

Part III

BEHIND AND BEYOND THE WRITTEN

ORDEAL BY INNOCENTS
THE LAW AND LITURGY OF
TRIAL BY WATER IN EARLY MEDIEVAL IBERIA

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ABSTRACT This article studies trial by hot water in late antique and early medieval Iberia across three genres of source material. I first consider the marginal position of the law on “the ordeal of the cauldron” in the oldest copies of the Visigothic code, and translate its text. I then catalogue and synthesize the rich casebook of charters that document the practice of ordeal from Asturias-León, Navarra, and Catalunya down to 1031. Finally, I introduce a guide to the liturgy of trial by hot and cold water in a manuscript copied at Barcelona in 1011, and translate its text. I argue that the law is not of Visigothic origin, but emerged out of the liturgy and practice of ordeal from the ninth century, and was then read back into the code to acquire the legitimacy of a Visigothic past.

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Introduction

Then there is the case of the English pilgrim. When he returned from the realm of Jerusalem without his companion, as his comrade was making a detour to Santiago [de Compostela], the ordeal was inflicted on him by the parents of his comrade, on their accusation that he had murdered him on the journey: for this he too underwent the judgement of water, and he died, while his comrade returned to England shortly after his hanging.

Peter the Chanter (d. 1197)¹

Trial by ordeal reminds us that “there is a world elsewhere” with rules very different to our own.² To entertain the notion that divine will should decide the outcome of a court case is to confront something essentially strange about late antique, medieval, and even early modern justice: its superstition, its unreason, and, as the poor English pilgrim experienced, its caprice.³ To contemplate the practice is to conjure a nightmare spectre of witches and witchcraft, of the blameless scapegoat bound and submerged beneath the surface of the water, proven innocent only in death.⁴ Such testing seems so far fallen from the rational edifice of Roman law. True, in the *legis actio sacramento* we may just glimpse an archaic ordeal by oath, but a judge, not the gods, decided the right of the matter, and the deposit which each party staked was to pay for sacrificial offerings in expiation of perjury.⁵ Evidence for trial by ordeal proliferates in the post-imperial world, across the “barbarian” kingdoms and amongst the Anglo-Saxons and the Irish, as if symptomatic of “Dark Ages.”⁶ According to Tacitus, the ancient Germanic peoples took their gods with them into battle, and held that single combat—a duel—

¹ *Verbum abbreviatum*, 78 (202), in *Patrologiae cursus completus*, ed. Migne, 230–31; Bartlett, *Trial by Fire and Water*, 160.

² Shakespeare, *Coriolanus*, III, 3, l. 165; Wood, “There is a World Elsewhere!”

³ Colman, “Reason and Unreason”; Radding, “Superstition to Science”; Van Caenegem, “Reflexions”; Israel, “Sehnsucht nach Eindeutigkeit?”; Bell, “Lawfinding, Duality, and Irrationality.”

⁴ Caciola, *Discerning Spirits*, 225–73; Tóth, “River Ordeal”; Levack, *Devil Within*, 191–214.

⁵ Cicero, *Pro Caecina*, 97; Varro, *De lingua Latina*, 5.180; Fiori, “Ordalie e diritto romano,” 112–28.

⁶ Hexter, *Equivocal Oaths*, 4–9; Bartlett, *Trial by Fire and Water*, 4–12; Keefer, “Donne”; Archan, “Ordeal by Fire”; Hill, “Weight of Love”; Moreno Resano, “Observaciones”; Jurasinski, “Emergence of the Ordeal.”

could divine the outcome of a campaign.⁷ These beliefs seem to have survived conversion to Christianity, and Gregory of Tours (d. 594) narrates an ordeal from the Merovingian kingdoms of the later sixth century, in which a Catholic deacon and an Arian priest sought to resolve a dispute by seeing who could retrieve a ring from a cauldron of boiling water. The practice is cited but not described in the “pact” of Salic law dating back to the reign of Clovis (r. 481–511): our deacon applied salve and ointment to save his arm, but the ruse was discovered, and another deacon from Ravenna then appeared and fished out the ring himself, miraculously sustaining no injury.⁸

Yet this early medieval account of an ordeal is only “Germanic” in setting, and the Old Testament is far richer than Salic law in models for trial by water.⁹ Most fully developed is a ritual for testing a wife suspected by her husband of adultery: in the presence of a priest, she would take oath on a barley offering and drink a cup of water and dust from the tabernacle; if guilty, she would suffer, if innocent, be ready to conceive.¹⁰ Similarly, when the Israelites had rejected foreign gods, Samuel poured out water for the Lord, and after fasting and confession they were judged for their idolatry.¹¹ The heavenly fire summoned by Elisha both condemned his Samaritan opponents and proved him to be a man of God.¹² In the New Testament, water became the key to salvation itself through John the Baptist and the baptism of Jesus.¹³ Christ walking on the water was a miracle, but also an ordeal of belief for the Apostle Peter, whose doubt was exposed by his sinking.¹⁴ In a sense, all Christian miracles followed that model, as a trial of faith for the petitioner, and maybe the intercessor too.¹⁵ Whether the Church reached for these precedents to accommodate pagan Germanic practices or they simply converged lies well beyond our scope; the divinatory duel depicted by

7 Tacitus, *Germania*, 7, 10; Woolf, “Ethnography”; Rojas Donat, “Duel in Medieval Western Mentality.”

8 Gregory of Tours, *Gloria martyrum*, 80, in *Gregorii episcopi Turonensis miracula et opera minora*, ed. Krusch, 92–93; *Pactus legis Salicae*, 53, ed. Eckhardt, 200–203; cf. Kerneis, “Legal Pluralism.”

9 Eidelberg, “Trial by Ordeal.”

10 Numbers 5:11–31; McKane, “Poison, Trial by Ordeal, and the Cup of Wrath”; see also Monferrer-Sala, “Una ordalía atribuida al rey Salomón.”

11 I Samuel 7:3–6.

12 II Kings 1:9–14.

13 Matthew 3; Mark 1:1–11; Luke 3:1–22; John 1:19–34.

14 Matthew 14:22–33; Mark 6:45–52; John 6:16–21.

15 Brown, “Society and the Supernatural,” 307–9.

Tacitus might find a ready parallel in the contest of David and Goliath to end the war between the Israelites and Philistines, just as Beowulf vowed to Hrothgar that by taking on the monster Grendel in single combat he would save one and all through the judgement of God.¹⁶ In truth, the ordeal is as old as history, and can be found around the world, in Asia, Africa, Mesoamerica, and beyond.¹⁷

In early medieval Europe, the written record of trial by ordeal becomes dense enough for study with the advent of the Carolingians in the later eighth century, and the “heyday” of its practice lasted until the early thirteenth.¹⁸ The Fourth Lateran Council of 1215 banned the clergy from involvement in judicial decisions resulting in bloodshed: for ordeals, priests were prohibited from blessing the elements—not an outright ban, as was the case for judicial duels, but a brake nonetheless.¹⁹ The varieties of ordeal are many and often grotesque, but to trial by combat a core of three others can be added: by hot water, from which one tried to retrieve an object such as a stone by hand, and innocence was witnessed by intact or healed skin; by cold water, in which one was plunged, usually bound, and guilt was proven by floating (“rejected” by the water); and hot iron, a variant of hot water whereby one grasped or stood on metal or a rod.²⁰ They were not exclusive, and Louis the Younger (r. 876–882) had three groups of ten of his troops undergo the ordeals of hot water, cold water, and hot iron upon his accession in 876 to see if God judged that he should inherit his share of the realm.²¹ Yet ordeal was not without its detractors, as Charlemagne (r. 768–814) implicitly acknowledged in a capitulary from 809 mandating

16 I Samuel 17; Bloomfield, “Beowulf,” 545–47.

17 *La Preuve*; Lea and Howland, *Ordeal*, 3–31; Bartlett, *Trial by Fire and Water*, 2–3; Archan et al., eds., *Ordalies*.

