. Sabine Panzram and Paulo Pachá, The Negotiation of Power in Post-Roman Iberia (Amsterdam University Press, 2020), 168, https://doi.org/10.2307/j.ctv1c5cs6z.12. "Hispano-Roman" is a modern term.
[44] Koch, 168; Bernard F. Reilly, *The Medieval Spains*, 1st ed. (Cambridge University Press, 1993), 43, https://doi.org/10.1017/CBO9780511818523; See also Wolfram Herwig, *History of the Goths*, trans. Thomas Dunlap (Berkeley and Los Angeles: University of California Press, 1987), 231–34.

existence of the actual Roman Empire in the east, which the Visigoths were in direct conflict with for most of the 6th and early 7th centuries. For the Visigoths, Rome (and Constantinople) was a political and military rival, a foundational myth, and a social inheritance. Rome loomed large over Visigothic society, so it should not surprise us to find Romanizing language in Visigothic legal texts.

As illustrated by the *Romanus/Gothus* distinction, a major problem with legal sources is that laws do not always reflect reality. When discussing unfreedom, it's important to understand that actual social status does not necessarily follow legal status. For example, there is strong evidence that, despite having inherited the Roman colonate, Visigothic law did not formally recognize the middle grounds of unfreedom that were common elsewhere: there are no references to *coloni* in the surviving Visigothic legal writings, with a single exception which will be discussed at length below.[45] In Iberia as in Francia, we find that "the main distinction in the Roman legal tradition between free and unfree was no longer workable in the fourth and fifth centuries (if it ever really had been), because reality was too fluid and unsystematic."[46] The specific disappearance of the *colonus* in formal law may reflect a broader trend in Roman law identified by Whittaker, that in the late 4th and early 5th centuries the distinctions between *colonus* and *servus* became blurred to the point of irrelevance.[47] Despite this, however, there is clear evidence, including some formulaic evidence, that semifree tenants functionally indistinguishable from *coloni* were relatively common in Visigothic society, as were slaves of relatively high status.[48] This only illustrates the point here that clearer practical distinctions do not follow from stricter

[45] García Moreno, "From Coloni to Servi," 204–7; See also P.D. King, *Law and Society in the Visigothic Kingdom* (Cambridge: Cambridge University Press, 1972), 160–61.
[46] Rio, "Freedom and Unfreedom," 26.
[47] Whittaker, "Circe's Pigs," 101.
[48] García Moreno, "From Coloni to Servi," 212; King, *Law and Society*, 170–71; Reilly, *The Medieval Spains*, 22; Damián Fernández, "Property, Social Status, and Church Building in Visigothic Iberia," *Journal of Late Antiquity* 9, no. 2 (2016): 532–33, https://doi.org/10.1353/jla.2016.0022.

legal definitions, rather, the legal binary obscures the reality on the ground. In all cases, throughout the early medieval world, as Wickham notes, one's legal status often had little to do with one's material conditions, so the simple fact that Visigothic law did not recognize the *colonus* tells us very little.[49]

Archaeology reflects the inverse of this problem: across Europe, the legal statuses of the dead cannot be reliably inferred from their material conditions. This is a major problem for slavery archaeology because, for example, there may be very little difference between the remains of a captive held for ransom and a slave being transported for sale.[50] Focusing on Visigothic contexts, excavations of the rural village of Gozquez in northern Visigothic Iberia show that individuals identified as slaves based on their shorter lifespans, lack of grave goods, and more serious physical traumas, had diets similar to those of the rest of the community.[51] All across early medieval Iberia, low status and possibly enslaved people of both sexes with similar physical traumas and short lifespans were buried both with and without grave goods, which only makes identification harder.[52] There are status gradations even among the free. Castillo notes that while local elites are relatively easy to identify, it's not always clear *why* they were elites, but the logics of aristocracy clearly do not apply.[53] Peasants are found with expensive craft items like glassware, which prompts Alfonso Vigil-Escalera Guirado to suggest that "perhaps the ingrained poverty of the villagers in our

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[49] For a discussion of this topic with a specific focus on the early middle ages, see Alice Rio, "'Half-Free' Categories in the Early Middle Ages: Fine Status Distinctions Before Professional Lawyers," in *Legalism: Rules and Categories*, ed. Paul Dresch and Judith Steele (Oxford: Oxford University Press, 2015), 129–52.

[50] For discussion of Northern European archaeology, see Janel M. Fontaine, "Early Medieval Slave-trading in the Archaeological Record: Comparative Methodologies," *Early Medieval Europe* 25, no. 4 (2017): 466–88, https://doi.org/10.1111/emed.12228.

[51] Juan Antonio Quirós Castillo, ed., *Social Complexity in Early Medieval Rural Communities: The North-Western Iberia Archaeological Record*, Archaeopress Archaeology (Oxford: Archaeopress Publishing Ltd, 2016), 11–12, https://doi.org/10.2307/j.ctv1pzk1sr.

[52] Alfonso Vigil-Escalera Guirado, "Invisible Social Inequalities in Early Medieval Communities: The Bare Bones of Household Slavery," in *Social Complexity in Early Medieval Rural Communities: The North-Western Iberia Archaeological Record*, ed. Juan Antonio Quirós Castillo, Archaeopress Archaeology (Oxford: Archaeopress Publishing Ltd, 2016), 117–18, https://doi.org/10.2307/j.ctv1pzk1sr.

[53] Castillo, *Social Complexity*, 11–12.

traditional social imaginary continues to weigh more than the mere evidence".[54] Social hierarchies are relatively clear in the material evidence, but legal status very much is not.

The situation with written evidence is not much better. Christian writings broadly agree with the legal evidence (arguably, the laws *are* Christian writings), but other evidence does not. Laurent Brassous finds difficulty even summarizing early Visigothic history because "while the epigraphic documentation celebrates local and civic successes, the codes of law testify globally to a world dominated by the state, which appears more constraining and repressive."[55] The disappearing *colonus* seems to indicate a harsher barrier between freedom and unfreedom but archaeology shows otherwise; similarly, the modern ideas of a "law codes" and the allure of discussions of systems and governments masks a diversity of approaches towards law and power in late antique and early medieval Iberia.[56]

Rio argues that early medieval law was not a stamp of royal authority but rather a basis for negotiation, that the conservative, even draconian measures written in codes were upper limits and starting points from which settlements and agreements could be made. Formulas and law codes represent two sides of a dialogue between lords and their dependents, they reveal the gulf between the ideal expression of elite power and the actual ways in which it was wielded, negotiated, and resisted.[57] Even at the highest levels of Visigothic society we find not a rule of law but negotiated relationships between powerful elites, city leaders, bishops, and monarchs.[58] In all of these cases the letter of the law, when read uncritically, can actually be unhelpful for understanding the dynamics of Visigothic society.

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[54] Guirado, "Invisible Social Inequalities in Early Medieval Communities," 118, 120.
[55] Brassous, "Late Roman Spain," 40.
[56] See Brassous, 50.
[57] Rio, *Legal Practice and the Written Word*, 208–10.
[58] See Paulo Pachá, "Beyond Central and Local Powers: The General Councils of Toledo and the Politics of Integration," in *The Visigothic Kingdom*, ed. Paulo Pachá and Sabine Panzram, The Negotiation of Power in Post-Roman Iberia (Amsterdam University Press, 2020), especially 108-109, https://doi.org/10.2307/j.ctv1c5cs6z.9.

Formulas will often seem to contradict the written laws of their various governments, though as discussed above we should understand this less as conflict and more as negotiation. Rio includes the example of a Carolingian formula in which a father splits his property among his sons and, importantly, a daughter, thus violating a prohibition on women inheriting land.[59] Since it would be strange for a person or institution to keep an unenforceable contract for their records, Rio argues that we should rethink our understanding of what "law" was: "more a reference to be customized than an enforceable rule."[60] Following this model we should not think in terms of legality and legitimacy, what was *technically* allowed under the law, but should instead try to understand what was common or normal in a given place or time. We should consider laws as expressions of the ruling elite's ideals, the absolute upper limits to their authority, which were then modified or negotiated dialogically in their actual applications.

The point here is that legal evidence, even "on the ground" evidence like formulas, needs to be treated carefully, and it cannot be assumed that law codes reflect actual practice. Additionally, we need to be careful not to dismiss all references to Rome as anachronism: antiquarianism was a legitimate form of expression both then and now, and it is important that we work to understand what Romanizing language means and does. In legal documents, it often reflects a legitimate intellectual heritage as medievals pulled laws from ancient sources, but it can also be an ideological attempt by a monarch to claim the authority of the perceived past imperial golden age, to assert the superiority of one group over another, or simply to entrench his position as monarch by appeasing the other elites.[61]

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[59] Rio, "Freedom and Unfreedom," 35; LIX.6 in Katherine Fischer Drew, "*Pactus Legis Salicae:* The 65-Title Version of the Code Ascribed to Clovis Plus the Later Sixth-Century Additions," in *The Laws of the Salian Franks* (University of Pennsylvania Press, 1991), 122, http://www.jstor.org/stable/j.ctt3fhd2f.8. "But concerning Salic land… no portion or inheritance is for a woman but all land belongs to members of the male sex who are brothers."
[60] Rio, "Freedom and Unfreedom," 36.
[61] Rio, *Legal Practice and the Written Word*, 208–9.

So, among the Visigoths, legal and social status were connected only loosely and occasionally not at all. Part of this may be the result of the application of a Roman legal system to a non-Roman society, although I argue that both the extent to which the law was "Roman" and, more importantly, the degree to which the Visigoths were not, have been grossly overexaggerated. Additionally, we should not assume that all Visigothic Romanizing was anachronistic, and should instead look for meaning where we find these references to the past. The more convincing explanation for the mismatch between legal and social status is that social status was negotiated between the relevant parties in ways that are difficult or impossible to fully express in formal legal language, and thus much of this negotiation, as well as its results, is lost in the surviving evidence which can, for example, only mark a person as either enslaved or free. Formulas are useful in part because they occupy a unique position in which they simultaneously produce and are produced by these relationships, and they can therefore give us insight into the underlying negotiations.

AN INTRODUCTION TO THE *FORMULAE VISIGOTHICAE*

The *Formulae Visigothicae* is a collection of 45 formulas discovered in Madrid in a sixteenth century copy of a lost twelfth century manuscript written by Bishop Pelayo (Pelagius) of Oviedo (d. 1153), which appears to have been originally compiled in Cordoba during or shortly after the reign of the Visigothic king Sisebut (r. 612 – 621). The lost manuscript, called the *Códice ovetense de don Pelayo* or *Liber Ithatium*, was preserved at the cathedral in Oviedo until the mid-15th century.[62] The most well-known edition was published by Karl Zeumer in 1886 in the

[62] Ioannes Gil, ed., *Miscellanea Wisigothica*, 1st ed., Filosofia y Letras (Seville: Publicaciones de la Universidad de Sevilla, 1972), x–xv; Noel Lenski, "Source: Visigothic Manumission Charters," *Teaching Medieval Slavery and Captivity* (blog), 2022, https://medievalslavery.org/europe/source-visigothic-manumission-charters/.The best English-language discussion of the corpus that I am aware of is in Edorta Córcoles Olaitz, "About the Origin of the Formulae Wisigothicae," *Anuario Da Facultade de Dereito Da Univesidade Da Coruña*, no. 12 (2008): 199–221. See also Luis A. García Moreno, "Building an Ethnic Identity for a New Gothic and Roman Nobility: Córdoba, 615 Ad," in *Romans, Barbarians, and the Transformation of the Roman World: Cultural Interaction and the Creation of Identity in Late Antiquity*, ed. Ralph W. Mathisen and Danuta Shanzer (London: Routledge, 2011), 272–73, doi.org/10.4324/9781315606880.

Monumenta Germaniae Historica, and at present the latest and most comprehensively annotated edition (the edition used in this thesis) is found in Ioannes Gil's *Miscellanea Wisigothica.*[63]

The *Formulae Visigothicae* are characterized by what André Evangelista Marques describes in his study of later Portuguese documents as a "strong narrative character;" that is, they have a powerful urge to explain themselves.[64] The documents frequently contain introductory explanations narrating the reasons for the documents' existence, the series of events that led to their creation, and so forth. Like the later documents that Marques studies, the *Formulae Visigothicae* rarely cite laws or legal texts, "but are somehow inspired by these texts and share their 'prescriptive style,'" generally assuming that the involved parties already know their rights and obligations.[65] This can be somewhat frustrating for the modern reader, but the explanatory introductions are full of information about the social and legal practices of the Visigothic period.

Readers often comment on the quality of the Latin in the *Formulae Visigothicae.* Gil describes it as *"incomptum et horridum,* which very often provokes disgust, indeed nausea," and Rio agrees more diplomatically that "[t]he Latin used in documents from this period, in particular the Merovingian period, is on average considered 'bad' (or even 'very bad') in terms of classical grammatical standards."[66] This is an issue with other Visigothic texts as well. Simon Corcoran notes in his translation of Vincent of Huesca's donation that "the Latin has often eccentric orthography and does not always seem intact or intelligible."[67] Readers should be aware of this both as introduction to the collection but also because Latin at multiple points in this thesis may

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[63] Zeumer, *Formulae Merowingici et Karolini Aevi*; Gil, *Miscellanea Wisigothica*.
[64] André Evangelista Marques, "Between the Language of Law and the Language of Justice: The Use of Formulas in Portuguese Dispute Texts (Tenth and Eleventh Centuries)," in *Law and Language in the Middle Ages*, ed. Jenny Benham, Matthew McHaffie, and Helle Vogt, vol. 25, Medieval Law and Its Practice (Leiden, The Netherlands: Brill, 2018), 134.
[65] Marques, 132.
[66] Gil, *Miscellanea Wisigothica*, ix; Rio, *Legal Practice and the Written Word*, 15.
[67] Simon Corcoran, "The Donation and Will of Vincent of Huesca: Latin Text and English Translation," *Antiquité Tardive* 11 (2003): 216.

seem misspelled or grammatically incorrect. Not to belabor the point, but the collection is overdue for a critical translation and commentary.

Structurally, most of the formulas can be split into two distinct sections: an introduction, often explaining the reasons for the document's existence or the motivations of one or both of the parties involved, and a more legalistic section containing the parties' actual contractual obligations. Córcoles Olaitz terms this a "double structure."[68] To judge from other extant formulas, we should expect to find a third section, except that most of the documents are cut off at the end, and thus are missing the endings where signatures (called "subscriptions") are listed in complete documents. FV 1, for example, has a redacted subscription line. Most of the introductions include legal, moral, or religious justifications and explanations for the rest of the contents of the document. Others will lay out the circumstances under which the contract is being made. This double structure also appears in some, but not all, of the Ripoll formulas: the letters typically do not have this structure, while the other documents occasionally do.[69]

This structure is not unique to the *Formulae Visigothicae*, in fact, formulas were likely composed of many more than three parts. The Ripoll formulas are instructive here. They include over a dozen *prologi*, some of which serve the same function as the introductions in the *Formulae Visigothicae* and others which appear to be more or less complete documents.[70] Other *prologi* of varying length and complexity also exist in other collections.[71] This suggests that their double

[68] Edorta Córcoles Olaitz, "The Manumission of Slaves in View of the *Formulae Visigothicae*," *Velia*, no. 23 (2006): 341. It's ritual at this point to note that this article contains some useful observations but is otherwise rather shallow in its analysis.
[69] Zimmermann, "Un Formulaire Du Xème Siècle Conservé à Ripoll." For example, the *donacio ecclesiae* on pgs. 82-83 has this double structure, but the letters on pgs. 72-76 do not.
[70]Zimmermann. For examples of actual introductions, see the *prologus donatione* and *prologus comutacionis* on pg. 77, for a more complete document see the *prologus testamenti* on pgs.77-78 and the *prologus de servum ingenuandum* on pgs. 79-80.
[71] Zimmermann, 33–34; 34 n.26. For *prologi* in other collections see *Formulae Augienses: Collectio B* 28-33, *Formulae Salicae Merkelianae* 13.b, *Formulae Senonenses: Appendix* 4, *Formulae Senonenses: Cartae Senonicae* 41, & *Marculfi Formulae* 14 in Zeumer, *Formulae Merowingici et Karolini Aevi*.

structure, or more generally a kind of modular structure, is intentional. Formulas, then, don't need to be templates for entire documents, but can represent smaller portions like introductions which writers could mix and match depending on their needs. Indeed, *Marculfi Formulae* 14, a formula for a royal grant of land, contains three different introductions which a scribe could have chosen from to suit their needs - one is specifically designed for grants of religious places.[72]

Nearly all the formulas in the *Formulae Visigothicae* are notionally letters from one party to another. Occasionally they are actual letters sent between peers requesting services or actions, but usually the letter form is more of a frame that a contract sits within. This form allows the writers to efficiently spell out the relationships between the involved parties and to express the power dynamics between them, as well as to express the "personal" opinions and situations of the parties involved. The letter form lends itself particularly well to narration. In these letter forms, contracts are typically framed as either requests – for land, freedom, entry into a monastic order, and so forth – or as gifts, depending on whether the "writer" in the contract is the person with or without power.

The place and date of the writing and compilation the *Formulae Visigothicae* are the subjects of an ongoing debate which anglophone scholars have a frustrating habit of ignoring.[73] The traditional date and place are deduced from two apparent mistakes made by the original redactor or redactors. The date, c.620, comes from FV 20, which contains two references to king Sisebut (r. 612 - 621): *principis ac domini Sisebuti gloria nostri* ("by the glory of our king and lord Sisebut") and *gloriosi merito Sisebuti tempore regis.* ("in the time of King Sisebut who is

[72] *Marculfi Formulae* 14 in Zeumer, *Formulae Merowingici et Karolini Aevi*. The formatting in the modern version implies that there are four possible *prologi* in the formula, but the fourth one is clearly not an introduction. Rather, it contains language specifying the place of the land which is being granted.

[73] Rio, *Legal Practice and the Written Word*, chap. 4 contains excellent introductions to the Frankish formula collections, including discussions of their manuscripts and their transmission through Zeumer and his colleagues. However, she does not discuss any Iberian collections.

deservedly glorious")[74] They are placed in Cordoba by a line in FV 25, where the scribe failed to fully redact an introduction: *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* ("[in] _____ era, _____ year, during the reign our most glorious king _____, on the ____ day of the month, the state of the records of the nobles of Cordoba, among ____ and ____ leaders, ____ overseer, ____ magistrate.").[75] As Edorta Córcoles Olaitz notes, these are mistakes – a properly prepared formula would be redacted such that it could be used anywhere during anyone's reign.[76] So these formulas contain vestiges of the documents that they used to be, and from this most scholars conclude that the collection was compiled in Cordoba, during or shortly after the reign of Sisebut, c. 620.

Still, even if the collection was *compiled* c. 620, there is no guarantee that any of the formulas in it, or the documents that they are taken from, were written around the same time. This is one of the reasons that dating formulas is so difficult, and maybe not worth the trouble. Formula collections frequently contain documents pulled from other sources and formulas are often found orphaned. Córcoles Olaitz concludes based on the Catholic language in some of the formulas, for example references to the Trinity, that they must have been written after the reign of the staunchly anti-Catholic Arian king Leovigild (r. 568-586) and argues that they were probably written after 589, the year of the next king Reccared's (r. 586 – 601) conversion to Catholicism.[77] These documents may well have been written during Sisebut's reign. However, beyond this, the dating of the original composition of the formulas remains a mostly open question.

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[74] FV 20 in Gil, *Miscellanea Wisigothica*, 90–93. It is a curious outlier among the *Formulae Visigothicae*, not just because it is written in verse. For an analysis of the document see García Moreno, "Building an Ethnic Identity for a New Gothic and Roman Nobility."
[75] FV 25 in Gil, *Miscellanea Wisigothica*, 98.
[76] Córcoles Olaitz, "About the Origin of the Formulae Wisigothicae," 202–4.
[77] Specifically, Córcoles Olaitz identifies FV 21, 25, 34, 35, & 45. Córcoles Olaitz, 216–18.

Another open question concerns the active life of the *Formulae Visigothicae* – how long were they in use? Were they being used when Bishop Pelayo copied them? How widely were they used? Most scholars accept that the *Leges Visigothorum* was highly influential in Northern Iberia throughout from the 9th-13th centuries, and as mentioned above it was reissued in translation by Fernando III of Castile in 1241. Even when the law itself was not in force, Visigothic legal procedure remained important.[78] As regards the *Formulae Visigothicae,* Takashi Adachi argues that, at least up to the year 1000, dispute settlement documents in Northern Iberia do not seem to be heavily influenced by the *Formulae Visigothicae,* whereas land and sale charters do.[79] So the formulas or at least the tradition they represent may have been in limited use as late as 1000. As discussed above, the question is inherently fraught because of the nature of the evidence. This does not mean, however, that there is nothing to be gained in looking for an answer. Gil has done an enviable job identifying documents, including charters and other formulas, that seem to share language with the documents in the *Formulae Visigothicae.* Taken together, there is very strong evidence that the at least some documents in the *Formulae Visigothicae* were being used as late as the early 12th century, or at least that they were influential until then.

Gil identifies a number of documents that contain large parts of the formulas in the *Formulae Visigothicae.* It's worth listing them out, because they not only show how long the formulas were being used, but also the breadth of the different ways in which they were employed. He also lists out documents that have smaller portions of the documents, which I do not list here because those connections are far more tenuous. The documents are:

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[78] Roger Collins, "'Sicut Lex Gothorum Continet': Law and Charters in Ninth- and Tenth-Century León and Catalonia," *The English Historical Review* 100, no. 396 (1985): 489–512; Collins, "Visigothic Law and Regional Custom," 85–88; Marques, "Between the Language of Law and the Language of Justice," 141–42, 142 n.50.
[79] Takashi Adachi, "Documents of Dispute Settlement in Eleventh-Century Aragón and Navarra: King's Tribunal and Compromise," *Imago Temporis: Medium Aevum*, no. 1 (2007): 74, https://www.torrossa.com/en/resources/an/2644162.

- A large part of FV 1 is reproduced in a will (*testamentum*) from 1071.[80]
- FV 2 is used in the settlement of a lawsuit from June of 1025 resulting in the manumission of several enslaved people.[81]
- Nearly all of FV 2 is used in a manumission document dated to 1072.[82]
- FV 2 is used in a manumission document dated April 1123 from the monastery of San Salvador de Celanova.[83]
- FV 7, a donation formula, is used in a donation from 895.[84]
- FV 8, another donation document, has large portions used in two donations dated 873 and 874.[85] It also shares language with dozens of other documents as late as 1069, which may indicate use, shared ancestry, or that parts of it were standard practice for donations.[86]
- FV 9, a donation specifically from a king, is used in a donation made by Alphonso III of Asturias in 891.[87] The opening of the formula is found in dozens of documents throughout the 10th century, and the document as a whole is similar to several other documents from the 10th - 11th centuries.[88]
- Roughly the first half of FV 22, a will, is used in a will from 951. The segment used seems to be standard introductory language confirming that the writer is of sound mind.[89]

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[80] Romualdo Escalona et al., eds., *Historia Del Real Monasterio de Sahagún: Sacada de La Que Dexó Escrita El Padre Maestro Fr. Joseph Perez [...]* (Madrid: Por D. Joachin Ibarra, Impresor de Camara de S.M., 1782), 470–71 no.104, catalog.hathitrust.org/Record/009336705.
[81] Eduardo de Hinojosa, ed., *Documentos para la historia de las instituciones de León y de Castilla (siglos X-XIII), coleccionades por Eduardo de Hinojosa* (Madrid: Centro de Estudios Históricos, 1919), 15–16, no. 10, catalog.hathitrust.org/Record/009020211.
[82] Santos Agustín García Larragueta, ed., *Colección de Documentos de La Catedral de Oviedo* (Oviedo: Diputación de Asturias, Instituto de estudios asturianos, 1962), 205–7, no. 68.
[83] Hinojosa, *Documentos para la historia de las instituciones de León y de Castilla*, 50–51, no. 32.
[84] Antonio Cristino Floriano, ed., *Diplomática Española Del Periodo Astur*, vol. 2 (Oviedo: Diputación de Asturias, Instituto de estudios asturianos, 1951), 208–9 no. 150.
[85] Floriano, *Diplomática Española Del Periodo Astur*, 83-84 no. 105, 92-93 no. 108.
[86] Gil, *Miscellanea Wisigothica*, 80-81 n.VII.
[87] Floriano, *Diplomática Española Del Periodo Astur*, 2:181–86 no.143.
[88] Gil, *Miscellanea Wisigothica*, 82-83 n.IX.
[89] Larragueta, *Colección de Documentos de La Catedral de Oviedo*, 100–102 no.25.

- Almost all of FV 23 is found in a will from 959.[90]
- Almost all of FV 27 is reproduced in two letters dated 1073 and 1110.[91]
- Parts of FV 39, an ordination, appear in two surviving documents, one, a lawsuit between the bishops of Lugo and Santiago tentatively dated to 989, the other, a document from 953 in which a monk commits to the construction of monastery.[92]
- The ending of FV 45, a document from a person entering a monastic order, is extremely similar to the ending of a document from 900 in which a group of monks renew their vows.[93]

It's worth pointing out how these formulas appear to be used in documents that are not necessarily the same kind of document that the formula is labeled as. For example, FV 2 as written in the *Formulae Visigothicae* is a straightforward manumission document, but we find it repurposed in a lawsuit settlement. We also frequently find that parts of the formulas are used, for example in the will from 951 which uses only part of FV 22. Again, we find that scribes have combined and excerpted formulas to suit their needs, further supporting the thesis that legal documents were in a sense modular.

Donations to monasteries seem to have the longest active life (especially FV 8 & 9) and widest use, which seems to affirm Adachi's observation about later documents. However, this may be an artifact of document survival patterns and not a reliable record of their actual use, since nearly all of the documents we have, especially the documents in which the formulas can be found,

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[90] Antonio López Ferreiro, ed., *Historia de la Santa A. M. Iglesia de Santiago de Compostela*, vol. 2 (Santiago: Impr. del Seminario conciliar central, 1899), 169–72, no. 73, catalog.hathitrust.org/Record/009018292.
[91] Escalona et al., *Historia Del Real Monasterio de Sahagún*, 472-473 no. 107; 507-508 no. 141.
[92] Hinojosa, *Documentos para la historia de las instituciones de León y de Castilla*, 5–8, no. 5.
[93] Floriano, *Diplomática Española Del Periodo Astur*, 2:263–64 no.162; Larragueta, *Colección de Documentos de La Catedral de Oviedo*, 103–7 no.26.

come from religious institutions. FV 2 was also used late and is notable because other manumission formulas do not appear to have been used nearly as widely.

As Rio notes, it's probably impossible to indisputably tie any single document to any single formula.[94] Formulas were working documents, they were meant to be modified and combined with others depending on circumstance and necessity. And there are several conceivable ways that a formula could have wound up used in a later document besides direct citation. Perhaps a given formula was copied into multiple collections, or some but not all of the *Formulae Visigothicae* were copied later into another collection that is now lost. The *Formulae Visigothicae* itself may contain formulas written by different authors.[95] Introductory and concluding language could also be highly formulaic even if it did not come from a formula simply because of the frequency of its use. However, even if the documents in the *Formulae Visigothicae* were not themselves copied into these later texts, because of these connections we can take the collection as a whole to be broadly representative of the legal landscape of the Visigoths and potentially of the Christian parts of Spain at least until the early 12th century.

[94] Rio, *Legal Practice and the Written Word*, 28–29.
[95] Córcoles Olaitz, "About the Origin of the Formulae Wisigothicae," 218.

PART II: FREEDOM AND UNFREEDOM IN THE VISIGOTHIC KINGDOMS: EVIDENCE FROM THE *FORMULAE VISIGOTHICAE*

> Do you not know that your bodies are temples of the Holy Spirit, who is in you, whom you have received from God? You are not your own; you were bought at a price.
> – 1 Corinthians 6:19-20, NIV

The late Roman and early medieval periods are typically thought of as periods of change. With respect to slavery, the narrative goes that it declined in importance from its golden age at the height of the Roman Empire and, while it never disappeared, it was generally diluted into some form of serfdom. The specific ways in which it is meant to have been diluted vary by region and period, and some will be addressed here. I argue that the *Formulae Visigothicae* show much more continuity between Roman and Visigothic practice than is typically acknowledged.

I model this section off Alice Rio's work and mostly follow her methodology. This section is organized thematically by subheading, treating formulas or groups of formulas alongside relevant laws and writings according to my particular interest in them. This is not to say that a given formula has a single topic. Quite the contrary, despite being rather short, they are very dense documents. Because some of these documents are under or un-studied, I occasionally digress to include introductions and translations for some of the formulas here, as well as introductions to the systems that they were interacting with. Many of the translations come from Noel Lenski's contribution to the blog *Teaching Medieval Slavery and Captivity* (www.medievalslavery.org), but some of them are original.

In large part because of the thematic organization of this section, I do not treat at length every document in the *Formulae Visigothicae* pertaining to unfreedom. The two not mentioned elsewhere at all are FV 9 and 20. FV 9, notable for having been used by Alphonso III, is a donation to a monastery in which the slaves inhabiting the land being donated are included in the donation

(Alphonso III's donation does not use the part of FV 9 that mentions slaves, or mention slavery at all).[96] This is a very normal thing for donations to do, they almost always include both land as well as everything and everybody on it. Vincent of Huesca's donation lists several tracts of land (*loci*) and afterwards notes that they are given along with "buildings, lands [*terris*], vineyards, olive trees, gardens, meadows, pastures, waters and watercourses [*aquis aquarum[q]ue ductibus*], entrances and approaches, *coloni* and slaves with their *peculia* in every right," and specifies by name later the slaves he wants to manumit.[97] FV 8 is another donation to a monastery that includes land *cum mancipiis nominibus designatis* ("with the slaves indicated by name").[98]

FV 20 is a peculiar dowry written in verse, including ten boys and girls (*decem… pueros totidemque puellas*) and an unspecified number of farm slaves (*rusticos famulos*).[99] Lenski notes that the boys and girls may have been intended as domestic servants because they are noted separately from the other slaves.[100] I will add that they may not have been actual children, Roman authors frequently referred to male slaves as "boy" (*puer*) as a form of condescension to denote legal and physical helplessness.[101] FV 20 is otherwise notable mostly because it combines Roman and Gothic marriage practices; interested readers should consult García Moreno's study of it for more information.[102] There is plenty to be learned from these documents, both about slavery and about Visigothic law and society in general, but they fall outside the scope of this thesis.