18 Bartlett, *Trial by Fire and Water*, is the standard study in English (cf. Palmer, “Trial by Ordeal”), with Hexter, *Equivocal Oaths*, for literary uses of the ordeal; see also Morris, “*Judicium Dei*”; Hyams, “Trial by Ordeal”; Kerr, Forsyth, and Plyley, “Cold Water and Hot Iron”; Head, “Saints, Heretics, and Fire”; Powers and Attreed, “Justice, Conflict, and Dispute Resolution”; and Jacob, *Grâce des juges*.

19 Baldwin, “Intellectual Preparation for the Canon of 1215”; Fraher, “IV Lateran’s Revolution in Criminal Procedure”; McAuley, “Canon Law and the End of the Ordeal.”

20 Barthélemy, “Diversité”; Makó Lupescu, “Between the Sacred and the Profane.”

21 *Annales Bertiniani*, ed. Waitz, 132; cf. Continuation of Aimoin of Fleury, *Gesta Francorum*, 5.34, in *Aimoini monachi inclityi coenobii D. Germani a Pratis*, ed. Du Breul, 329–30.

“that everyone should believe the judgement of God with no uncertainty.”²² After all, the lesson of Satan testing Christ—tempting him in his wilderness fast and bringing him to the apex of the temple and the mountaintop—was that the Lord should not be put on trial.²³ Already in the early sixth century Cassiodorus (d. 585), writing on behalf of Theodoric (r. 493–526), was calling for an end to judicial duels amongst the “barbarians” of Pannonia, and early in the ninth century Agobard of Lyon (d. 840) wrote a treatise against those who believed that divine judgement is truly revealed by fire, water, or arms.²⁴ Such ambivalence is the starting point for this study of ordeals in early medieval Iberia, where trial by water, though employed as a tool for settling disputes, emerges far more clearly from liturgy than law.

The first ordeal in Iberian history took place not in Iberia, but at the palace of Louis the Pious (r. 814–840) in Aachen, emerging from the maelstrom of Carolingian frontier politics in Catalunya. Bera (d. 844), who ruled the counties of Razès, Conflent, Barcelona, Girona, and Besalú, stood trial in January 820, accused by Sunila of undermining imperial interests: by pursuing a policy of truce with the emirate of Córdoba, he was hampering efforts to bring to heel the Basques and Aragonese beyond the frontier. The poet Ermoldus Nigellus (*fl.* 824–826) dramatizes the episode to illustrate the “ancient custom” (*mos...antiquus*) of the Franks to settle questions of treason by judicial combat. He identifies both parties as Visigoths, and when Bera challenges Sunila to a duel he has him call it “the spears of Mars” (*Martia tela*) as well as “our way” (*more...nostro*). Then, by “the laws of the Franks” (*Franconum iura*), they ride into battle “using a new technique” (*arte nova*) of spear and sword “hitherto unfamiliar to the Franks” (*Francis antea nota minus*). Bera was defeated, stripped of his counties, and after commutation of his death penalty exiled to Rouen.²⁵ Does this witness an ancient Visigothic custom of ordeal? The poet is quite unclear about whose

22 *Capitularia regum Francorum*, 62.20, ed. Boretius, 150; Bartlett, *Trial by Fire and Water*, 70–102.

23 Matthew 4:1–11; Mark 1:12–13; Luke 4:1–13; see Deuteronomy 6:16.

24 Cassiodorus, *Variae*, 3.23–24, in *Magni Aurelii Cassiodori Variarum libri XII*, ed. Fridh and Halporn, 113–15; Agobard of Lyon, *Contra iudicium Dei*, in *Agobardi Lugdunensis opera omnia*, ed. Van Acker, 31–49; Gaudemet, “À propos de la preuve”; and see now Bronner, “Judgement of God.”

25 Ermoldus Nigellus, *In honorem Hludowici*, 3, ll. 543–622, in *Poetae Latini aevi Carolini II*, ed. Dümmler, 56–58; d’Abadal i de Vinyals, *Els primers comtes catalans*, 222–30; Lewis, *Development of Southern French and Catalan Society*, 44–45; Iglesia Ferreirós, “El proceso del Conde Bera,” esp. 189–98; Chandler, *Carolingian Catalonia*, 60–62, 72–74.

(Frankish, Visigothic, even Roman) is what (the judicial combat or the duelling technique), while the account by the Astronomer (*fl.* 840–841) focuses less on the contest held “according to their own law” (*secundum legem propriam*) than on the moderation of the punishment from death to exile, in terms suggesting that he had Visigothic treason law in mind.²⁶ The only other contemporary Iberian mention is in a Catalan court case of 1018, when Hug I (d. 1040), count of Empúries, proposed the duel, but the formidable Ermessenda of Carcassonne (d. 1058), countess of Barcelona, Girona, and Osona, declined it on the grounds that “Gothic law does not decree that disputes be settled by combat” (*lex Gotica non iubet ut per pugnam discutiantur negocia*).²⁷ If this is true, then what ordeal, if any, does Visigothic law decree, and how was it realized in practice?

The Law

Visigothic law as we have it is the code known as the *Liber Iudiciorum* or “Book of Judgements,” first promulgated in 654 by the Visigothic king Reccesuinth (r. 649/53–672), then revised and reissued in 681 by Erwig (r. 680–687). One of the most ambitious and accomplished codifications from post-imperial Western Europe, its twelve books address legal philosophy and procedure, family and relationships, business affairs and crime, robbery and damage to person and property, ties of obligation and dependence, divisions of space and time, doctors, traders, and, in conclusion, an extraordinary series of anti-Semitic legislation designed to limit, and ultimately erase, Jews as a distinct community in the kingdom.²⁸ The code presents as a uniform bloc, but this disguises an ideology of good kingship and orthodox rule, reflected in the assigning of credit for the authorship of laws to certain kings alone; in part, it was the product of iterative case law, as Visigothic rulers issued responses to petitions brought before them.²⁹ Yet the most remarkable, and least investigated, feature of the code is that Visigothic law

²⁶ Astronomus, *Vita Hludowici imperatoris*, 33, in *Theganus*, ed. Tremp, 398–401; cf. *Annales regni Francorum*, s.a. 820, ed. Pertz and Kurz, 152; Barrett, “The Text of Visigothic Law in Practice.”

²⁷ *Salrach* 178; see <https://epistolae.ctl.columbia.edu/letter/25967.html>, accessed December 7, 2023; Bowman, “Countesses in Court,” 56–59; with *Salrach*, “Les modalités du règlement des conflits en Catalogne,” 118–19; Oliva Manso, “La excepcionalidad del duelo judicial”; Rodenbusch, “*Libellus de batalla facienda*.”

²⁸ *LI*; *Estudios*, 207–590.

²⁹ Barrett, *Text and Textuality*, 259–60.

as we have it is entirely a product of the post-Visigothic world. Study of the text is post-Visigothic: the oldest surviving copy dates from the early eighth century.³⁰ And study of its practice is post-Visigothic too: though the code presumes the conduct of business in writing, documentary sources before the Muslim conquest of 711 are few and fragmentary, a handful of charters and the *pizarras* (slates), preserving some echoes of laws but no sign of what the code comprised.³¹ Lacking an anchor in the period of its creation matters, because Visigothic law then became deeply embedded in the politics and the documentary and judicial processes of the post-Visigothic centuries, which furnish all our evidence for its text.

By the ninth century, if not from their very origins, the early medieval kingdoms of Asturias-León and Navarra cultivated an identity of continuity, which their kings reinforced by issuing no secular or canon law. Instead, they observed the normative monuments of their putative predecessors, the Visigothic code and the *Hispana* collection of Church councils, in addition to the ongoing use of Visigothic monastic rules and liturgical books. More than any other text, the *Liber Iudiciorum* defined the cultural inheritance of these realms, whereby the legitimacy of kingship itself was expressed in continuity of law. In parallel, while charters from early medieval Iberia routinely and effectively cited a wide range of normative sources, the key component of the written network in which they situated themselves was Visigothic law.³² The possible consequences of this transmission on what constitutes that law, however, are not reflected in its standard edition. When Karl Zeumer (1849–1914) edited the code in 1902, he printed it in two neat columns based on historical instead of textual considerations, in other words representing the “official” Reccesuinth and Erwig recensions, the latter either “pure” or including novels of Egica (r. 687–702): he based each on only four witnesses, while labelling another twenty codices as “inferior forms,” signed V for being “compiled in varied manner.”³³ The shortcomings of his edition are well known; scholars have since identified a further fifteen manuscripts, and delineated how “inferior” form and “varied” compilation are reflections of three main strands in post-Visigothic use of the Visigothic

30 Vatican City, Biblioteca Apostolica Vaticana, MS Reg. lat. 1024; Barrett, “Adultery Law.”

31 Barrett, “God’s Librarian,” 44–53; cf. Wormald, “*Lex scripta*,” esp. 18–37; Wormald, “*Leges Barbarorum*,” 26–28, 35–38.

32 Barrett, “Hispania at Home and Abroad,” 90–92; Barrett, *Text and Textuality*, 259–313.

33 *LI*, xix–xxv.

code, mapping onto Catalunya, Navarra (here La Rioja), and Asturias-León (including Castilla).³⁴

The relationship between text and practice comes into focus in the case of the ordeal, which highlights the urgency of examining the potentially dynamic transmission of the code. Visigothic law as we have it does regulate trial specifically by hot water, albeit without any detail on the processes involved, but the relevant law is absent from the oldest manuscript of the code, dating to just after the fall of the Visigothic kingdom in 711: that copy was made in the eastern Pyrenees (at Urgell or Cerdanya), and uniquely preserves the “pure” Reccesuinth version without any elements of the Erwig revision or additions by Egica.³⁵ In fact, this law does not appear in the tradition until the early ninth century, and then only as a title rubric. I summarize its evolution here using the manuscript sigla of Yolanda García López (Table 7.1).³⁶

MS F can be localized quite precisely to Girona (Catalunya), in 827 or soon after, thanks to a note recording the arrival of the Umayyad general Abū Marwān on October 10 of that year, and it contains a partial Erwig version with novels of Egica, reflecting local knowledge and use of the code.³⁷ Curiously, the ordeal law is listed in the title index, but the rubric and text were either suppressed from or never included in the main body. MS A is dated May 1, 976, and was copied at San Martín de Albelda (La Rioja) by the scribe Vigila, a joy of calligraphy and illumination. It transmits both the *Hispana* and the code together with a group portrait of Reccesuinth, his father Chindasuinth (r. 642–653), and Egica, but not Erwig, as past lawgivers. While descended from MS F, it reflects the use of other exemplars too, offering an individual treatment of the Reccesuinth and Erwig versions with additions from canon law.³⁸ This is the earliest testimony to a text, rather than a rubric, of the ordeal law. MS E is dated to 992, and was copied at San Millán de la Cogolla (La Rioja) by the scribe Belasco: though modelled on MS A, it is not a plain copy, and has been revised from other exemplars of the code.³⁹

34 Díaz y Díaz, “Lex”; García López, “La tradición del Liber Iudiciorum”; *Estudios*, 7–37; Collins, *Visigothic Spain*, 223–46.

35 *Estudios*, 41–42.

36 *Estudios*, 35–36.

37 *Estudios*, 55–60; Alturo, “*Liber Iudicum*”; the note can be found in the lower right-hand corner of fol. 7r (see <https://gallica.bnf.fr/ark:/12148/btv1b84559359/f23.item>, accessed December 7, 2023); Mundó, “Manuscrits del ‘Liber Iudiciorum,’” 79–80.

38 Díaz y Díaz, *Libros y librerías*, 63–71; *Estudios*, 121–24.

39 Díaz y Díaz, *Libros y librerías*, 155–62; *Estudios*, 124–25.

Table 7.1. Ordeal Law in Iberian Manuscripts (711–1031)

Date	West (Asturias-León)	La Rioja (Navarra)	East (Catalunya)	Law
9th c. (early)			MS F: Paris, Bibliothèque nationale de France, MS lat. 4667 (dated ca. 827), fol. 14r. ⁴⁰	2.1.32
10th c. (late)		MS A: San Lorenzo de El Escorial, Real Biblioteca del Monasterio, MS d-I-2 (dated 976), fol. 366r–v. ⁴¹		
		MS E: San Lorenzo de El Escorial, Real Biblioteca del Monasterio, MS d-I-1 (dated 992), fol. 402 ^{bis} r. ⁴²		
	MS T: Madrid, Biblioteca Nacional de España, MS 10064 (dated 10th c. <i>ex.</i>), fols. 72v–73r. ⁴³			6.1.3
11th c. (early)			MS B: San Lorenzo de El Escorial, Real Biblioteca del Monasterio, MS Z-II-2 (dated 1011), fol. 142v. ⁴⁴	

MS T was produced in the late tenth century, somewhere in Castilla or Asturias-León, potentially in Galicia or Portugal. Elements recall MSS V and F, but its novels of Egica constitute a distinct branch of transmission; by the twelfth century it resided in Toledo, where Arabic annotations, transla-

⁴⁰ See <https://gallica.bnf.fr/ark:/12148/btv1b84559359/f37.item>, accessed December 7, 2023.

⁴¹ See <https://rbme.patrimonionacional.es/s/rbme/item/13434> (images 254–55), accessed December 7, 2023.

⁴² See <https://rbme.patrimonionacional.es/s/rbme/item/13267> (image 188), accessed December 7, 2023.

⁴³ See <https://bdh-rd.bne.es/viewer.vm?id=0000059709> (image 76), accessed December 7, 2023.

⁴⁴ See <https://rbme.patrimonionacional.es/s/rbme/item/14308> (image 287), accessed December 7, 2023.

tions of some laws, were added.⁴⁵ Uniquely, the ordeal law lacks a rubric, repurposing the opening words in place of one. MS B is dated July 11, 1011, and was copied in Barcelona by the scribe and judge Bonsom, entitled *Liber Iudicum Popularis* so as to distinguish it from canon law. While this copy has been influenced by MSS F, A, and E, it is a revised edition for fellow jurists, with the addition of contextual materials, lexical aids, and glosses. Initially MS B did not include the ordeal law, but immediately after Bonsom had copied it the text started being modified and annotated; early in the process a folio was inserted incorporating the law, but the scribe neglected to update the title index, which makes no mention of it.⁴⁶ This is the first, and only early medieval, copy to assign the law to the reign of Egica.