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[96] FV 9 in Gil, *Miscellanea Wisigothica*, 82–85; Floriano, *Diplomática Española Del Periodo Astur*, 2:181–86 no.143.
[97] Corcoran, "The Donation and Will of Vincent of Huesca," 1.33-36.
[98] FV 8 in Gil, *Miscellanea Wisigothica*, 80–81. Also, the list of things donated along with the land is remarkably similar to the list found in Vincent of Huesca's donation, and might indicate a degree of standardization. Compare FV 8 lines 15-17: "***aedificiis***, ***uineis***, *siluis*, ***pratis***, ***pascuis***, *paludibus*, ***aquis aquarumque ductibus***" and the donation lines 1.33-35: "***edificiis***, *terris*, ***vinenis***, *oleis*, *ortis*, ***pratis***, ***pascuis***, ***aquis aquarium[q]ue ductibus***, *aditibus*, *accesibus*, *colonis ver servis.*" (emphasis my own)
[99] FV 20 in Gil, 92 lns.48–53.
[100] Lenski, "Source: Visigothic Manumission Charters."
[101] Christopher Paolella, *Human Trafficking in Medieval Europe: Slavery, Sexual Exploitation, and Prostitution* (Amsterdam University Press, 2020), 145, https://doi.org/10.2307/j.ctv18x4hw8.7.
[102] García Moreno, "Building an Ethnic Identity for a New Gothic and Roman Nobility."

SELLING SLAVES

FV 11 is perhaps the most straightforwardly Romanizing document in the *Formulae Visigothicae.* The formula, a contract of sale, follows Roman precedent in including a clause affirming that the sold slave "is not subject to any suit, nor a runaway, nor a troublemaker, nor has any vice as to his person, nor is subject to the ownership of any other person."[103] In Rome, slave sellers were similarly responsible for these kinds of warranties. As early as the 2nd century B.C. sellers were required to declare the "defects" of the slaves they had up for sale.[104] As early as the Roman Republic, an edict of the aediles, the officials in charge of streets and marketplaces, states that "[t]hose who sell slaves are to apprise purchasers of any disease or defect in their wares and whether a given slave is a runaway, a loiterer on errands, or still subject to noxal liability" and that "vendors must declare at the time of sale all that follows: any capital offense committed by the slave; any attempt which he has made upon his own life; and whether he has been sent into the arena to fight wild animals."[105] Both Visigothic and Roman slave-buyers wanted written confirmation that they were purchasing quality goods, or insurance against potential "defects" in their human property.

Noxal surrender or noxal liability is the state in which a slave is given by one enslaver to another as recompense for a crime committed by that slave. In effect it is way of limiting the liability of an enslaver for the offences of his slaves, if they were committed without his knowledge or against his will. The basic principle is that if an enslaved person committed a civil offense (civil offences in Rome could include things like assault and even murder that we moderns would

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[103] Lenski, "Source: Visigothic Manumission Charters"; FV 11 in Gil, *Miscellanea Wisigothica*, 86.
[104] Alan Watson, *Roman Slave Law* (Baltimore: Johns Hopkins University Press, 1987), 49; See also Keith R. Bradley, *Slavery and Society at Rome*, Key Themes in Ancient History (Cambridge: Cambridge University Press, 1994), 51–56, https://doi.org/10.1017/CBO9780511815386.
[105] Ulpian, *Digest* 21.1.1.1, translated by Alan Watson.

distinguish as criminal) and their enslaver was sued successfully because of the offense (slaves could not be sued as they were denied legal personhood), the enslaver could either pay the amount of the settlement or surrender the slave to the plaintiff.[106]

The Visigoths, fond as they were of using enslavement as punishment for crimes, do not seem to have had a corollary to Roman noxal surrender.[107] But this Visigothic seller is sure to note that the slave being sold is not subject to a lawsuit, the outcome of which might have resulted in a similar condition. More generally, the Visigothic seller, like his Roman predecessors, makes it clear that the slave being sold is a "good slave," not likely to flee or commit crimes. Roman sellers often marketed their slaves based on "positive" character traits – loyal, industrious, diligent, honest, and so forth – and the Visigoths likely maintained that system.[108]

It is also worth pointing out the small scale of FV 11 – a single slave, sold between peers, not, it seems, at a dedicated slave market. It is unlikely that the slave here is being sold at a market because of the inclusion of the provenance at the beginning of the document, as the formula notes that the slave being sold "is known to have come into our jurisdiction through purchase from ____." This statement indicates a private purchase, following at least one other private purchase. This, again, follows general Roman practice. Although slave-traders and mass enslavements are known and documented in the Roman period, the vast majority of surviving documents describe private sales of one or a few slaves between households, often of slaves born in those households and not of slaves captured in war or otherwise taken from outside the community.[109] Likewise, FV 11 documents and would have likely been use for small, private affairs.

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[106] See Watson, *Roman Slave Law*, chap. 5.
[107] Lenski lists the crimes for which enslavement could be a punishment exhaustively, see Lenski, "Slavery among the Visigoths," 262–67.
[108] Bradley, *Slavery and Society at Rome*, 53.
[109] Kyle Harper, *Slavery in the Late Roman World, AD 275–425*, 1st ed. (Cambridge University Press, 2011), 73–74, https://doi.org/10.1017/CBO9780511973451.

Furthermore, the line "have, hold, and possess" (*habeas, teneas et possideas*) in the clause in FV 11 which states that "you may from this day forward have him, hold him, possess him, claim him as property in your authority and defend him in perpetuity," is the classical Aquilian Stipulation (*habes tenes possides*).[110] The Aquilian Stipulation, so called after its originator Gaius Aquilius Gallus, is also quoted or invoked in FV 1, 6, 15, and 20.[111] FV 6, for example, is ratified "under the bond of the Aquilian law having been made" (*aquiliae legis innodatione subinterfixa*).[112] The fact that some formulas reference "Aquilian law" without quoting it directly suggests that Visigothic scribes were not just reproducing language that they thought to be authoritative but were in fact consciously invoking Roman law.

So FV 11 seems to be an exemplar of Roman slave sale practices. It follows the declaration requirements laid out in Roman law, is typical of the private sales that dominate the surviving Roman evidence, and shows that an understanding of Roman contract law survived into the Visigothic period. The practice of selling slaves does not appear to have changed much from the Roman to the Visigothic period. FV 11 is probably the most obviously Romanizing document in all of the *Formulae Visigothicae*, so perhaps it ought to be taken with a grain of salt. The sale of slaves is also an area that seems unlikely to be heavily affected by changing governments unless the fundamental structure of society changed as well, which we know it did not. But nonetheless FV 11 is a good introduction to the discussions to follow. Hopefully it will serve to dispel the notion that Visigothic legal proceedings were markedly different from earlier Roman ones.

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[110] Florentinius, *Digest* 46.4.18. See also "Acceptilatio" in Adolf Berger, *Encyclopedic Dictionary of Roman Law*, Transactions of the American Philosophical Society 43 (Philadelphia: American Philosophical Society, 1991), 339–40, https://hdl.handle.net/2027/heb07846.0001.001.

[111] This observation is made by Lenski, see Lenski, "Source: Visigothic Manumission Charters."

[112] FV 6 Gil, *Miscellanea Wisigothica*, 77. The ablative absolute makes for awkward English, which I assume is why Lenski jettisons it. His translation reads "the bond of the Aquilian law has been interwoven."

MANUMISSION AND FREEDMEN

A plurality of the formulas pertaining to unfreedom are manumission documents. One manumission document also survives in the Ripoll formulas, which I do not intend to treat at length, but which is useful for comparison to the *Formulae Visigothicae.* A close examination of these manumission documents shows that Visigothic attitudes towards manumission and freedmen were very similar to Roman ones. This connection reveals itself in three main ways: First, the highly religious language of the manumission documents reflects Christian attitudes towards the act that can be traced back to antiquity as well as pre-Christian Roman attitudes towards enslavement. Second, the specific terms of the manumission arrangements as well as the laws surrounding manumission and freedmen are very Roman. Finally, the formulas reveal a social attitude towards slaves, manumission, and freedmen that strongly resembles Roman thought.

An Enserfment of Slaves?

Arguments for what Lenski calls the "enserfment" of slaves, at least those that treat the Visigoths, tend to develop along the same axis. The basic argument is that over time the conditions of enslavement softened to the point that slaves and semi-free tenants became functionally indistinguishable and thus melded into or joined the preexisting category of the "serf" (the technical term for serf varies by location). This argument does not typically consider the technical legal status of the people involved. Even if somebody was *de jure* enslaved, they might be a *de facto* serf. As Wickham puts it, many tenants "were unfree in legal terms, but their *economic* relationship to their lords was effectively identical to that of their free neighbours."[113] This argument ignores the evidence that free tenants recognized and valued their semifree statuses even

[113] Chris Wickham, *Framing the Early Middle Ages: Europe and the Mediterranean, 400-800* (Oxford: Oxford University Press, 2005), 261.

if they were indistinguishable from those of their enslaved neighbors.[114] But if we take the argument on its own terms, the problem is not that it's untrue, but that it does not represent a change from Roman practice. If this is to be evidence of serfs in the medieval period, we must also accept that there were serfs at Rome.

For a Visigothic example, a key element of García Moreno's argument that there was a "convergence between slaves and *liberi* in relation to their legal capacity and personality, thus breaking a basic distinction of Roman jurisprudence" rests on enslaved people's "regular working conditions," which he argues were functionally identical to those of "autonomous peasants or tenants."[115] To make this point he argues that the contents of a typical enslaved person's *peculium* included things like livestock, buildings, and even other enslaved people, "whose utility is only understood if those slaves had their own land."[116] Thus he concludes that slaves and freedmen often owned land, a key marker for autonomy if not legal freedom. However, one does not need to own or rent land to use it, and, as Roth notes, it's quite clear that Roman slaves made use of their enslavers' land for personal benefit as far back as the 1st century BC in works like Varro's *De re Rustica*.[117] In fact, Roman enslaved people were in many cases *expected* to engage in some entrepreneurship via their *peculium,* though that business didn't have to involve real estate.[118] García Moreno's "convergence" had been happening for over 600 years!

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[114] See Rio, "'Half-Free' Categories in the Early Middle Ages."
[115] García Moreno, "From Coloni to Servi," 208–10.
[116] García Moreno, 209.
[117] Ulrike Roth, "Slavery and the Church in Visigothic Spain: The Donation and Will of Vincent of Huesca," *Antiquité Tardive* 24 (2017): 436–37, https://doi.org/10.1484/J.AT.5.112637.
[118] Ulrike Roth, "Food, Status, and the Peculium of Agricultural Slaves," *Journal of Roman Archaeology* 18 (2005): 278–92, https://doi.org/10.1017/S1047759400007364; Harper, *Slavery in the Late Roman World*, 127–28. As Harper notes, this was also a way for enslavers to exploit their slaves in criminal or unsavory industries and profit off, for example, sex work, without officially attaching their names to any of it.

The somewhat more sophisticated version of this argument is first made by Dietrich Claude and followed by Noel Lenski, which focuses more on freedmen.[119] Lenski sees in the evidence a "habit of locking freedmen into ongoing service to their manumitter" such that "complete liberation from servitude was growing more difficult – rendering late Visigothic slavery ever closer to serfdom."[120] In this model, manumission is not truly a grant of freedom, but a move from one kind of unfreedom to another, from slavery to serfdom, as the manumitted freedmen were increasingly bound to their former enslavers and thus denied full freedom. Thus manumission is the mechanism through which different kinds of unfreedom were blurred together. However, most of the laws and practices that Lenski and Claude cite have strong Roman precedents, and the *Formulae Visigothicae* suggest that many of them were not actually followed in practice.

One of the most notable continuities is that of the freedman's *obsequium*, a term describing a duty to one's manumitter that roughly translates to "service obligation." Claude describes *obsequium* as "the distinguishing mark *par excellence* of the feudal dependent."[121] As Lenski notes, LV 5.7.13 binds freedmen and women to their former enslavers' service.[122] And indeed, several manumission documents in the *Formulae Visigothicae* explicitly bind the freed person to *obsequium:* In FV 5, an enslaver manumits a slave "provided that, as long as I shall live, you as freemen should offer me extended service (*obsequium*), but after my death, wherever you wish to make your dwelling, you should have free authority to do so."[123] In FV 3, an enslaver states that "you should be free (*ingenuus*) but remain under my patronage, and that you should always be my

[119] Dietrich Claude, "Freedmen in the Visigothic Kingdom," in *Visigothic Spain: New Approaches*, ed. Edward James (Oxford: Oxford University Press, 1980), 183–87; Lenski, "Source: Visigothic Manumission Charters," 275–76.
[120] Lenski, "Slavery among the Visigoths," 275–78.
[121] Claude, "Freedmen in the Visigothic Kingdom," 185.
[122] *Leges Visigothorum* 5.7.13; Lenski, "Slavery among the Visigoths," 275. The law, trans. Scott: "No freedman or freedwoman who has received his or her liberty from either master or mistress, shall abandon the latter while they are living."
[123] Lenski, "Source: Visigothic Manumission Charters"; FV 5 in Gil, *Miscellanea Wisigothica*, 75.

adherent, but as a person of reputable status (*idoneus*); but after my death, let your service obligation (*obsequium*) be retained by no one."[124] FV 21, a last will and testament, does not mention *obsequium* directly but includes blank spaces for a writer to name enslaved people to be freed only upon the death of the testator, and not before.[125] Lenski sees the expansion of *obsequium* as evidence of the habit which represents an effort to bind freedmen into perpetual service even after they were supposed to be free, thus "enserfing" them.

But the Visigoths were not expanding *obsequium* or binding their freedmen to their manumitters much more than the Romans were. *Obsequium* itself comes from the Romans, and what exactly it means is vague in both the Roman and Visigothic contexts. In the Roman legal sense the term comes from the title of *Digest* 37.15 (*De obsequiis parentibus et patronis praestandis*), but in practice it was much more a social than a legal construct, grounded in moral duty (*pietas*) rather than legal obligation or guardianship (*potestas*).[126] From the Visigothic standpoint, Claude notes that "nowhere is it made clear precisely what is meant by *obsequium,"* and this is true in Rome as well, where it was a nebulous duty of respect whose observation was the mark of the *probus libertus,* the "honest freedman."[127]

Because of the vagueness of the term, it's difficult to compare the specific duties of *obsequium* across time periods. But the binding of the Visigothic freedmen, Claude argues, came not so much from *obsequium* itself but from the constellation of other laws which resulted from the "endeavour of the patrons that the duties which *obsequium* involved should continue to be fulfilled."[128] The need for this endeavor was also felt by the Romans. They did not use law to

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[124] Lenski, "Source: Visigothic Manumission Charters"; FV 3 in Gil, *Miscellanea Wisigothica,* 74.
[125] Lenski, "Source: Visigothic Manumission Charters"; FV 21 in Gil, *Miscellanea Wisigothica,* 94–95.
[126] Jane F. Gardner, *Being a Roman Citizen* (New York: Routledge, 1993), 23–25; See also Alan Watson, *The Law of Persons in the Later Roman Republic* (Oxford: Claredon Press, 1967), 227–29.
[127] Claude, "Freedmen in the Visigothic Kingdom," 183; Henrik Mouritsen, *The Freedman in the Roman World* (Cambridge: Cambridge University Press, 2011), 57–58, https://doi.org/10.1017/CBO9780511975639.
[128] Claude, "Freedmen in the Visigothic Kingdom," 183.

compel freedmen to observe *obsequium;* in actual practice, they had few legal tools for dealing with recalcitrant freedmen beneath the nuclear option of public lawsuits. These were both difficult to win and potentially shameful, because suing a freedmen could come with the social consequences of being viewed as a man who was not in control of his *familia.* As a result, they developed a complex social code of conduct to keep their lessors in line and avoid taking conflicts into the public sphere.[129]

So did the Visigoths use law where Romans used social pressure? They certainly seem to have had more laws to use. Two laws that Claude mentions, LV 5.7.17 and 5.7.20, bar intermarriage, lawsuits, and general offenses between freedmen and their descendants and their former enslavers and their descendants on pain of re-enslavement (I treat them together because 20 is a restatement of parts of 17).[130] For laws not mentioned by Lenski or Claude, LV 5.7.9 also includes language allowing enslavers to re-enslave freedmen for certain offenses, and LV 5.7.12 bans freedmen from testifying unless no freeborn people can be found. The ban on intermarriage is new. Romans in fact frequently manumitted enslaved women in order to marry them or take them as concubines and were at some points encouraged to do so – the coercion inherent to these manumissions cannot be overstated.[131] But the other laws all have very strong precedent in Roman legal practice.

Restrictions on freedmen's ability to testify against reflect a social attitude towards slaves dating back to the Roman period in which enslavers viewed their slaves as "potential enemies lodged within the home" because they were potential spies and legal liabilities should the enslaver end up on the wrongs side of a lawsuit. Slaves might know an enslaver's secrets, and they were

[129] Mouritsen, *The Freedman in the Roman World*, 57–64.
[130] *Leges Visigothorum* 5.7.17 & 5.7.20.
[131] Mouritsen, *The Freedman in the Roman World*, 42–48.

thought to be habitual liars who might use any opportunity to harm their owners.[132] Because of this, Roman slaves were typically only allowed to testify under torture, and it was not until the reign of Trajan that it was allowed to torture slaves for testimony against their enslavers. Even then it was only permitted under certain circumstances, for example in adultery prosecutions or in cases against enslavers who were already condemned.[133]

Like Visigothic freedmen, Roman freedmen in general were forbidden from bringing any damaging civil or criminal action against their manumitters, except for accusations of high treason (*maiestas*), which was a public issue.[134] They did have some very limited ability to sue their patrons, for example if the patron treated the freedmen like a slave.[135] But overall, they had access to almost none of the legal tools that their manumitters did.

The Visigothic ban on freedmen injuring their manumitters, either by harming their reputation or through financial or political means, has direct parallels with the Roman concept of the *libertus ingratus*, literally "ungrateful freedman."[136] Roman patrons could sue freedmen for disrespect, verbal insults against himself, his children, or his wife, which could result in floggings or worse. What, exactly, "worse" means is not specified in surviving texts. Freedmen who informed against their patrons or who conspired against them could be sentenced to the mines.[137] Physical assault against one's manumitter was also grounds for mine-sentencing, which was the default penalty for all serious crime at the time.[138]

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[132] Jennifer Glancy, "Slavery and the Rise of Christianity," in *The Cambridge World History of Slavery: Volume 1: The Ancient Mediterranean World*, ed. Keith Bradley and Paul Cartledge, vol. 1, The Cambridge World History of Slavery (Cambridge: Cambridge University Press, 2011), 496, https://doi.org/10.1017/CHOL9780521840668.023.
[133] Watson, *Roman Slave Law*, 80–81; Bradley, *Slavery and Society at Rome*, 168–70; Mouritsen, *The Freedman in the Roman World*, 20.
[134] Gardner, *Being a Roman Citizen*, 24.
[135] Gardner, 47–48.
[136] Córcoles Olaitz, "The Manumission of Slaves in View of the *Formulae Visigothicae*," 342; Mouritsen, *The Freedman in the Roman World*, 53–57; See also "Ingratus" in Berger, *Encyclopedic Dictionary of Roman Law*, 501.
[137] Gardner, *Being a Roman Citizen*, 45.
[138] Gardner, 48.

Re-enslavement also has Roman precedent, though it appears slightly differently in Visigothic law. Roman law and thought goes back and forth on the subject: Diocletian forbids it, Constantine encourages it, even for minor offences.[139] Valerius Maximus says that re-enslavement was an ancient practice (*prisca institutia*) in Athens, but it was never systematized in Rome.[140] Tacitus tells us that Nero rejected a proposal by the senate that would have allowed patrons to re-enslave unruly freedmen, instead directing the senate to consider it on a case-by-case basis.[141] The Visigoths, however, seem to enslaved and re-enslaved with gusto. This is a notable discontinuity that Lenski attributes to the influence of the Germanic *Wergeld*, literally "man-price."[142] This practice of assigning a money value to the life of every man depending on his social standing created ample opportunities for debt-slavery and for the purchasing of freedom, with the effect that it was possible for people to move in and out of freedom more fluidly than in Rome.

Still, it can be difficult to escape the image of Visigothic law as more severe than Roman law, even if we accept that it was descended from Rome. So, we must also ask whether the Visigoths *used* these laws more than the Romans. Roman law seems to be similarly severe, but we know from court records and other documents that they were actually very hesitant to re-enslave freedmen or find against those accused of ingratitude.[143] And in general, conflicts between patrons and freedmen were considered private affairs, and the Romans did their best to avoid airing their dirty laundry in the courts.[144] We lack the direct evidence for the Visigoths that we have for the Romans, but evidence from the *Formulae Visigothicae* suggests that in its actual application the law was much less severe than it seems.

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[139] Gardner, 49.
[140] Valerius Maximus, *Memorable Doings and Sayings* 2.6.6-7, translated by D. R. Shackleton Bailey.
[141] Tacitus, *Annales* 13.26-27, translated by Alfred John Church.
[142] See Lenski, "Slavery among the Visigoths," 262–64.
[143] Gardner, *Being a Roman Citizen*, 41–50; Mouritsen, *The Freedman in the Roman World*, 57–59.
[144] Mouritsen, *The Freedman in the Roman World*, 57–58.

As every jaywalker knows, we should not assume from the existence of a law that it was followed. *Leges Visigothorum* 5.7.13, which Lenski cites as evidence for enserfment, stipulates that "no freedman or freedwoman who has received his or her liberty from either master or mistress, shall abandon the latter while they are living."[145] But it is frequently circumvented in the manumission formulas, many of which go out of their way to grant freedmen freedom of movement. FV 5 includes the stipulation that "after my death, wherever you wish to make your dwelling, you should have free authority to do so," FV 2 includes the line " I decree that you should have free authority in God's name to abide, live, and make your dwelling wherever you wish from this day forward," and FV 3, although it is broken off at the end, clearly also included a line affirming the freedman's ability to move.[146] The Ripoll manumission formula also includes a clause granting freedom of movement.[147] The Visigoths did inherit a Roman paranoia about runaway slaves, which might have also motivated manumitters to make it as clear as possible that freedmen were allowed to move.[148] Clearly, freedmen could and did "abandon" their manumitters, with their explicit blessing, in apparently open violation of the law.

As discussed above, LV 5.7.13 forbids freedmen from testifying unless no other testimony is available. However, the Ripoll manumission, though later than the *Formulae Visigothicae,* includes a clause explicitly allowing the freedman to testify *inter ceteras idoneas vel ingenuas personas* ("among other reputable or free-born people")*.*[149] *Servi idonei* were a kind of protected higher class of slave or freedman who were entitled to some legal rights not enjoyed by other

[145] *Leges Visigothorum* 5.7.13 in S.P. Scott, ed., *The Visigothic Code (Forum Judicum),* trans. S.P. Scott (Boston: Boston Book Company, 1910), 187, https://libro.uca.edu/vcode/visigoths.htm.
[146] Lenski, "Source: Visigothic Manumission Charters"; FV 2, 3, & 5 in Gil, *Miscellanea Wisigothica,* 72–75.
[147] *Prologus de Servum Ingenuandum* in Zimmermann, "Un Formulaire Du Xème Siècle Conservé à Ripoll," 79–80.
[148] See "Flight and Capture," 49.
[149] *Prologus de Servum Ingenuandum* in Zimmermann, "Un Formulaire Du Xème Siècle Conservé à Ripoll," 79–80.

slaves (*servi rusticani / inferiores / viliores*).[150] So the right to testify, like freedom of movement, could be granted in a will if the testator simply wrote it in.

In these examples we find that prohibitions in the law codes are circumvented by the terms of manumission agreements. In the case of movement, this seems to have been routine. This practice is identical to the practice that Alice Rio identifies when she draws out her reference model for medieval law, that it was not an enforceable rule but rather a starting point for negotiation.[151] Manumitters could get around the apparently draconian restrictions on freedmen by simply writing exceptions into their manumission charters. We should stress that freedmen were at the mercy of their enslavers for their ability to testify, move freely, and so forth, but the evidence from the formulas suggests that this mercy was granted more often than the law on its own suggests. So, the laws that Claude and Lenski argue represent a tightening of bonds on freedmen were in actuality not strongly enforced. Not only this, but enslavers *chose* not to enforce them, whether out of some sense of ethics or simply because there would be no point in doing so after their deaths.

The *Formulae Visigothicae* on their own reveal more Roman connections. For example, many of the manumission formulas include clauses allowing the manumitted slaves to keep their *peculia.*[152] Occasionally the previous enslaver also gives their new freedmen gifts, usually left unspecified in the formulas, as in FV 2: "I give and grant this ____ and that ____ to you along with your entire *peculium*."[153] This is not unique to the *Formulae Visigothicae,* for an earlier example, Saint Vincent of Huesca also explicitly granted some of his slaves their *peculiae* in his will (c.576).[154] And in an episode in his *Life,* the Visigothic Saint Fructuosus of Braga (c.600 –

[150] Lenski, "Slavery among the Visigoths," 258–59.
[151] Rio, *Legal Practice and the Written Word*, 208–10.
[152] FV 2, 5, & 6 in Gil, *Miscellanea Wisigothica*, 72–77.
[153] Lenski, "Source: Visigothic Manumission Charters"; FV 2 in Gil, *Miscellanea Wisigothica*, 72–73.
[154] Corcoran, "The Donation and Will of Vincent of Huesca," 2.10-16; Roth, "Slavery and the Church in Visigothic Spain," 434–42.

665), beginning his hermitage, is said to have distributed all of his considerable wealth "to holy churches, to his freedmen, and to the poor."[155] Vincent of Huesca even gave land to some of his freedmen. As Ulrike Roth notes, this represents a continuity with Roman practice; it was actually mandatory for manumissions in the empire to include the new freedman's *peculium.*[156]

The combined effect of these grants means that Visigothic freedmen would have been given much more autonomy than is typically assumed. Many freedmen were thus not bound to their manumitters, in fact quite the opposite. It seems that although they were not legally obligated to, many enslavers tried to ensure their freedmen were granted as much autonomy as possible both by ensuring their legal rights were protected and by giving them the resources to live independently. So, while it was certainly possible for Visigothic enslaved people to be "enserfed" via manumission, it seems that most enslavers were not interested in this kind of control over their freedmen.

Even in Rome, no freedman probably ever achieved truly complete liberation from their manumitter. But there is little evidence that the Visigoths were working to bind freedmen to their manumitters more than the Romans already did. The Roman and Visigothic laws governing freedmen were very similar. Although the Visigoths used penal enslavement much more than the Romans on paper, it's not obvious that they sentenced wrongdoers to enslavement all that often in practice. Most of the Visigothic laws which seem to show an "enserfment" of slaves and freedmen actually have Roman precedent, and the social obligation of *obsequium* was vague in both periods. Although Visigothic law gave enslavers more power over their freedmen than Roman law, the

[155] Sister Clare Frances Nock, "The *Vita Sancti Fructuosi:* Text With a Translation, Introduction, and Commentary" (Dissertation, The Catholic University of America, 1946), 98.
[156] Ulrike Roth, "*Peculium*, Freedom, Citizenship: Golden Triangle or Vicious Circle? An Act in Two Parts," in *By the Sweat of Your Brow: Roman Slavery in Its Socio-Economic Setting*, ed. Ulrike Roth (London: Institute of Classical Studies, School of Advanced Study, University of London, 2010), 94–106.

manumission documents in the *Formulae Visigothicae* show that enslavers were often not interested in actually exercising that power. In fact, it seems Visigothic manumitters *wanted* freedmen to have that autonomy and worked to secure it in their manumission documents. If this should be taken as evidence of enserfment, we must also conclude that enserfment was happening in Rome as well.

Christianity, Stoicism, and the Ethics of Enslavement

One of the more striking similarities between the Visigoths and the Romans is found in the religious openings of the manumission formulas. Christianity might seem to be a clear marker of the medieval as opposed to the Roman period, but the attitudes expressed in these documents are inherited from the Romans, only restated in Christian language. The formulas tend frame freedom as a reward for good service, and emphasize the piety of both enslaver and enslaved. Slaves are thought to have "earned" their freedom through faithful service. This is exemplified by the opening of FV 4:

> The services of faithful slaves, when performed with pure obedience of mind, rightly obtain the rewards of manumission owed to them. Indeed, these transactions are never reproachable, for we are called to repay those who serve us faithfully with well-earned rewards. And thus considering the blameless diligence of your services and desiring to obtain the lot of blessedness before God for ourselves, with an eye to reward, we are driven to release the debt of servitude for you and to confer on you the brilliant and reputable status of freedom.[157]

It is found again in the opening lines of FV 5:

> Because cures for the soul should always be sought before God, and the dedication of good deeds should be celebrated with salvific intent, which banishes sins and increase rewards, thus must the condition of servitude be rewarded with a prize in order that it might attain eternal freedom.[158]

[157] Lenski, "Source: Visigothic Manumission Charters"; FV 4 in Gil, *Miscellanea Wisigothica*, 74–75.
[158] Lenski, "Source: Visigothic Manumission Charters"; FV 5 in Gil, *Miscellanea Wisigothica*, 75.

And again in FV 6, a curious document in which an enslaved person or possibly several enslaved people (the Latin uses singular and plural forms inconsistently) are freed by a bishop in order to be immediately ordained:

> Because everyone deserves to receive his palm of victory in the Lord, the fulfillment of this wish is finally ushered in by the Divinity, when the one praying earnestly for himself turns up what he seeks, and others are moved in their hearts to impart the salvation owed to his dutiful servility, so that mercy might spur hearts divinely through fateful intervention in order that old men's strength may increase and the blocked doorways of the heart's cloister may be pried open. And since the divine teachings have ordained that, now that you have wiped away the darkness and attained the status of complete trust, you should joyously transcend the threshold of light in such a way that, from the recess of this holy church of ____, who propitiously chose us to ascend the throne of apostolic doctrine by the order of Our Lord Jesus Christ, we have chosen to ordain with every hope of fulfillment, that you may understand you have set out on the most flourishing path of brilliant freedom as people divested of any dregs of your [former] condition.[159]

It is also reflected in the extreme religiosity of the Ripoll manumission formula.[160] In this way, the manumission documents in the *Formulae Visigothicae* are exemplars of Christian thought about the ethics of slavery and manumission that dating back to antiquity.