Based on the manuscript evidence, the ordeal law developed and migrated as part of the Visigothic code across the early Middle Ages. First appearing as a rubric, little more than a legal concept, in the early ninth century (MS F), it was tacked onto the end of Book 2, Title 1, on judges and judicial procedure, after an unrelated law of Reccesuinth on disobedience to royal commands.⁴⁷ Remaining in place, it had acquired substantive legal text by the late tenth century (MSS A and E), before being moved to the more relevant Book 6, Title 1, on bringing accusations, between a pair of laws on the use of torture, which it explicitly moderates (MSS T and B, representing “Western” and “Eastern” branches).⁴⁸ Of the four codices transmitting a law with content, the earliest three (MSS A, E, and T) date to just before or during the reign of Vermudo II (r. 982/84–999), when the royal notary and chronicler Sampiro hints at renewed or intensified engagement with the Visigothic code.⁴⁹ The fourth manuscript (MS B) witnesses the final phase in the evolution of the law, taking on royal authorship in Egica, conceivably the product of informed guesswork by the legal students of Barcelona. In the background to this process of development and migration, trial by water is documented (as we shall see) in regular practice from the early tenth century, becoming progressively more common into the early eleventh, which raises the question of potential feedback into its consolidation as a law in

⁴⁵ *Estudios*, 155–61; Aillet, “Recherches,” 107–8.

⁴⁶ *Estudios*, 84–92; *LIP*, 125–36 (cf. 483, where the rubric is mistakenly transcribed in the title index).

⁴⁷ *LI* 2.1.33.

⁴⁸ *LI* 6.1.2, 6.1.4.

⁴⁹ *Historia Silensis*, 25.10, in *Chronica*, ed. Estévez Sola, 194; Barrett, *Text and Textuality*, 287.

the code. Could the ordeal law even be early medieval rather than Visigothic, contrived in recognition of reality and read back into the legitimating past? Dynamic transmission seems confined to the header: the body is fairly uniform, though MS T has a degree of variation in wording. There is also some differentiation in the terms for “ordeal,” as MSS A, E, and B use both *examen* and *examinatio*, while MS T employs the latter term alone, and alternates uniquely between *c-* and *k-* for “cauldron.” Otherwise, once the law had entered the code and gained a body, its authorship and location in book and title were what changed in time.

But when did the ordeal law enter the Visigothic code? The question of whether it is authentically or anachronistically present in the *Liber Iudiciorum* has long been open: if it is what it seems, a Visigothic law, it has left only slight proof of itself in the period.⁵⁰ There are definite stylistic similarities between its text and a novel on absconding freedmen ascribed to Egica and Wittiza (r. 694–710), though this only demonstrates that one influenced the other, not when.⁵¹ The sole potential cross-reference to it in the code represents the very last Visigothic legislation, another novel of Egica issued at Córdoba late in 702, which calls for interrogation of fugitive slaves through interview (*vivida indagazione*), torture (*questionum tormenta*), or a “penal ordeal” (*penali examinatione*), and, in cases of sale, for their purchasers to take an oath before the slaves are subjected to an “ordeal of penalty” (*examinatione pene*).⁵² Both clauses seem to refer to some judicial process of *poena*, a term normally meaning “punishment” rather than denoting procedure, but it cannot be the *examinatio* of the ordeal law, since that applies specifically to freemen. Nonetheless, both laws have at times been read together as evidence of the incipient demise of the Visigothic kingdom, its Roman gloss yielding to grim ferocity or resurgent barbarism.⁵³ Outside of the code, a canon from the Second Council of Zaragoza (592) requires that potentially Arian relics should be “tested by fire” (*igne probentur*) to prove their authen-

50 *Colección de fueros municipales y cartas pueblas*, ed. Muñoz y Romero, 22–23n34; García-Gallo, “El carácter germánico,” 600–601; García-Gallo, “Consideración,” 407–9, 418; Iglesia Ferreirós, “El proceso del Conde Bera,” esp. 69–104; Salrach, “Prácticas judiciales,” 1020–21; see García López, “La tradición del Liber Iudiciorum”; *Estudios*, 513–17.

51 *LI* 5.7.20; *Estudios*, 525–28.

52 *LI* 9.1.21.

53 Poveda Arias, “Relectura”; e.g. Thompson, *Goths in Spain*, 259; King, *Law and Society*, 22, 121.

ticity, but the language and context are remote from the ordeal law.⁵⁴ There is one passage in the *Common Rule*, composed in the milieu of Fructuosus of Braga (d. 665), which exempts the lay representative of a monastery in litigation from “oath and penalty” (*iuramento et poena*), yet this is scarcely indicative either given that *poena* is not used for “ordeal” in the law.⁵⁵ As such, its absence from the earliest known manuscript of the code, dating to the early eighth century, could be taken as the *terminus post quem* for the development of this specific law out of a general Visigothic legal category of ordeal, and its presence as a bare title in MS F of the early ninth century a tentative first step towards giving it substance.⁵⁶

Translation: The Law⁵⁷

[MSS FAE] 32.

[MS T] 3. [MS B] 3.

[MSS FAE] –

[MS T] – [MS B] King Flavius Egica.

[MSS FAE] How the judge should investigate cases through the ordeal of the cauldron.⁵⁸

[MS T] – [MS B] How the judge should investigate cases through the ordeal of the cauldron.

[MSS AETB] We have learned that many men have complained that many evils have been suffered by freeborn men, as they believe that investigation⁵⁹ is to be pursued in [cases] worth 300 *solidi*.⁶⁰ But we now decree through [this] beneficial ordinance that, even when [the case] be of an offence committed of small value, we order them, once detained by the judge, to go through the ordeal of the cauldron,⁶¹ and when the daring of

⁵⁴ II Zaragoza 2, in *Concilios visigóticos e hispano-romanos*, ed. Vives, with Marín Martínez and Martínez Díez, 154.

⁵⁵ *Regula communis*, 3, in *Santos Padres Españoles, II*, ed. Campos Ruiz and Roca Meliá, 177–78.

⁵⁶ See García López, “La tradición del Liber Iudiciorum,” 388–91, for a semi-contrary argument.

⁵⁷ This translation is based on *Estudios*, 528–42 (532–34); cf. *LI* 6.1.3.

⁵⁸ *per examine caldarie*.

⁵⁹ In this context, by torture: *LI*, s.v. *questio*, 552; King, *Law and Society*, 111–15, 172–76.

⁶⁰ This is the wergild of a freeborn man: *LI* 6.1.5, 7.3.3, 8.4.16, 9.2.3.

⁶¹ *per examinationem caldarie*.

the deed has been revealed,⁶² let the judge not hesitate over investigating⁶³ them.

[MSS AEB] And when he has given his confession, he will come under the heading of the above law.⁶⁴ But if he has been found blameless through the ordeal of the cauldron,⁶⁵ the plaintiff should not fear any charge.⁶⁶

[MS T] And when they have given their confessions, they will come under the heading of the above law. But if total innocence has been revealed through the ordeal of the cauldron,⁶⁷ the plaintiff should not suffer any charge.

[MSS AETB] And this also applies regarding persons of doubtful consideration⁶⁸ who have come to give testimony: this order will be preserved.