The framing of the act of freeing one's slave as an act of devotion is extremely common in manumission documents from across the medieval world. Christian thinkers and authorities, like their Roman predecessors, never questioned the institution of slavery, and Visigothic churches were of course no different.[161] It also broadly reflects elite Christian ideology about the owning of slaves dating back to Roman times, most strongly the idea that slavery and slaveowning are only problematic if they involve excess, or as de Wet puts it in Christian language, "social gluttony,"

[159] Lenski, "Source: Visigothic Manumission Charters"; FV 6 in Gil, *Miscellanea Wisigothica*, 76–77.
[160] *Prologus de Servum Ingenuandum* in Zimmermann, "Un Formulaire Du Xème Siècle Conservé à Ripoll," 79–80.
[161] King, *Law and Society*, 178–79.

on the part of the enslaver, for example in numbers of slaves or cruelty towards them.[162] This attitude finds precedent in Stoic philosophy. Seneca mocks the social gluttony of a hypothetical slaveowner who has dedicated slaves for wiping away spittle, cutting chicken breasts, managing wine, buying food, and so on, arguing that the enslaver is actually a slave to their services: "How many masters he has among them!"[163] Even in the relatively mild preaching of John Chrysostom, slaves were only equal to the free in the eyes of God.[164] Thus, while slavery itself was a value-neutral system, it was possible in the minds of ancient and medieval thinkers to be a "good" or "bad" enslaver.

Christian teachings regarding slavery emphasized the permanence of the social hierarchy. Some attempted to argue that the social hierarchy didn't really matter, often using Chrysostom's argument, or by adopting the Stoic position that, really, *everyone* was enslaved, whether to a person or to passion and sin.[165] Seneca writes "Show me a man who is not a slave. One man is slave to lust, another is slave to greed, another to ambition, all of us hope and fear."[166] But the connecting thread throughout these beliefs is the idea that to be pious within this unchangeable system was to play one's part in it well, even if that part was harmful, demeaning, dehumanizing, or worse. Thus, in his letter to the Ephesians, Paul instructs enslaved people to "obey your earthly masters with respect and fear, and with sincerity of heart, just as you would obey Christ… as if you were serving the Lord, not people, because you know that the Lord will reward each one for whatever good they

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[162] Glancy, "Slavery and the Rise of Christianity," 464–70; Jonathan Tallon, "Power, Faith, and Reciprocity in a Slave Society: Domestic Relationships in the Preaching of John Chrysostom," in *Social Control in Late Antiquity: The Violence of Small Worlds*, ed. Jamie Wood and Kate Cooper (Cambridge: Cambridge University Press, 2020), 69, https://doi.org/10.1017/9781108783491.006; Harper, *Slavery in the Late Roman World*, 507.
[163] Seneca, *Epistulae Morales* 47, translated by Elaine Fantham.
[164] Tallon, "Power, Faith and Reciprocity in a Slave Society," 72; Glancy, "Slavery and the Rise of Christianity," 473.
[165] Bradley, *Slavery and Society at Rome*, 150–52.
[166] Sen. *Ep.* 47, trans. Fantham.

do, whether they are slave or free."[167] For an enslaved person to be a good Christian, they must accept their position as a slave and perform their duties as a slave well and faithfully.[168] And, reflecting this, the *Formulae Visigothicae* emphasize the good service of the freedman in highly religious terms.

The flip side of this is that enslavers were also under some social pressure to treat their slaves with a basic amount of humanity. Since their place in the hierarchy was one of power, piety demanded that they use it responsibly. Paul continues in Ephesians: "And masters, treat your slaves in the same way. Do not threaten them, since you know that he who is both their Master and yours is in heaven, and there is no favoritism with him."[169] The question then is what it means to treat a slave well. Ignatius, the third bishop of Antioch, advises not to "despise slaves," but also not to free them, so "that they may not be found slaves of lust" (Recall Seneca again.)[170] This reflects a view of enslaved people as inherently "lazy and deceitful."[171] Additionally, because household slaves, particularly women, were frequently targets of sexual violence, they were often associated specifically with licentiousness and prostitution.[172] Because of the supposedly inherently sinful nature of slaves, some authors like Ignatius argue against the practice of manumission altogether, on the grounds that it is better to be a slave to a good Christian than to be left to one's own devices and become a slave to worldly desires. Chrysostom, on the other hand,

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[167] Ephesians 6:5-8. (New International Version). See also Colossians 3:22, 1 Timothy 6:1, & 1 Peter 2:18.
[168] For a litany of other examples, see Kimberly Flint-Hamilton, "Images of Slavery in the Early Church: Hatred Disguised as Love?," *Journal of Hate Studies* 2, no. 1 (January 1, 2003): 28–34, https://doi.org/10.33972/jhs.9.
[169] Ephesians 6:9 (New International Version). The authorship of Ephesians has been challenged and remains a source of controversy, but this is irrelevant to the question of the impact of Ephesians on Christian thought and culture. For a discussion of the authorship problem with a specific focus on the universality of the Church, see Sigurd Grindheim, "A Deutero-Pauline Mystery? Ecclesiology in Colossians and Ephesians," in *Paul and Pseudepigraphy*, ed. Stanley E. Porter and Gregory P. Fewster (Brill, 2013), 171–95, https://doi.org/10.1163/9789004258471_008.
[170] Ignatius of Antioch, "Ignatius to the Polycarp," in *Ignatius of Antioch: A Commentary on the Letters of Ignatius of Antioch*, by William R. Schoedel, ed. Helmut Koester (1517 Media, 1985), 269, https://www.jstor.org/stable/j.ctvb936zj.13.
[171] Flint-Hamilton, "Images of Slavery in the Early Church," 34–38.
[172] See Paolella, *Human Trafficking in Medieval Europe*, chap. 3.

argues that slavery should be a temporary condition during which the enslaver should teach the enslaved a trade to eventually grant them their liberty.[173] The manumitters of the *Formulae Visigothicae* seem to take Chrysostom's side in this debate, as they pat themselves on the back for their piety in freeing slaves.

The point is not just that Christian attitudes towards slavery did not change much between the time of Paul and the reign of Sisebut, or that the Visigoths maintained the paternalism of the Roman slave system using these attitudes, it's that these ideas survived into the Visigothic period in actual practice. Seneca, for example, largely uses the metaphor of slavery to characterize the "mental or psychological states of subjugation" like fear and desire, but actual enslaved people are largely absent from his writings.[174] Ignatius then takes this literally and uses the analogy of slavery to sin to justify slavery to people. The language of the manumission charters frame freedom as a reward for good service, noting that "the dedication of good deeds should be celebrated with salvific intent." Thus, the Roman idea that some slaves are "deserving" of freedom and others are irredeemably servile, and that it is the job of the ethical enslaver to separate the one from the other and cultivate morals in those for whom there is hope, survives into the middle ages, restated in the language of Christianity.[175] This attitude towards the ethics of domination extends beyond the bounds of outright enslavement. We find, for example, landlords framing the act of taking on semi-free tenants or even of buying slaves as one of charity, as conceptually saving their tenants from poverty.[176]

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[173] Flint-Hamilton, "Images of Slavery in the Early Church," 42.
[174] Joshel, "Slavery and Roman Literary Culture," 230–34.
[175] On this idea in Rome, see Mouritsen, *The Freedman in the Roman World*, 203–4; See also Finley, *Ancient Slavery and Modern Ideology*, 188–89.
[176] See "Self-Sale and Tenancy," 55.

This is not to say there were no differences between Roman and Visigothic manumission practices and attitudes. Clearly, there were, but that they have to this point been overstated. Not only is the duty of the freedman to render *obsequium* to his manumitter retained from the Roman period, but the specific requirements of *obsequium*, to the extent that they can be known, are largely the same. Other elements of Visigothic slavery, like the use by slaves of enslavers' land for personal benefit and the granting of *peculiae* upon manumission also find precedent in the Roman period. Ideas about the appropriate way to treat one's slaves are carried over from Stoic and early Christian thought into the Visigothic kingdom and manifest in the *Formulae Visigothicae.*

A notable departure from Roman thought about slaves is that the Visigoths appear to have legally divorced slavery from the family. Whereas Roman law technically placed the slave and the son in the same legal category, this connection is nowhere to be found in the Visigothic evidence.[177] They might have misunderstood the Roman practice: Isidore of Seville writes that "The word *familia* is used metaphorically for slaves, and not with its proper application."[178] Although paternalism, or alternatively pastoralism, where the home is figured as a church in miniature with the *paterfamilias* as pastor, is perhaps the defining feature of Christian thought about slavery, it does not appear to have been enshrined in law.[179]

So, shifts in manumission practices and the treatment of freedmen between the Roman and Visigothic periods were minor. The Visigoths appear to restrict freedmen more on paper, but most of these restrictions were not new or unique to them and they were routinely circumvented in the

[177] See Gardner, *Being a Roman Citizen*, chap. 3, especially pgs. 55-56.
[178] Isidore of Seville, *The Etymologies*, IX.v.12.
[179] See Tallon, "Power, Faith and Reciprocity in a Slave Society," 71–73; Chris L. de Wet, *Preaching Bondage: John Chrysostom and the Discourse of Slavery in Early Christianity* (University of California Press, 2015), chap. 3, http://www.jstor.org/stable/10.1525/j.ctt196339m.

actual practice of manumission. The Visigoths adopted Christian ideas about the proper way to be a slaveowner which date back to antiquity and which find precedent in non-Christian ideas, most notably those of the Stoics. Thus, even the changes from Roman to Visigothic practices here are driven by a philosophy that was strongly influenced by Roman philosophy as filtered through the Christian tradition.

FLIGHT AND CAPTURE

The traditional view, inherited from the Marxists, is that slavery declined in importance from antiquity to the Middle Ages. A key element of the argument for this decline in the Visigothic kingdoms is what, in Lenski's words, "appears to have been a massive problem with flight." Staunching this "hemorrhage of slaves," he argues, was much of the point of book nine of *Leges Visigothorum.*[180] But although the legal evidence seems to support this conclusion, it sits uneasily alongside other evidence which suggests that slavery was *not* prominent in Visigothic Iberia. Contemporary Merovingian estates employed plenty of unfree labor, but few of these tenants were actually enslaved, and many owned the land they worked (and may have owned slaves of their own).[181] Later documents from the 10th and 11th centuries suggest, in Rio's words, "that the difference between Spain and the rest of Europe lay more in the attitudes of legislators than in social practice."[182] The amount of laws regarding runaway slaves may reflect more paranoia about the possibility of fugitives than a reality in which they were ubiquitous in all kinds of communities.

Most of book 9 of the *Leges Visigothorum* is devoted to the subject of fugitive slaves: the penalties for freeing slaves (10 *solidi* or 100 lashes, plus the return of the slave or a slave of equal

[180] Lenski, "Slavery among the Visigoths," 272–73.
[181] Wickham, *Framing the Early Middle Ages*, 283–85.
[182] Alice Rio, *Slavery after Rome, 500-1100*, Oxford Studies in Medieval European History (Oxford, United Kingdom: Oxford University Press, 2017), 63.

value)[183], what to do if a fugitive is discovered (bring them to a judge immediately; if after 8 days the fugitive leaves the discoverer owes the enslaver two slaves of equal value)[184], exceptions for those who harbor fugitives in ignorance (no penalty if the fugitive stayed less than a day, if they stayed more, the harborer must trace the fugitive at least to their next place of refuge)[185], and more. Most of these laws originate with the Theodosian Code, but several are additions of the Visigoths.[186]

This density of this legislation should not be taken as evidence of sophistication or of increasingly centralized power, rather, it is a convoluted mess. The many rules proved so difficult to enforce that King Egica (r. 687 – 701/703) notes in the introduction to law 9.1.21 that "there is scarcely a town, castle, village or hamlet, where a number of fugitive slaves are not known," and thus, on top of the existing laws, he deputizes entire communities under threat of lashing.[187] Scott suggests that the law was unpopular and that both citizens and magistrates avoided enforcing it, an idea for which evidence has also emerged more recently.[188] The number and contradictory nature of these laws might also help to visualize the limits of royal power. In any case, the Visigothic laws surrounding runaway slaves were a patchwork, one which was both unpopular and, in many cases, unenforceable.

More evidence for paranoia about runaways may be found in the Life of Saint Fructuosus. St. Fructuosus of Braga was a Visigothic monk who was active throughout the mid-7th century and who founded several monasteries throughout Iberia before eventually settling as Bishop of

[183] *Leges Visigothorum* 9.1.2.
[184] *Leges Visigothorum* 9.1.3.
[185] *Leges Visigothorum* 9.1.4 & 9.1.6.
[186] For example, *Leges Visigothorum* 9.1.14; 9.1.16-18; & 9.1.21.
[187] *Leges Visigothorum* 9.1.21.
[188] Scott, *The Visigothic Code (Forum Judicum)*, 319 n.2; For more recent discussion see Janet L. Nelson, "Peers in the Early Middle Ages," in *Law, Laity, and Solidarities: Essays in Honour of Susan Reynolds*, ed. Pauline Stafford, Janet L. Nelson, and Jane Martindale (Manchester: Manchester University Press, 2001), 27–46.

Dumium, a suburb of Braga, and who left behind several letters and two monastic rules. His *Life* was written shortly after his death and is sometimes attributed to St. Valerius of Bierzo (c. 630 – c.695), though its authorship is ultimately uncertain. The anonymous author recounts a miracle in which Fructuosus, while travelling, is mistaken for a fugitive while praying because of the "meanness of his attire" and is beaten with a staff after "the devil, ever envious of all good people, led a rude fellow in a state of madness" to him. Fructuosus does not fight back and is saved after he makes the sign of the cross and expels the devil from the man, who he then nurses back to health.

Fugitive slaves, then, occupy a prominent place in the cultural imagination of the Visigothic elite.[189] The author displays the same paranoia about fugitive slaves as his contemporary Egica. This paranoia may also help to explain the fixation on mobility in the manumission formulas.[190] But this reading of Fructuosus's *Life* is complicated by the attacker's motivations. He is not acting of his own accord, his paranoia is not his own, it is inspired by the devil, and can be dispelled with a simple gesture. Paranoia about fugitive slaves (or monks) is shown to be not just nonsense, but active misinformation from the devil himself in an attempt to undermine some good in the world.

Against this backdrop we find FV 43, *Alio Iniuncto* ("Another Injunction" – the Latin is misspelled). The text that survives is in rough shape, and Zeumer worked very hard to make it legible. A substantial amount of it is cut off from the end. In Lenski's translation, it reads:

> Another injunction. I ____ [greet] my lord and brother in Christ ____. Next I enjoin upon your charity that, in place of me personally, you should pursue the slave under my jurisdiction by the name of ____, who has removed himself from servitude

[189] Lenski, "Slavery among the Visigoths," 273 draws the same conclusion from this story.
[190] See "Manumission and Freedmen," 33.