The Casebook

The early medieval afterlife of the *Liber Iudiciorum* was both rich and varied. In the Catalan counties, especially, there was a broad degree of engagement: vague allusions to and precise citations of laws, with more or less intentional rewritings of their text, or rather of a subset of laws within the code, a culture where “Visigothic law,” not the Visigothic code as such, was alive and known.⁶⁹ Consulted intensively, it became the object of study, glossing, and revision from the tenth century: MS B, the *Liber Iudicum Popularis* of Bonhom, was the culmination of this movement, as much a handbook for

62 In other words, when they have confessed in consequence of the ordeal.

63 Again, by torture, to confirm the truth of the confession: Martínez Díez, “Tortura judicial,” 247–48.

64 *LI* 6.1.2: this is a law of Chindasuinth, revised by Erwig, on judicial torture of freeborn men.

65 *per examine caldarie*.

66 That is, a counter-charge for false accusation: *LI* 7.1.1; Osaba, “Observaciones,” 203–4.

67 *per examinatione kaldarie*.

68 Potentially bearing false witness: *LI* 2.4.1–3, 2.4.6–9; Iglesias Rábade, “El falso testimonio judicial,” 71–76, 77–79.

69 Zimmermann, “L’usage du droit wisigothique,” 233–81; Iglesia Ferreirós, “La creación del derecho en Cataluña,” esp. 125–252, 284–88, 406–17; Salrach, “Prácticas judiciales,” esp. 1011–24; Zimmermann, *Écrire et lire en Catalogne*, 2, 922–48; Salrach, 1057–67.

lay judges as an edition of the code.⁷⁰ For the kingdom of Asturias-León, in contrast, there has been a consensus that the eighth and ninth centuries saw a caesura in the Visigothic legal tradition, before renewal by “Mozarabic” immigration or royal initiative in the tenth century led to recognition and implementation of the code, and the particular citation of a discrete number of laws. I have elsewhere, however, identified references to Visigothic law in 464 (11 percent) of the 4,095 charters from Asturias-León and Navarra down to 1031. In spite of limited material from the Asturian period, the earliest plausibly genuine mentions of the code appear from the second half of the eighth to the first half of the ninth century, pointing to continuity from the Visigothic era rather than hiatus and revival.⁷¹ The incidence of legal citation becomes more frequent over time, and rises fourfold from the early tenth century until the *Fuero de León* (“Code of León”) in 1017, when the king, Alfonso V (r. 999–1028), broke with his forebears by issuing the first royal legislation since the Visigoths. Trial by ordeal took place in this dense and dynamic legal context, and I have set out here all known records of the practice in early medieval Iberia (Table 7.2).⁷²

Table 7.2. Cases of Trial by Ordeal in Iberian Charters (711–1031)

	Date	Charter	Context	Identifier
1	May 857	<i>Oviedo 7</i>	Royal donation ⁷³	<i>aquam calidam</i>
2	June 2, 912	<i>Santiago 24</i>	Royal donation	<i>per fideles et innocentem exivit utilitas eorum limpida</i>
3	Jan. 30, 915	<i>León 34</i>	Dispute settlement	<i>pena</i>
4	May 4, 915	<i>Pino 2</i>	Dispute settlement	<i>pena caldaria</i>
5	927	<i>Castañeda 1</i>	Dispute settlement	<i>penna caldaria</i>
6	940	<i>San Millán 391</i>	Dispute settlement	<i>calda</i>
7	May 7, 946	<i>León 192</i>	Dispute settlement	<i>pena</i>
8	Nov. 20, 953	<i>Oviedo 26</i>	Dispute settlement	<i>pena kaldaria</i>
9	Nov. 20, 959	<i>Lugo 21</i>	Dispute settlement	<i>pena / examen</i>

70 *Estudios*, 41–118; *LIP*, esp. 67–117, 167–219; Bowman, *Shifting*, 33–55, 84–99; Edders, “Law-Books,” 545–55; Kosto, “Versatile Participants,” 313–17.

71 Barrett, *Text and Textuality*, 259–63.

72 This list updates and expands on *Estudios*, 542–54, but only as far as the year 1031.

73 This diploma is a later forgery: Fernández Conde, *El Libro de los Testamentos*, 144–51.

	Date	Charter	Context	Identifier
10	973	<i>Lugo 24</i>	Dispute settlement	<i>pena caldaria</i>
11	Jan. 31, 975	<i>Coruña 87</i>	Inventory and delimitation	<i>pena calida</i> ⁷⁴
12	978	<i>Albelda 27</i>	Donation and testimony	<i>calda</i>
13	986–999	<i>Sobrado 1.109</i>	Dispute settlement	<i>pena caldaria / calida aqua</i>
14	Mar. 19, 988	<i>Salrach 106</i>	Dispute settlement	<i>examine caldaria</i> ⁷⁵
15	July 15, 991	<i>Otero 31</i>	Dispute settlement	<i>kalida</i>
16	Feb. 9, 996	<i>Cañizares 65</i>	Dispute settlement	<i>pena caldaria</i>
17	Apr. 24, 1000	<i>León 597</i>	Dispute settlement	<i>pena / caldaria</i>
18	May 5, 1001	<i>Samos 7</i>	Dispute settlement	<i>pena</i>
19	Dec. 23, 1001	<i>Celanova 260</i>	Dispute settlement	<i>pena caldaria</i>
20	Nov. 29, 1012	<i>San Millán 535</i>	Fuero of Berbeia and Barrio	<i>calda</i>
21	Feb. 28, 1016	<i>Salrach 167</i>	Dispute settlement	<i>iudicialis examine / ferventi aqua / caldaria</i>
22	Apr. 6, 1017	<i>Alfonso V vii</i>	Dispute settlement	<i>pena</i>
23	July 30, 1017	<i>Oviedo 42.20</i>	Fuero of León	<i>aqua calida</i>
24	Mar. 19, 1019	<i>Otero 120</i>	Dispute settlement	<i>ereribimus te Sescudo de ipsam nocente</i> ⁷⁶
25	Apr. 19, 1019	<i>Otero 123</i>	Dispute settlement	<i>kalda</i>
26	Dec. 25, 1022	<i>Otero 158</i>	Dispute settlement	<i>calda</i>
27	Mar. 27, 1024	<i>León 806</i>	Dispute settlement	<i>caldarie ignem</i>
28	Aug. 30, 1025	<i>Braga 22</i>	Dispute settlement	<i>pena</i>
29	June 5, 1031	<i>Braga 36</i>	Dispute settlement	<i>pena</i>

The geographic weighting of the cases of trial by ordeal is both obvious and opposite to the distribution of the manuscript evidence. The “Western” zone accounts for 24 of 29 cases (83 percent): a dozen each from the far-west (Galicia and Portugal) and centre-west (Asturias and León) regions.⁷⁷ In contrast, there are only three cases from La Rioja, and from Catalunya just two,

74 This identifier may instead refer to a topographic feature.

75 Note that the scribe of this charter was Bonsom.

76 The editors interpret this to mean rescue from the ordeal.

77 Andrade, “Documentary Production,” 56–57, 61–62.

yet these zones account for all but one of the manuscripts. The terminology is also worth noting, as near to standardized as can be expected from early medieval scribal practice: *pena*, for *poena*, and *calda* or *caldaria* are present in all but four cases (14 percent), denoting “the ordeal of the cauldron” in language partly matching the law (*caldaria*), partly not (*pena*).⁷⁸ The legal equivalent of the latter term, *examen*, is attested in only three cases, while there is no instance of *examinatio* in use. Both *calda* and *calida* can equally designate “hot water,” acting as noun or adjective, and they are documented here episodically, in general with *aqua*.⁷⁹ Two unique variants are *ferventi aqua* (“boiling water”) and *caldarie ignem* (“the fire of the cauldron”). In only two cases is none of this terminology employed, but the ordeal can still be recognized by the elements of procedure described. The chronology is a final factor to note: setting aside the first case from 857 (an obviously forged charter), up to ten cases pre-date the first substantive statement of the ordeal law in MS A of 976. Given this order, and the lack of any description in the law as to how the ordeal should work, we need to draw on the records in our casebook of charters to reconceptualize the relationship between law and its practice.