> *[servitio]*to me. And when you find him, you should strive to bring him back as a person registered under my ownership. Whatever you do or perform…[191]

Lenski speculates that the missing language "is likely to have listed reimbursement for expenses incurred by the slave-catcher while pursuing the fugitive," citing book 9 of the *Leges Visigothorum* as evidence that this was a major problem.[192]

In Lenski's translation the document appears to be addressed to a lord from a dependent. This is not implausible; Carolingian estate surveys (polyptychs) show tenants of uncertain status who have unfree dependents, though it is unclear whether they are enslaved.[193] In this case, the inclusion of *in Xpo fratri* in the greeting seems to imply that the requester is not enslaved, but there is far too little to tell. However, I think it is more likely that the document is a letter between equals acknowledging the recipient's status. Most of the documents in the *Formulae Visigothicae* in which we can be certain that the "writer" is a dependent of the recipient are specifically addressed *domino meo* or *domino mihi.*[194] Contrast this with the *Cartula Communicationis* of FV 27, which is addressed *domino et fratri,* using the title of lord but placing the sender and recipient on equal footing.[195] Still, the formula that survives is in pretty rough condition and regardless of what it originally said it could easily have been modified to suit either of these scenarios.

This paranoia is not original to the Visigoths. The Roman elite was similarly terrified of the image of the fugitive slave. Finley observes about the Roman evidence that "fugitive slaves are almost an obsession in the sources," and notes that Roman historians "were quick to see 'slave-revolts' everywhere," even when the revolt in question was ordinary banditry or civil war.[196] We

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[191] Lenski, "Source: Visigothic Manumission Charters"; FV 43 in Gil, *Miscellanea Wisigothica,* 110.
[192] Lenski, "Source: Visigothic Manumission Charters"; For a broader overview of these laws see Lenski, "Slavery among the Visigoths," 272–73.
[193] Rio, *Slavery after Rome, 500-1100*, 163–65.
[194] F.V. 32, 36, 45 in Gil, *Miscellanea Wisigothica*. This is not universally true, cf. FV. 37.
[195] F.V. 27 in Gil, 99.
[196] Finley, *Ancient Slavery and Modern Ideology*, 179–81.

have much stronger evidence for slave revolts and runaways in Rome than we do in Visigothic Iberia, but the Roman elite are not just concerned with these actual fugitives and revolutionaries – the *idea* of the runaway is just as if not more pressing to them.[197] Paranoia about fugitive slaves is not an invention of medieval or Visigothic society, it pervaded Rome as much as it gripped the Visigoths.

Additionally, like the *Leges Visigothorum*, Roman law was obsessed with runaway slaves, to the extent that Keith Bradley notes that "it is hard to resist the impression that servile truancy was the chief type of slave wrongdoing, with which both owners and the public authorities were constantly having to contend with."[198] Like the *Leges Visigothorum*, Roman law is obsessed fugitives, their registration, what to do with those who harbor them, and so on and so forth.[199] Alan Watson attributes this byzantine complexity to the problem of slaves' humanity, their status as "thinking property." In short, Roman law wanted to treat enslaved people as property, but was hamstrung by enslaved peoples' insistence on exercising agency. He grossly understates his case when he concludes that "as 'thinking property,' slaves in some areas caused the law to become very complex."[200] Bradley concludes that it's ultimately not possible to determine from the surviving evidence what the most common forms of slave resistance were, but "at the impressionistic level," petty sabotage and flight predominated.[201]

So what are we to make of Lenski's "hemorrhage of slaves?" It seems to me that Lenski is overstating his case. Visigothic law and culture surrounding fugitives seems to follow the Roman precedent closely, and the Roman evidence, while it does suggest a problem with flight, does not

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[197] See Bradley, *Slavery and Society at Rome*, chap. 6.
[198] Keith R. Bradley, "Roman Slavery and Roman Law," *Historical Reflections / Réflexions Historiques* 15, no. 3 (1988): 489.
[199] Bradley, 489; Watson, *Roman Slave Law*, 131–32; Alan Watson, "Thinking Property at Rome," *Chicago-Kent Law Review* 68, no. 3 (1993): 1368–71.
[200] Watson, "Thinking Property at Rome," 1371.
[201] Bradley, *Slavery and Society at Rome*, 129–30.

support the conclusion that it was "massive." Rather, it seems that the Romans, like the Visigoths, had an image of the fugitive slave that fueled paranoia and social stigma. Bradley argues that, in Rome, "social inferiority bred stigma, and the law is full of incidentals that illustrate slavery's stigmatic assosciations."[202] Thus any organized violent resistance to the Roman state might be characterized as a slave revolt simply to associate it with the supposedly debased nature of slaves. Additionally, the contradiction between the "thinking" and "property" elements of the "thinking property" idea is likely to have created a lot of edge cases, resulting in the mess that is book 9 of the *Leges Visigothorum* and in the endless debates we see among Roman jurists.[203] Given that the Visigothic laws and social attitudes were so similar to those of the Romans, we should not assume that enslaved people running away was any more endemic in Visigothic Iberia than it was in Rome.

It is perhaps relevant, then, that FV 43 makes no recourse to law. Instead, it seems to rely the parties' shared interests as enslavers to maintain the system and their property. Much of early medieval elite culture was premised on the mutual exchange of gifts and favors, things which were theoretically done freely with no payment required but which in fact created very strong social obligations between the involved parties.[204] Thus the request for help *tuae chariti* is not truly a request, it is an invocation of a social obligation held by all members of the elite. The requester may have offered a reward or to pay for expenses, but it would almost certainly have been understood that the favor would be returned in the future.

So, FV 43 should not be taken as direct evidence for the prominence of fugitive slaves. The fact that it is the only formula on the subject may be more evidence that the prominence of runways is overstated. If runaways were a common occurrence, at least for the people using the *Formulae*

[202] Bradley, "Roman Slavery and Roman Law," 492.
[203] Watson, "Thinking Property at Rome."
[204] See Chris Wickham, "Compulsory Gift Exchange in Lombard Italy, 650-1150," in *The Languages of Gift in the Early Middle Ages*, ed. Wendy Davies and Paul Fouracre (Cambridge: Cambridge University Press, 2010), 193–216.

Visigothicae, we would expect to see more documents related to them. There are six manumission documents and only one related to fugitives. It's perhaps also worth noting, cautiously, that no documents derived from FV 43 have been identified.[205] All this to say: there is a disconnect between the prominence of fugitive slaves in the *Leges Visigothorum* and their importance in other legal sources that is best explained by the ideological importance of the archetypical "runaway" inherited from the Romans, not by an actual hemorrhage of slaves.

SELF-SALE AND TENANCY

The *Formulae Visigothicae* contains three documents related to self-sale: One, FV 32, is explicitly a self-sale document, though it curiously does not mention what the seller is selling themselves into, and the other two, FV 36 and 37, are a lease or tenancy agreements, documents which would be unremarkable if it were not for the explicit comparisons in them between tenants and *coloni.* FV 32 specifically is highly provocative and is often mentioned as a curiosity, but self-sale is rarely treated as a topic in and of itself. The notable exception is of course Alice Rio's study on the topic, which focuses on Carolingian sources.[206] There are also translation questions to do with FV 36. As such, this section must wander a bit to address these debates before coming to my two connected theses: first, these documents are not just rooted in ancient precedent, but they demonstrate a deep awareness of it on the parts of their authors, who actively invoked Roman law and legal practice to justify their actions, and second, these documents show Visigothic elites using *coloni* to understand tenancy. Thus, the Visigoths were thinking with slaves, using Roman concepts like *coloni* to understand forms of domination, in this case tenancy, that were more or less unique to their context.

[205] Gil, *Miscellanea Wisigothica,* 110 n.XLIII.
[206] Rio, "Self-Sale."

Self-Sale and Tenancy in the *Formulae Visigothicae*

To begin with, Noel Lenski's translation of FV 32 reads, in full:

> Charter of Obligation. I ____ [greet] ____, my lord forever. Although it may be established by sanction of the laws, nevertheless no one should worsen his own status of his own free will. But whenever someone, while holding control of his own status, seems to suffer necessity or some misery because of a legal case, and is compelled by his case to render judgment concerning how he wishes his status to be, whether to improve it or worsen it, he should have free authority to do so. Therefore having properly considered this on my own, I have proposed to sell my status. And your lordship has heard this, and your consent has acceded to my prayer, and now it is evident that _____ number of solidi have been paid by your lordship and that you have received me on account of ____ and ____. And thus from today onward you may have, and hold, and own my above mentioned status, and you may claim it as property and defend it by your right and ownership in perpetuity, and whatever you wish to do to or with my person, this power shall belong to you with immediacy and full certainty. Which also by oath…[207]

The document is particularly noteworthy because some scholars believe that in the Visigothic kingdoms self-sale was completely illegal. Self-sale is well attested since Roman times, mostly in legal documents, and the late Roman orator Dio Chrysostom decried the "countless" freemen of his time who were supposedly selling themselves into slavery.[208] Roman orators were fond of exaggeration, but Dio Chrysostom exemplifies the fact that in the late Roman world, self-sale was both well-known and frowned upon. This disapproval is found in medieval laws as well; a law in the Visigothic Code states rather bluntly that "he who submitted to slavery willingly does not deserve to be free."[209] Noel Lenski finds in this law and a law in the Code of Euric a "statutory prohibition on self-sale," and understands the formula to have been something of a loophole, a

[207] Lenski, "Source: Visigothic Manumission Charters"; Gil, *Miscellanea Wisigothica*, 101–2.
[208] Harper, *Slavery in the Late Roman World*, 79.
[209] *Leges Visigothorum* 5.4.10; Rio, "Self-Sale," 670. Cf. S.P. Scott's 1910 translation: "it is dishonorable that a freeman should voluntarily subject himself to servitude."

workaround that allowed a free person to "worsen his own status of his own free will" so far that he ends up enslaved, thus skirting the self-sale prohibition.[210]

The general attitude towards self-sale in the Roman and post-Roman world was that it was dishonorable but rational in the face of certain circumstances, and it was allowed, if frowned upon, by law codes throughout it. Bavarian and Carolingian laws both allow for self-sale, and Lombard law, while it never explicitly makes self-sale legal, included a stipulation exempting self-sellers from the statute of limitations after which they as free-born people (*ingenui*) would normally be unable to claim their right to freedom.[211] There was also the phenomenon of autodedition, or voluntary self-donation to a church. Similar though they may be, autodedition and self-sale evidently had different motivations, though we should be careful not to draw too clear a distinction between them. Evidence from 12th and 13th century Bavaria suggests that autodedition was primarily done by women for protection, and it became more common as the world became more violent.[212] Meanwhile, self-sale documents and laws governing it emphasize poverty – "suffering necessity" – as a motivation. Bavarian law actually defends the dignity of the poor: "even if [a free man] is poor (*pauper*), he must not lose his freedom nor his inheritance, unless he wants to transfer it to someone of his own free will" (emphasis and parentheticals original), although Rio points out that this focus on poverty is likely boilerplate intended to frame the self-sale as an act of charity on the part of the buyer, thus obscuring an even wider diversity of situations.[213] So, voluntarily giving up one's freedom was widely understood across place and time in the medieval world as

[210] Lenski, "Slavery among the Visigoths," 262.
[211] Rio, "Self-Sale," 670–72.
[212] Samuel S. Sutherland, "Mancipia Dei: Slavery, Servitude, and the Church in Bavaria, 975-1225" (Dissertation, Ohio State University, 2017), 97–100, https://etd.ohiolink.edu/apexprod/rws_etd/send_file/send?accession=osu150046157710009&disposition=inline.
[213] *Lex Baiwariorum* VII, 5 in Rio, "Self-Sale," 670; 672.

unfortunate but rational, and it was accepted that the poor and disempowered would bargain with their freedom as the wealthy would with money.

Considering this, a law against self-sale would be highly unusual, and so the law merits closer examination. The law in the Code of Euric that Lenski cites, *CE* 300, has been interpreted differently in the past. García Moreno argues, *contra* Lenski, that "Euric's legislation ended up allowing a person to sell himself," quite the opposite of a ban, and finds in the formula evidence of an increase in such self-sales due to rising poverty.[214] The later law in the Visigothic Code, *Leges Visigothorum* 5.4.10, which is directly referenced in FV 32, also does not support the thesis that self-sale was banned in the Visigothic kingdom. It reads, in S.P. Scott's translation:

ANCIENT LAW. X.
Where a Freeman Allows Himself to be Sold.

> Any freeman who permits himself to be sold, and shares the price with the vendor, and, afterwards, desiring to cheat the purchaser, publishes the fact for the sake of reclaiming his liberty, shall not be heard, but shall remain in slavery; for it is dishonorable that a freeman should voluntarily subject himself to servitude. But if he who sold himself, or permitted himself to be sold, should have sufficient property to redeem himself, or, if his parents should choose to give the price of his redemption to him who owns him; then the entire amount for which he was sold shall be returned to the purchaser, and the person who was the object of the sale shall regain his freedom. (formatting from Scott.)[215]

Upon closer inspection, this law, far from proscribing self-sale, actually presupposes its existence! Lenski says that this law shows that "those who sold themselves to defraud the buyer would be enslaved," which is true.[216] The law effectively strips free born self-sellers of their legal right to freedom, which they would typically be able to assert if they were, for example, enslaved against their will or captured in war. But a necessary assumption for this law to make any sense at all is

[214] García Moreno, "From Coloni to Servi," 206.
[215] *Leges Visigothorum* 5.4.10 in Scott, *The Visigothic Code (Forum Judicum)*, 162–63.
[216] Lenski, "Slavery among the Visigoths," 262.

that it is possible to sell oneself in a non-fraudulent way. Nowhere is it or declared that *all* self-sales are fraudulent. The *CE* 300, though heavily reconstructed, makes the same stipulations, with the addition that it only takes effect after a year.[217] The two laws are probably restatements of the same Roman law, as the *Leges Visigothorum* was based in large part on the Code of Euric. The presumption of fraud is generally dismissed as an anachronistic holdover from Roman law, and most scholars focus on the opinion that it is "dishonorable that a freeman should voluntarily subject himself to servitude."[218]

The understanding that self-sale happened relatively often is especially visible in the history of the law, in particular the second half, which was added by Ervig (r.680 – 687) in the late 7th century.[219] Ervig saw some cause to add, or codify as a right, the ability for an enslaved person or their family to buy back an enslaved person's freedom. The ability of a self-seller to buy back his freedom had evidently become an issue – perhaps enslavers were refusing to honor their contracts, though it seems unlikely that royal power would be used to back the oppressed, or perhaps such contracts had simply become common enough to warrant official recognition. The decision to attach this clause to this law, nominally an archaic prohibition against defrauding enslavers, reflects an understanding on the part of Ervig and the legal authorities of the reality and banality of self-sale, and of the law's presupposition of its existence. It is crucial that they chose to allow those who *sell themselves,* not, say, those who are enslaved as punishment for a crime or for failing to pay back a debt, to buy their freedom back, which suggests that the Visigoths understood self-sale slavery as a phenomenon that was distinct from other forms of enslavement.