All the documents listed above either emanate from or anticipate recourse to trial by ordeal in dispute settlement. In early medieval Iberia, written evidence played a fundamental role in advancing and defending claims to property, and possession of a supporting title deed could lead simply, straightforwardly to a victorious outcome at court. In most cases, however, success was achieved through complementary oral modes of proof, a combination of inquest, testimony, oaths, and ordeals in which charters were introduced, evaluated, and affirmed (or destroyed).⁸⁰ In records of dispute settlement, oaths and ordeals invariably occur in tandem. The *condiciones sacramentorum*, of Roman and Visigothic legal and documentary pedigree, records the “terms of oaths” to be sworn, normally an oath taken by parties or witnesses in a court case, though in Catalunya also for testamentary publication: invoking saints and other spiritual authorities, setting out testimony, and stating penalties for perjury, it was placed on an altar, according to its own narrative, and oath-takers recited its contents while touching it

78 Menéndez Pidal, Lapesa, and García, *Léxico hispánico primitivo*, s.v. calda, caldera, 106; Pérez, *Lexicon Latinitatis Medii Aevi*, s.v. calda, caldarius, caldera, 113–14.

79 Menéndez Pidal, Lapesa, and García, *Léxico hispánico primitivo*, s.v. calda, 106; Pérez, *Lexicon Latinitatis Medii Aevi*, s.v. calda, calidus, 113, 115.

80 Barrett, *Text and Textuality*, 234–55.

with their hands.⁸¹ When the Galician monastery of Celanova made a complaint to Alfonso V in 1001, accusing a certain Alfonso of usurping its property, the judges asked both parties to produce witnesses, and selected ten to swear the *seriem conditionum* (set of terms) on behalf of Celanova, as well as a neutral third party to undergo the ordeal of hot water.⁸²

This case illustrates how the ordeal was a complementary rite of confirmation, linked in context to oath-taking but involving separate personnel. When one party cited a charter in a claim and offered supporting witness testimony, another individual was on occasion invited to undertake the ordeal of the cauldron to provide further substantiation, putting the text to the test of divine judgement through some intermediary; ordinarily it was necessitated by either intransigence on the part of the disputants or else a failure of the habitual modes of proof, by writing and speech, to result in a settlement.⁸³ Not everyone accepted it, and in 1012 villagers from Berbeia and Barrio swore before Sancho García, count of Castilla (r. 995–1017), that their *fuero* or local set of legal arrangements did not include the *calda*, but this is predicated on the assumption that it was otherwise universal.⁸⁴ The process could be initiated by text, and one common function of *placita* (agreements) was to bind parties to the next stage of settlement, whether to consult the law, offer testimony, produce evidence, swear an oath, or undergo the ordeal.⁸⁵ In 991, for example, Hermegildo made a *plazum* (*placitum*) to send a representative on a fixed date to undertake the ordeal on his behalf.⁸⁶ Once begun, the proceedings played out predictably. In one indicative Asturian case, Pedro *frater* argued in 953 that Victino had granted him by *placitum* vacant land worth 100 *solidi* in order for him to build a monas-

81 *FV* 39–40; *LI* 2.1.23, 2.1.25, 2.2.5, 12.3.15; Calleja-Puerta, “Ecos de las fórmulas visigóticas”; Benito i Monclús, Kostó, and Taylor, “Three Typological Approaches,” 48–59; cf. Vladár, “Juramento.”

82 *Celanova* 260.

83 Collins, “*Sicut lex Gothorum continet*,” 503–4; Collins, “Visigothic Law and Regional Custom,” 87; Alvarado Planas, “Ordalías,” 507–617; *Estudios*, 513–54; Alvarado Planas, *El problema del germanismo*, 179–90; Andrade, “Documentary Production and Dispute Records,” 53–57; cf. Iglesia Ferreirós, “El proceso del Conde Bera,” esp. 65–198; Bowman, *Shifting Landmarks*, 119–40; Salrach i Marès, “Justícia d’estat.”

84 *San Millán* 535; Santos Salazar, “Los privilegios de Berbeia y Barrio,” 64–66.

85 Collins, “*Sicut lex Gothorum continet*”; Collins, “Visigothic Law and Regional Custom,” 87–90; Davies, *Windows on Justice*, esp. 35–55, 279–83.

86 *Otero* 31; López Ortiz, “El proceso en los reinos cristianos,” 207–8; Davies, *Windows on Justice*, 211–12.

tery there, but had taken back the property by force, with much else besides, after he had built it. Thirty witnesses testified under oath to his allegations, before an *innocens*, a term used for a neutral third party here named Fernando, swore to the same terms and then underwent *pena kaldaria*: recalling the question asked by David of his commander Abishai, “For who can put forth (*extendet*) his hand against the Lord’s anointed and be guiltless (*innocens*)?” he plunged his hand, held by a *fidelis* or partisan for each litigant, into a cauldron of hot water, and came back three days later to show that it was *limpidus* (literally “clear”: healed).⁸⁷

Much of this is enigmatic at first reading, but a case from the Galician monastery of Sobrado dos Monxes explains the process in some detail. When bishops Pelayo of Lugo and Pedro of Santiago locked horns over dependants in the late tenth century, Pelayo claimed that the men at issue belonged to his see, as inventoried in lists kept in its archive, whereas Pedro countered that they had been given *per testamentum* by Ordoño III (r. 951–956) to Sobrado. Since the inquest failed to resolve matters, witnesses swore an oath on behalf of the monastery, and the parties named *fideles* to lead one Salamiro *presbiter* through the ordeal.⁸⁸ It was held at a church of Santa Eulalia on the River Narla (likely Santalla de Madelos about 7 km southwest of Sobrado), before over fifty witnesses: *ego innocens*, speaking in the first person, reached into the cauldron of *calida aqua* (hot or boiling water), grasped some *lapides igneos* (literally “burning stones”) with his hands, and cast them *foras*, out and onto the ground. Reappearing at the council three or four days later *sub sigillo fidelium* (under the custody of the partisans), he showed his *illesus vel limpidus* (unharmed, unblemished) skin. At this stage, the *innocens*, two *fideles*, and the *saio* (bailiff) confirmed a *placitum* of the successful ordeal, and Pelayo yielded, leaving the monastery victorious.⁸⁹ The miraculous had happened; only judgement by God could permit one to emerge from such a testing unscathed, and this belief provided a way out from a stalemate of conflicting written evidence and oral testimony.

⁸⁷ Oviedo 26 (see I Samuel 26:9); Davies, *Windows on Justice*, 29, 136–39; Davies, “*Fides* in Northern Iberian Texts”; Davies, “Creating Records of Judicial Disputes,” 238–45.

⁸⁸ Sobrado 1.109 (cf. *Santiago* 24); Davies, *Windows on Justice*, 243–45; Davies, “The Language of Justice in Northern Iberia,” 241–44.

⁸⁹ Lea and Howland, *Ordeal*, 35; *Sampiro*, ed. Pérez de Urbel, 65–69; García Álvarez, *San Pedro de Mezonzo*, 69–72, 161–64, 309–12; Ares, “Roimil,” 243–48; cf. Prieto Morera, “El proceso en el reino de León,” 476–78.

The case from Celanova in 1001, which arose because Alfonso usurped land given in testament to the monastery by Abbot Salamiro with all pertinent charters, followed the same basic trajectory to resolution, or nearly so. He denied the charge before Alfonso V and court, but the monastery produced 356 witnesses to his paltry ten; of the former crowd, Vimara, the monastic advocate, sent ten to swear the *seriem conditionum* and the *innocentem* to undergo the *pena caldaria*. Outnumbered and overawed, Alfonso was moved to confess and return the land, effectively deterred by the prospect of divine judgement from pursuing the matter any further.⁹⁰ In these rituals, written evidence was not simply an end to dispute, but one stage in a choreography of settlement, and (as we shall see) the liturgical exorcism which immediately preceded the ordeal functioned to intensify the presence of supernatural authority and prompt a party to default.⁹¹ All the above is of course separate from the “truth value” of the ordeal. In reality, we never hear of a failed testing by the cauldron, and presumably the temperature was adjusted to ensure the “right” outcome of an unharmed hand: proof was not at stake so much as establishing that the responsibility for judgement lay with divine rather than human authority.⁹² But the charters make it clear that there was a stable and developed practice for trial by hot water, one attested earlier than and with no obvious textual basis in ordeal law beyond certain terms. Did this lie in the realm of custom? Elements of it have patent written sources: the three-day turnaround for scrutiny of the hands emulates the three-day fast, based in turn on the Ninevites foreswearing their vices and fasting for as long as Jonah had been in the belly of the whale.⁹³ That water parable for a water ordeal gained further resonance from the Resurrection, whereby the Sign of Jonah was realized in Christ rising from death after three days.⁹⁴ The casebook of such trials thus raises the question: where did this stable and developed ritual as a whole originate?

90 *Celanova* 260 (cf. *Castañeda* 1; *Alfonso V* vii); Davies, *Windows on Justice*, 211–12, 244; White, “Proposing the Ordeal.”

91 Barthélemy, “Présence de l’aveu dans le déroulement des ordalies.”

92 Whitman, *Origins of Reasonable Doubt*, 55–57.

93 Jonah 1:17, 3:3–5; cf. Isidore of Seville, *De ecclesiasticis officiis*, 1.42, in *Sancti Isidori episcopi Hispalensis*, ed. Lawson, 47.

94 Matthew 12:38–42; cf. Luke 11:29–32; Brinkman, “Descent into Hell.”

The Liturgy

The same MS B which transmits the ordeal law in its most elaborated form, with the ascription to Egica, also preserves a “user guide” for the liturgy of trial by hot water and cold, the key to understanding its practice in charters, and maybe the law itself. When the ordeal law was inserted into the codex which the judge Bonsom had prepared in 1011, it linked the Visigothic code to a procedure in use for dispute settlement, and this additional fascicle (fols. 281r–284v) on the rituals involved was tacked on not long afterwards.⁹⁵ He himself as scribe had recorded a settlement by the ordeal of hot water in 988, and another lost copy of the code made by Bonsom in 1010 had included the ritual for that ordeal, though not for cold water.⁹⁶ In the twelfth century, a third ritual for the ordeal of bread and cheese was inserted into MS B (fol. 284r–v): known as *corsnæd* in Anglo-Saxon law, this test involved eating morsels of *pan y queso* under pressure, successfully swallowing them without choking, but there is no trace of its usage in early medieval Iberia.⁹⁷ The manual is not unique in offering user guidance, as three later copies of the Visigothic code from the mid-eleventh to the thirteenth century have templates and instructions for administering the ordeals of hot water and hot iron (similarly unattested in our period), yet it is the earliest and most detailed example.⁹⁸ Of its two rituals, the ordeal of hot water is clearly the one commonly used in the early medieval documents; it is not until a Catalan charter of 1036 that we find reference to the ordeal of cold water, when a party to a dispute would only accept “judgement by Almighty God in cold water” (*iudicium Dei Omnipotentis in aqua frigida*) as a means of arriving at a settlement.⁹⁹

⁹⁵ See <https://rbme.patrimonionacional.es/s/rbme/item/14308> (images 562–69), accessed December 7, 2023.

⁹⁶ *Salrach* 106; Iglesia Ferreirós, “La creación del derecho en Cataluña,” 193–95; *Estudios*, 89–92, 519–21; *LIP*, 121–22, 251–55; the copy of 1010, destroyed in the razing of Santa Maria de Ripoll in 1835, may be the source of *Ordines A 8* (from *Capitularia*, ed. Baluze, 2.639–44).

⁹⁷ See <https://rbme.patrimonionacional.es/s/rbme/item/14308> (image 57–58), accessed December 7, 2023; *Del uso de las pruebas judiciales, llamadas vulgares*, ed. Villa-amil y Castro, 37–38; *LIP*, 791–92; Keefer, “*Ut in omnibus honorificetur Deus*”; Niles, “Trial by Ordeal.”

⁹⁸ *Estudios*, 550–51; see *Notizie*, ed. Gaudenzi, 7–10; *LI*, 463; Ureña y Smenjaud, *Legislación*, 578–80; *Diplomática hispano-visigoda*, ed. Canellas López, 222–23 (271–72).

⁹⁹ *Salrach* 256; Iglesia Ferreirós, “La creación del derecho en Cataluña,” 196–99,

Such guides are known generically as *ordines*, and cover trial by hot and cold water; hot iron; bread and cheese; and the hanging cauldron, bread, or Psalter, which signalled guilt by its rotation; in addition to other more outré ordeals and varieties of cleromancy or sortition (casting lots).¹⁰⁰ They are transmitted in liturgical books more often than with secular laws and codes, reflecting the involvement of churches and priests in their performance which we have seen in practice. The standard edition of *ordines* prints eighty-two guides from manuscripts mostly of the ninth- to twelfth-century Frankish world: these include collections of ordeals, individual rites, and component parts, revealing a common stock of language, liturgy, and procedures.¹⁰¹ The rituals of MS B quite clearly draw from the same well, making them Frankish as much as Iberian.¹⁰² By chance, they were transcribed and annotated by the great Jesuit theologian Martín del Río (1551–1608) in his six-volume *Investigations into Magic*, published in its final form in 1608, to set the stage for trials of suspected witches right up to his own day via submersion in cold water.¹⁰³ He had been supplied with a copy of MS B by a fellow scholar, Pierre Pantin (1556–1611), and collated it with a directly comparable text less satisfactorily published; this latter, from a lost codex of Saint-Bénigne in Dijon, concludes with a notice also found in a number of other *ordines* that Pope Eugenius II (r. 824–827) had established the *iudicium* at the request of Louis the Pious for use across his empire by all Christian people, “to acquit the innocent and try the guilty” (*defendant innocentes et examinent nocentes*).¹⁰⁴ If so, then we can localize the origin of this form and usage, which the emperor appears (though by no means uncontroversially)

210, 217, 263–65; Salrach, “Prácticas judiciales,” 1027–28; Salrach, “Les modalités du règlement des conflits en Catalogne,” 123–24; see also *Viage literario a las iglesias de España*, ed. Villanueva, 21–24, for a cold-water rite from a manuscript found in Tortosa dating to 1055.