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[217] *CE* 300 in Karl Zeumer, ed., *Legum Codicis Euriciani Fragmenta*, Monumenta Germaniae Historica, Leges Nationum Geramanicarum, Leges Visigothorum (Hannover, 1902), 15, http://clt.brepolis.net/eMGH/pages/TextSearch.aspx?key=M_EQJ__RFJ.
[218] Rio, "Self-Sale," 670.
[219] Rio, 670.

Rio notes that this would have effectively allowed a freeman to loan himself to an enslaver, an arrangement which has parallels in the Carolingian sources and in the Lombard law discussed earlier, which also presupposes the existence of self-sale.[220] Enslavers could also loan slaves to each other, or more generally use enslaved people as financial instruments. The *Formulae Visigothicae* contain a document in which an enslaver requests a loan of 5 *solidi,* using a slave "for employment in all manner of service" as collateral.[221] So it is perfectly reasonable that poor people would insert themselves into this economy in order to benefit themselves or their families.

The two other relevant documents are FV 36 and 37. Discussion of these formulas is even more sparse than discussions of FV 32, so they merit some introduction. I offer translations of them both as well. In these translations I follow Lenski's practice of rendering the shortened demonstrative pronouns used to anonymize the documents (*ill.*) as blank spaces. FV 36 is a lease or a tenancy agreement. It is most notable for the unusual connection it draws between the tenant and the *colonus,* and I am also interested in the invocation of *xenia*. It reads, in full:

> Tenancy agreement. I, _____, [greet] my lord forever, _____. While from day to day I was suffering poverty and was running here and there to where I could work for my own gain and never arriving there, at that time I ran to your lordship's piety, suggesting that you be pleased to give me land to cultivate by the right of tenancy in your land, which is called _____. This your lordship, agreeing to my petition, put into effect, and you saw fit to give by right of tenancy land in the aforementioned place, as my request was, to the extent of as much as I said. Hence, through the text of this tenancy agreement of mine, I promise that never at any time will I cause any misfortune or damage against your part on behalf of those same lands, but I promise to stand in all things for your advantage, and to bring an answer to my defense. I promise to pay ten percent of the payment or *xenia,* as is customary for a *colonus,* as my yearly rent. But if I will have been forgetful of my tenancy

[220] Rio, 671–72.

[221] Lenski, "Source: Visigothic Manumission Charters"; FV 44 in Gil, *Miscellanea Wisigothica,* 110. It should be noted that the 5 *solidi* number is almost certainly not a standard exchange rate but rather a failure of the complier to fully anonymize the reference document, similar to the references to Cordoba and Sisebut. In other formulas, specific amounts are usually left unspecified. Cf. FV 32, where the price that the enslaver pays the self-seller is not specified, or FV 2, where the things given to the manumitted slave along with their *peculium* are not specified.

> agreement, having endeavored to break the agreement or part of it concerning all of the things which I promised above, I declare under oath on the divine will and the most glorious kingdom of our lord king _____, I swear that you have free power to expel me abroad from the previously mentioned lands, and to apply your rights again as they are owed to you. In this current tenancy I, being present, have promised to you, being present, by word and pledge, I have made a mark with my hand below and, with witnesses having been summoned by me, I hand this over to be confirmed as a contract. This having been done…[222]

FV 37 is another *precaria* formula. It is similar in content to FV 36, stressing the rights of the landlord, but contains noticeably less self-flagellation on the part of the person requesting land. It also lacks the double structure that typically characterizes the *Formulae Visigothicae,* which might suggest that it has a different origin than most of the other documents. Perhaps most strikingly, the tenant completely refrains from referring to his landlord as his *dominus,* a term which in the medieval period often means "lord" but is also the word used for "enslaver." It reads:

> Another tenancy agreement. _____ [greets] _____, my brother in Christ. For it is certain that we [are] in the land of your law of which the word is that, the land for cultivation by right of tenancy situated in that territory is as much as is desired by you for our profit, and which your brotherhood chose to grant to our requests. And therefore I promise that in each year, following the ancient customary payment, of dry and liquid crops and of all animals or orchards or in every possession, which I increase on that same land, a tenth will be paid to you every year. Which if I will produce too little and will depart from this tenancy agreement of mine, I declare under oath…[223]

A *precarium* or *precarius* was a kind of land grant or lease agreement.[224] *Precaria* documents like FV 36 represent one half of a transaction which originates from the practice of gift-giving, the giving of *beneficia.* A *beneficium* in its purest form was a gift, typically but not necessarily of land, in which the recipient was notionally taken into the *familia* of the grantor and

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[222] FV 36 in Gil, *Miscellanea Wisigothica*, 104–5. Translation my own, with the help of Professor Curtis Dozier.
[223] FV 37 in Gil, 105. Translation my own.
[224] For unclear reasons, during the Merovingian period the feminine *precaria* would become more common in the than *precarium/us,* as in the *Formulae Visigothicae.* I do not know why the sources are spelled *praecarium* as opposed to *precarium.* See DMLBS s.v. *praecarius* & *precarious;* John Beeler, *Warfare in Feudal Europe, 730–1200* (Cornell University Press, 1971), 5, http://www.jstor.org/stable/10.7591/j.ctv3s8nvw.

was thus obligated as a dependent family member would be.[225] Even when these gifts did not involve legal obligation, they almost always created social obligations.[226] It is for this reason that earlier medievalists like John Beeler regard them as early precedents to vassalage, though modern scholars like Fouracre criticize his overly "juridical" view of feudalism.[227] Importantly, *beneficia* reverted to their original owners upon the tenant's death; unlike a more typical serf, the tenant's children could not inherit his land. Their impermanence made them popular with the Church, since agents of it were forbidden from alienating God's property but had too much of it to manage on their own.[228] The *precarium/a* was the precursor to or perhaps simply the earlier term for the *beneficium,* the verb used for the request was *precari.*[229]

Thinking With Slaves About Landlords and Tenants

On the face of it these documents are fairly Romanizing already. But a closer examination reveals deeper connections. FV 32 references some very old legal principles. The second sentence, "although it may be established by sanction of the laws," is a reference to the *Lex Romana Visigothorum Paul.* 2.18.1 (also called the *Pauli Sententiae* or variations thereof), a collection of opinions from the Roman jurist Julius Paulus (2nd or 3rd c. AD) which was published in the Breviary of Alaric, which states that "A free man who holds his own status in his power can either improve or deteriorate that status."[230] Even this law here presupposes improving and deteriorating status, as

[225] Paul Fouracre, "The Use of the Term *Beneficium* in Frankish Sources: A Society Based on Favours?," in *The Language of Gift in the Early Middle Ages*, ed. Wendy Davies and Paul Fouracre (Cambridge: Cambridge University Press, 2010), 65–69.
[226] See Wickham, "Compulsory Gift Exchange in Lombard Italy, 650-1150."
[227] Beeler, *Warfare in Feudal Europe, 730–1200*, 3–6; Fouracre, "The Use of the Term *Beneficium* in Frankish Sources: A Society Based on Favours?," 72–73. Later, *beneficia* would often oblige the recipient to military service, which resembles the idea of vassalage more clearly.
[228] Fouracre, "The Use of the Term *Beneficium* in Frankish Sources: A Society Based on Favours?," 70.
[229] Fouracre, 70–71.
[230] Gil, *Miscellanea Wisigothica*, 101 §XXXII n.1; Lenski, "Source: Visigothic Manumission Charters"; *Julii Pauli Sententiarum ad Filium* 2.18.1 in Philipp Eduard Huschke, *Iurisprudentiae Anteiustinianae Quae Supersunt*, 3rd ed., 1874, 442–43: *Liber homo, qui statum suum in potestate habet, et peiorem eum et meliorem facere potest.* Lenski incorrectly cites 2.19.1, the correct citation is 2.18.1, as above.

it proceeds from the assumption that people can and do negotiate with their freedom. This language recalls Rio's reference model for legality, that laws were meant as baselines to be modified rather than strictly enforceable rules. Following this model, we can understand the preamble of the formula as an argument for the legitimacy of the specific modification that follows. FV 32 argues from precedent: The Romans recognized self-sale in the past, therefore the status deterioration that it codifies should also be legal.

In fact, through its narrative, the formula makes a rather elaborate case for its own legitimacy and for the ethics of the transaction. The preamble starts by noting the legal precedent and conceding that self-sale is generally undesirable, and then immediately carves out an exception for those suffering *"necessitate vel miseria aliqua*."[231] It then spells out the cause of this necessity and misery: a *causa*, or legal case. This may seem oddly specific, but the Visigothic habit of enslaving convicted criminals could have resulted in many such scenarios. Regardless, emphasis is put on the poverty and desperation of the self-seller in order to affirm the importance of freedom while also legitimizing the act of voluntarily forfeiting it. Thus, the enslaver can rationalize the act of buying a self-seller as one of charity, again emphasizing their status as a "good enslaver."

Thus, FV 32 is a self-aware application of ancient legal precedent to medieval ethics. The author appeals to ancient laws to legitimate an action whose legality may have been dubious and which he knew was likely to bring him dishonor. By invoking Julius Paulus alongside his self-sale apologia, the author demonstrates a clear awareness of both the contemporary attitudes towards self-sale and the ancient laws about it and uses this to craft an argument in favor of the legitimacy of self-sale: although it is clearly undesirable, it is legal, and people should be allowed to sell themselves if their situation demands it.

[231] FV 32 in Gil, *Miscellanea Wisigothica*, 102.

In FV 36, he invocation of the *colonus* is tied to the term *xenia:* the *xenia* is "customary for a *colonus.*" In Rome, *xenia* in the legal sense referred to small gifts made to regional governors (which they were later banned from taking), typically of food or produce, and less formally it could refer to any small gift made by a dependent to a noble.[232] In the later empire, these gifts evolved into a kind of de facto rent, possibly because the distance between peasants and *coloni* and their absentee landlords made what was once a relatively personal interaction more mercenary.[233] It is certainly this sense in which *xenia* is being invoked in FV 36. Thus, rent is offered in the form of *praestationis* (read *praestatione*) vel *exenia,* as "payment or gift," *ut colonus*, similarly to the ways that *coloni* used to pay their landlords.[234] FV 37 contains a similar 10% rent of everything which the tenant produces, *secundum priscam consuetudinem,* "following the ancient custom."[235] That the rents are the same between FV 36 and 37 indicates that they are both following the same tradition, that of the *colonus.* FV 36 is unusual in that it states this outright, but the fact that FV 37 does not need to do the same suggests that the link between precaria and unfreedom was widely understood.

To García Moreno, this comparison is the only reason that the *colonus* is mentioned at all, and he dismisses the reference as anachronism. He interprets the *xenia* to be an unusual "payment in kind," distinct from the payment described as *praestatio,* thus the *colonus* must be used as a reference for clarification. García Moreno acknowledges the language of FV 37, but interprets it as further evidence that FV 36 is unusual.[236] But FV 37 undermines the apparent distinction

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[232] *Xenia* in Berger, *Encyclopedic Dictionary of Roman Law*, 771; Maciej Jońca, "Provisions for the Proconsul: Some Remarks on D. 1.16. 6.3 in the Kórnik Manuscript of Digestum Vetus," *Classica Cracoviensia*, no. 15 (2012): 126–29.
[233] Leslie Dossey, *Peasant and Empire in Christian North Africa*, 1st ed. (University of California Press, 2010), 247 n.171, http://www.jstor.org/stable/10.1525/j.ctt1pn5x0.
[234] The Latin is odd, see Gil, *Miscellanea Wisigothica*, 104 §XXXVI n.13.
[235] FV 37 in Gil, 105.
[236] García Moreno, "From Coloni to Servi," 205.

between *xenia* and *praestatio* because the rents specified in it are also taken in kind: a tenth annually of the "dry and liquid crops and of all animals or orchards or in every possession which I [the tenant] increase on that same land."[237] It also would not make sense for a contract to single out in-kind payments as unusual, since they were the norm, especially for rents. Most peasants did not have access to the long-distance markets that would allow them to trade produce for money, nor did they as individuals produce cash crops in quantities that would make the trip worthwhile.[238] So García Moreno's claim that "*xenia* constitutes a rarity" is plainly incorrect; payment in kind was the norm, and what was rare was calling it *xenia* and making the explicit connection between *coloni* and tenants. And, even if we were to grant García Moreno's assertion, he cannot explain what "ancient custom" was being followed in FV 37, or the connections in FV 36 to self-sale documents both in and out of the Visigothic corpus.

Furthermore, In FV 36, tenant addresses the landlord in the same way that the self-seller of FV 32 addresses his new enslaver: *Domino semper meo,* "my lord forever," and frequently refers to him as his *dominus.* This language also appears in another self-sale document from Tours, which opens with the greeting *Domino semper meo illo ego ille,* "I, _____, to _____, my lord forever."[239] Thus slavery is employed as a metaphor through which to the *beneficium* can be understood, similarly to the ways in which churchmen were conceptualized as slaves of God. FV 45, a formula from person entering a monastic order, is addressed *Sanctissimo domino meo ill. episcopo ill. servus vester*, "your slave _____, to my most holy lord bishop _____," invoking the common metaphor.[240] Variations of the phrase also appear in other precaria formulas that combine

[237] FV 37 in Gil, *Miscellanea Wisigothica*, 105.
[238] Wickham, *Framing the Early Middle Ages*, 271.
[239] *Formulae Turonenses vulgo Sirmondicae dictae* 10 in Zeumer, *Formulae Merowingici et Karolini Aevi*, 140.
[240] FV 45 in Gil, *Miscellanea Wisigothica*, 111–12; de Wet, *Preaching Bondage*, chap. 2; Glancy, "Slavery and the Rise of Christianity," 458–59.

these religious and secular elements. Three Salic precaria formulas open by addressing the landlord, an abbot or perhaps his monastery, as *Domino mihi semper et in Christo venerabili patri* – "my lord forever and venerable father in Christ" – and a fourth addresses the abbot simply as *Domino mihi.*[241] Contrast this with FV 37, which is addressed *in Xpo fratri*, "to my brother in Christ."[242] Although not universal, the similarity of the language suggests a conceptual connection between the tenant in a *beneficium* with a slave, even in documents where this connection is not made explicit.

The connection between *coloni* and ancestral duties is not unique to the Visigoths, it is found in other early medieval societies as well. In the 864 Edict of Pîtres, for example, Carolingian emperor Charles II the Bald reprimands a group of *coloni* for failing to do their "cart-work and manual labor owed by ancient custom" (*carropera et manopera ex antiqua consuitudine debent*).[243] Medievals were aware of the Roman systems from which they took their law codes. Even when not actually present, the *colonus* was a meaningful reference for the Visigoths to use to structure relationships between landlords and tenants, so they used it.

The stated motivations of the tenants and the self-seller are also remarkably similar across FV 32 and FV 36 (FV 37 does not detail the tenant's motivations). Both emphasize the poverty of the tenant/self-seller, whether it is *egestatem* ("poverty") or *necessitas* ("need, lack"). Both emphasize the piety of the landlord/enslaver. The tenant in FV 36 runs *ad dominationis… pietatem,*

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[241] *Formulae Salicae Merkelianae* 7, 33, 36, & 34 in Zeumer, *Formulae Merowingici et Karolini Aevi*, respectively 243, 253, 255, 254. Translations my own. All of these are addressed *abbati ex monasterio sancti illius, vel cuncta congregatione ibidem* – "to the abbot of the monastery of Saint _____, or indeed to the entire congregation in that place." The specific reading rests on the translation of *vel*, which I have rendered as "or indeed" because it makes little sense for a tenant to owe rent to a congregation but not its leader, or vice versa. Another plausible translation could render the *vel* as "and."

[242] FV 37 in Gil, *Miscellanea Wisigothica*, 105.

[243] Alfred Boretius, ed., *Capitularia Regum Franciae Occidentalis*, Monumenta Germaniae Historica (Hannover, 1890), 323 no.273 cap.29, http://clt.brepolis.net/eMGH/pages/Toc.aspx?title=M_BJO__NMA. Unlike the Visigoths, the Carolingians recognized the *colonus* as a legal status.

and the enslaver in FV 32 buys the self-seller *per mea supplicatione,* framing the request as a prayer.[244] As we have seen before, religious language is nothing new in these kinds of documents, but it would be foolish to dismiss it as mere boilerplate. Here, whatever their legal distinctions, slavery and tenancy are framed the same way, and they are thought to be *doing* the same thing, solving the same problem.

The note in FV 37 that rent is offered "following ancient custom" points to a broad understanding that tenant rent payments were at the very least historically connected to the payments once offered by Roman *coloni.* FV 36 is unusual only in that it makes this connection explicit. It is possible that this connection was in the process of being forgotten at the time of the *Formulae Visigothicae's* original composition, but it is equally possible that it was so ubiquitous that it did not typically need to be stated outright. The similarities that FV 36 shares with self-sale documents like FV 32 further cement this connection. Visigothic landlords don't just use the Roman colonate as a convenient reference for understanding their relationships with their tenants, they apparently claim that their tenants are in direct historical lineage with the *coloni.* Whether or not this is true in fact, it demonstrates that in Visigothic thought Roman *coloni* and medieval *precaria* tenants were connected.

FV 32 demonstrates that self-sale was an accepted element of life in the Visigothic kingdoms. More striking, however, are the connections between master-slave and landlord-tenant relationships. In the self-sale and tenancy formulas, we find this mode of thinking extended out of literature into the law, as Visigothic writers use slavery to make sense of landlord-tenant relationships. It is not clear that the tenant in FV 36 was, as Rio says, "enter[ing] a lord's service

[244] FV 32 & 36 in Gil, *Miscellanea Wisigothica*, 102–5. The Latin in FV 32 is odd: *Per mea supplicatione vester accrevit adsensus.* Perhaps read *adsensus* as *ad* + *sensus* and take the *per* as an unnecessary addition to the ablatives *mea supplicatione*, thus "through my prayer your opinion towards [this self-sale] has increased." Lenski renders the phrase "your consent has acceded to my prayer."

as a *colonus,"* but it is clear that he was entering a lord's service *like* a *colonus.*[245] Perhaps more striking is that all parties involved appear to be fully aware of this.

The Visigoths used Roman law to legitimate their own actions, in this case self-sale, and appealed to ancient practice and ancient laws to make sense of their situations. In these formulas, we find the Visigoths using Roman slavery to conceptualize and contextualize the contemporary relationships between landlord and tenant. This practice is of course not unique to the case of tenancy. As noted above it is relatively common to find individuals entering monastic orders using the language of autodedition and unfreedom to emphasize the seriousness of their commitments to their vows.[246] In both cases, the Visigoths were thinking *with* slavery even if they were not thinking *about* it. Of particular interest here is that the shift from slavery to tenancy is being characterized by the Visigoths in terms of Roman slavery, driven by the same thought about slavery that they inherited from figures like Seneca.

It is tempting to argue that this deployment of slavery for the understanding of other kinds of power dynamics helps to explain why slave and non-slave statuses converged in the Middle Ages. But we must remember that the ideas about slavery that the Visigoths were thinking with came in large part from the Romans, and the Romans themselves used slavery as an organizing metaphor as well. And, accordingly, we find that the status convergence that is mean to differentiate the ancient and medieval periods did happen in Rome.[247]

[245] Rio, "Self-Sale," 673.
[246] Rio, 674; for an example in the *Formulae Visigothicae*, see FV 45 in Gil, *Miscellanea Wisigothica*, 111–12; See also de Wet, *Preaching Bondage*, chap. 2.
[247] Whittaker, "Circe's Pigs," 110–14.

CONCLUSION

> Measureless liar, thou hast made my heart
> Too great for what contains it. "Boy"? O slave! –
> Pardon me, lords, 'tis the first time that ever
> I was forced to scold.
> – Shakespeare, *Coriolanus*

Although Visigothic slavery can look on first blush to have been more severe than Roman slavery, in actual practice as reconstructed through the documents of the *Formulae Visigothicae* it was much more similar to Roman slavery than it first seems, and many of the elements of Visigothic slavery that seem original to them actually have Roman precedent. Of course there were differences, but many of those changes (and many of the continuities) were driven by philosophies about slavery that were inherited from the Romans, whether by Stoicism as mediated through Christianity or by the less formalized cultural milieu. There is a general impulse to consider the late antique and early medieval periods as times of change, especially in discussions about slavery and economic production, but I argue caution here: Roman and Visigothic slavery were simply not that different.

Visigothic manumission practices strongly follow Roman ones. FV 11 appears to be an exemplar of Roman sale practices. Freedmen were not precursors to serfs, nor were they meaningfully more restricted than Roman freedmen. Although some Visigothic laws appear to heavily restrict freedmen, they do not appear to have been strongly enforced and enslavers took pains to get around them. Many of these restrictive laws are also not original to the Visigoths, so if we are to conclude that freedmen were being increasingly bound to their manumitters in the Visigothic period, we must reconsider our view of them in the Roman time as well. Given the amount of evidence for the Roman period, it seems more prudent to assume that Visigothic freedmen were like Romans than that Romans were like the Visigoths. The Visigothic paranoia about fugitive slaves was inherited from the Romans, and appears to have been mostly a non-issue

in actual practice. Self-sale practices seem to have been mostly the same in the Visigothic kingdoms as in Rome and are a notable example in which medievals think with slavery, using it as an organizing principle for the understanding and design of other kinds of power relations, in this case the landlord-tenant relationship. The practice and thought about slavery in the Visigothic kingdoms are characterized primarily by continuity with Roman practice, not a break from it.

Kyle Harper concludes his 2011 book *Slavery in the Late Roman World* by arguing for the historiographical distinction between a "slave society" and a "society with slaves." Roman society was a slave society, he argues, and thus they

> insisted on the centrality of slavery in sexual rules, in habits of violence, in the economy of honor, in the material realm of production, in the legal order. In the mind of the preacher whose words have so often served as our guide [Pope Gregory I, r.590–604], the world was inconceivable without slavery. The household and the city, the rich and the poor, the urban and the rural: slavery was implicated in every aspect of social life. By the late sixth or seventh century, no one was insisting that slavery was central in the production of wealth, in the construction of social honor, or in the order of public law.[248]

The formulas present a challenge to this view. FV 32 and the religiosity of the manumission documents show us that slavery clearly *was* central in the construction of social honor, and slavery was being used to structure relationships like tenancy through legal documents, if not in public law. Furthermore, this wasn't new. The ways in which the Visigoths used slavery to construct honor and order public law were often continuous with the ways in which the Romans used it, and when they weren't, they were often influenced by the same thought about slavery that the Romans held. Even the lack of slaves in economic production wasn't new. In fact, this was one of Finley's key objections to the Marxian model: in Rome, slaves *were never central to economic production,* except in the heartlands of Italy and Sicily from the 3rd century BC to the 2nd century AD.[249]

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[248] Harper, *Slavery in the Late Roman World*, 509.
[249] Shaw, "A Wolf by the Ears," 33–34.

My point here is not to attack this one paragraph of Harper's otherwise excellent book, but to demonstrate how the paradigm of change is taken for granted in thought about slavery. But most productive conversations move beyond this frame. Susan Mosher Stuard has shown that women continued to be trafficked and enslaved in large numbers well into the high Middle Ages, and were important in domestic settings even when male slaves ceased to dominate economic production.[250] Carl I. Hammer and Ruth Mazo Karras have shown that slavery was prominent in medieval Bavaria and Scandinavia.[251] As Samuel S. Sutherland puts it in his assessment of the state of the field, "it seems that—almost wherever one looks beyond France—slavery of an early medieval type can be found to have continued in some significant way well into the central middle ages."[252]

We might also consider that unfreedom was not declining but broadening and becoming less concrete. We have seen how *coloni* became associated with tenants and possibly serfs, but Céline Martin has also shown that during the reign of Ervig slavery became associated with exile.[253] Similarly, the well-documented expansion of terms for "slave" might be taken not as evidence of slavery's declining importance but of its expanding scope.[254] Discussions that focus on the extent to which historical places, peoples, and practices fit or do not fit reconstructed definitions of slavery, or of slave societies, or of modes of production, are probably limiting the better and more interesting discussions of how ancient and medieval people thought about, used, and experienced slavery themselves, both as a form of unfreedom and as an organizing metaphor.

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[250] Susan Mosher Stuard, "Ancillary Evidence for the Decline of Medieval Slavery," *Past & Present*, no. 149 (1995): 3–28.
[251] See Carl I. Hammer, *A Large-Scale Slave Society of the Early Middle Ages: Slaves and Their Families in Early Medieval Bavaria* (Burlington, Vermont: Ashgate, 2002); and Ruth Mazo Karras, *Slavery and Society in Medieval Scandinavia* (New Haven, CT: Yale University Press, 1988), https://hdl.handle.net/2027/heb01492.0001.001.
[252] Samuel S. Sutherland, "The Study of Slavery in the Early and Central Middle Ages: Old Problems and New Approaches," *History Compass* 18, no. 11 (November 1, 2020): 6, https://doi.org/10.1111/hic3.12633.
[253] Céline Martin, "Ervig and Capital Penalties: The Way of Exile," in *Framing Power in Visigothic Society*, ed. Céline Martin and Eleonora Dell' Elicine, Discourses, Devices, and Artifacts (Amsterdam: Amsterdam University Press, 2020), 149–51, https://doi.org/10.2307/j.ctvw1d4xc.9.
[254] Stuard, "Ancillary Evidence for the Decline of Medieval Slavery," 7.

We moderns ought to have that discussion too. What is at stake in our discussions of slavery, and what are we using it to think about? To the Mainz School and the Soviets, slavery and serfdom were key to the truth of Marx's thought, the extent to which Communist thought accurately described the world, and thus the legitimacy or lack thereof of the foundations of both the Soviet Union and the Western bloc. In the United States, slavery is key to the understanding of modern racial politics and the legitimacy of the American identity.

Joseph Vogt, the founder of the *Forschungen zur antiken Sklaverei* at the Mainz Academy, began his career arguing along the lines of what Finley describes as the "moral-spiritual" approach to ancient slavery that dominated what little discussion there was in the late 1800s and early 1900s.[255] Probably in part to counter the atheism of the Soviets, he attempted to rehabilitate the early church, arguing that early Christians were abolitionist in principle. So even without abolition, Christianity brought about "a new kind of evaluation of property and power" that was more ethical, if not completely ideal, than the earlier practice.[256] Downplaying the complicity of Christianity and Christian institutions in the evils of the world is a habit of religious figures and conservatives to this day – Donald Trump's "1776 Report," a direct (and largely ahistorical) counter to the "1619 Project," an effort to center slavery in the history of the United States, argues that "[a]nti-slavery literature was largely faith-based and spread through the free states via churches."[257] What is absent from these discussions, even in most of the 1619 Project, is discussion of *actual enslaved people*, or even slavery or freedom as concepts. Even Christianity is mostly an aside here, slavery is instead being used to discuss American history and, in the 1776 Report, "identity politics."

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[255] Finley, *Ancient Slavery and Modern Ideology*, 80–81.
[256] Joseph Vogt, *Ancient Slavery and the Ideal of Man*, trans. T.E.J. Wiedemann, 1st ed. (Cambridge, Mass.: Harvard University Press, 1974), 145; Finley, *Ancient Slavery and Modern Ideology*, 84–86.
[257] The President's Advisory 1776 Commission, "The 1776 Report," January 2021, 26, https://trumpwhitehouse.archives.gov/wp-content/uploads/2021/01/The-Presidents-Advisory-1776-Commission-Final-Report.pdf.

I am not arguing that slavery studies should eschew politics. I don't think that's possible, nor do I think it's desirable. There would be little point to discussing any aspect of history if it were not important to us in modernity. Professor Bisaha observed in a comment on a draft of this thesis that our modern notions of freedom and slavery are often binary: like Roman and Visigothic law, we can only really conceive of people as either "free" or "enslaved." In her words, "what does it mean to be 'sort-of free?'" Who would fall into that category, and what should we do about it? The authors of the 1776 Report, for example, are deeply invested in the idea that all actionable discrimination was abolished alongside slavery and the worst of the Jim Crow laws. To them, legal freedom is everything, any acknowledgement that people might be unfree in ways not explicitly written into law is "identity politics" that amounts to "rejecting the Declaration's principle of equality" (as if the existence of a principle implies its universal application).[258]

The point is, freedom and unfreedom are subjects of deep ideological importance in modern politics and national identity. In the 1776 Commission's own words, "[t]o be an American means something noble and good. It means treasuring freedom and embracing the vitality of self-government."[259] So it matters, politically, whether freedom is achieved through class struggle or by God-given right, and whether Black people in the United States must be "free" because they are no longer technically enslaved. And it is because of this that we need a clear understanding of both the reality of historical slavery and of the ways in which we use it to think.

Late antiquity and the early medieval period are typically thought of as times of change. To Marxists, the period marks the shift from the slave to the feudal mode of production, to Vogt and others like him, the medieval period is characterized by the rising influence of Christianity, and modern scholars like Harper now take it for granted that it was a period of transition. In all

[258] The President's Advisory 1776 Commission, 30.
[259] The President's Advisory 1776 Commission, 20.

cases, there is a general consensus that slavery was replaced by serfdom. I think this is a reductive way to characterize the period, but if we must discuss the shift from slavery to serfdom, we ought to take more seriously the possibility that it happened during Roman times or even not at all. There is no reason why slaves, *coloni*, and serfs could not have coexisted, they did it perfectly well in the medieval period. C.R. Whittaker has already shown strong continuities in the number of slaves and the methods of their organization from as early as the Roman Republic into the Carolingian period.[260] This evidence from the documents of the *Formulae Visigothicae* further suggests continuity in both social and legal practice between the Roman and medieval periods. Niall McKeown has shown how the interpretation of the Roman evidence has changed radically over time along with the ideological commitments of the people interpreting it.[261] Given this, I have to wonder whether and to what extent the idea that there was a meaningful shift from slavery to serfdom, even when divorced from Marxian historiography, is driven by an insistence on the distinction between "ancient" and "medieval," and I wonder what benefit it truly brings us.[262]

[260] Whittaker, "Circe's Pigs," 91–92, 110–14.
[261] Niall McKeown, *The Invention of Ancient Slavery?*, Duckworth Classical Essays (London: Gerald Duckworth & Co., 2007).
[262] Sutherland, "The Study of Slavery in the Early and Central Middle Ages: Old Problems and New Approaches," 5; McKee, "Slavery," 282.

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