100 Elukin, “Ordeal of Scripture”; Luijendijk and Klingshirn, eds., *My Lots Are in Thy Hands*.

101 *Ordines*; Lea and Howland, *Ordeal*, 34; see also *Ordaliis*, ed. Browe, 2; Keefe, *Water and the Word*, 2.

102 See e.g. *Ordines A* 6, 8, 21.

103 Martín del Río, *Disquisitionum magicarum libri sex*, 4.4.4.4, in *Investigations*, ed. Maxwell-Stuart and García Valverde, 570–79, 582–87.

104 Brown Wicher, “Gregorius Nyssenus,” 321–24, on Pantin; and *Ivonis*, ed. Juret, 249–50 (cf. *Ivonis*, ed. Juret (2nd ed.), 638–42, for identification of the manuscript); edited only in part as *Ordines A* 19 (from *Codex legum antiquarum*, ed. Lindembrog, 1299–1302); see also *A* 14, 15, 18, *B* 18, *sing. cap.* 26.

to have endorsed in a capitulary of 829, in both space and time—a suggestive point to which we shall return.¹⁰⁵

The most striking feature of the liturgy for trial by water transmitted by MS B is the direct address and exorcism of that water, which reflects baptismal ritual.¹⁰⁶ From the earliest history of the Church, the exorcist was intimately involved in the process of conversion: as Augustine wrote, one becoming a Christian had first to pass through the fire of exorcism to the water of baptism.¹⁰⁷ This arose from the conviction of early believers that both things and people were subject to demoniacal possession, and the substances used in liturgical service, namely the salt, oil, and water of baptism, had to be purified before they could contribute to freeing and saving in baptism. Ambrose speaks of the *creatura aquae*, literally the “creature of water,” which must be exorcised before a baptismal candidate climbs into (*descendat*) the water of the font.¹⁰⁸ Roman and Gallican sacramentaries from across Western Europe, from the seventh-century Gelasian on, include such baptismal rites with direct-address exorcisms of water (and salt, oil, ashes, honey, milk, and the font).¹⁰⁹ These reflect complex patterns of formulaic crossover and intermingling, while at least three codices of the so-called Romano-Germanic pontifical of the tenth century even transmit comparable *ordines* for

105 *Capitularia regum Francorum*, 192.12, ed. Boretius and Krause, 16; Schwerin, “Rituale für Gottesurteile,” 42–48; Nottarp, *Gottesurteilstudien*, 56, 323–31; Bartlett, *Trial by Fire and Water*, 10–11; cf. Barthélemy, “Présence de l’aveu dans le déroulement des ordalies,” 19n19; Van Caenegem, *Legal History*, 75n10; Orella Unzué, “Sistema jurídico pirenaico,” 283n6; Bronner, “Judgement of God,” 1n2, who all read the capitulary as a prohibition.

106 Benz, “Zur Vorgeschichte des Textes”; Kelly, *The Devil at Baptism*, 201–31; Lupi, “Development of the Rite of Baptism”; Bastiaensen, “Wortgeschichte im altchristlichen Latein,” 339–47; Bastiaensen, “Exorcism”; Young, *History of Exorcism*, 30–44; see also Kallendorf, “Rhetoric of Exorcism”; Kumler, “Manufacturing the Sacred,” 28–30.

107 Augustine, *Enarrationes in Psalmos*, 65.17, in *Sancti Aurelii Augustini*, ed. Dekkers and Fraipont, 851–52; Cramer, *Baptism*, 87–89; Pignot, *Catechumenate*, 208–9.

108 Ambrose, *De sacramentis*, 1.18, in *Ambrosius*, ed. Schmitz; Cramer, *Baptism*, 64–72.

109 *Liber sacramentorum Romanae*, ed. Mohlberg, 1.31 (43), 40 (63), 44 (72–74), 73 (94–95), 75 (95–97), 76 (97), 3.76 (225–27), 77 (228); Vogel, *Medieval Liturgy*, 64–70; Palazzo, *History of Liturgical Books*, 42–48; Spinks, *Early and Medieval Rituals*, 109–33; and see Cramer, *Baptism*, 136–55; *Documents of the Baptismal Liturgy*, ed. Whitaker and Johnson, 212–43; Rivard, *Blessing the World*, 237–67, for translations and discussions.

trial by water, hot iron, and bread and cheese.¹¹⁰ In the Old Hispanic rite of late antique and early medieval Iberia, the *Liber Ordinum*, attested in tenth- to eleventh-century manuscripts, contains much parallel material for use in blessing salt, oil, and water for baptism, as well as numerous other objects ranging from wax to wells across a variety of ceremonial contexts.¹¹¹

Each of the rituals that MS B describes is titled *exorcismus*, and the Fourth Council of Carthage (397), as transmitted by the *Hispana* in Iberia, expected exorcists to receive just such a *libellum* (“booklet”) from the hand of the bishop containing all necessary exorcisms.¹¹² In language echoed in the rites themselves, Isidore of Seville (d. 636) explained exorcists as front-line soldiers in the fight against the Devil, responsible for *adiurantes* (“calling upon”) and banishing this *creatura* from the catechumen in preparation for baptism.¹¹³ Aemilianus memorably exorcised the house of Senator Honorius in his hagiographical life by Braulio of Zaragoza (d. 651), yet no exorcists appear in any early medieval Iberian charters, and the one contemporary mention is of a “Bishop Plato” who performed an exorcism in a passion of the Apostle Matthew from the eleventh century.¹¹⁴ The leader of the rituals in MS B is termed a priest, nothing more, though the judge is also addressed. The text anticipates and forestalls potential disbelief in or opposition to such trial by water through a dense and repeated series of Scriptural allusions building up a coherent theology of the ordeal: the miracles of the fiery furnace and of the parting of the Red Sea, the wedding feast at Cana, the Pool of Siloam, and Christ walking on the waves stood for testing by fire and

110 *Le pontifical romano-germanique*, ed. Vogel and Elze, 33 (1.82–89), 40 (1.124–73), 51 (1.185–90), 99 (2.1–141), 105 (2.152–54), 107 (2.155–64), 109 (2.165–66), 110 (2.167–72), 115 (2.193–205), 117 (2.209–11), 118 (2.211–16), 181 (2.333–41), 183 (2.342–50), 185 (2.351–52), and esp. 246–52 (2.380–414); Magne, “Exploration généalogique”; Vogel, *Medieval Liturgy*, 230–37; Palazzo, *History of Liturgical Books*, 201–7; Chave-Mahir, *L'exorcisme*, 93–132; Young, *History of Exorcism*, 44–53; Parkes, “Questioning.”

111 *Liber Ordinum*, ed. Férotin, 1.1 (7–24), 1.10 (156–78), 1.15 (208–26); Hornby et al., *Understanding the Old Hispanic Office*, 65–66; Hornby and Maloy, “Old Hispanic Pre-Baptism Initiation Rites”; and see Akeley, *Christian Initiation in Spain*, 147–58; *Documents of the Baptismal Liturgy*, ed. Whitaker and Johnson, 164–75.

112 IV Carthage 7, in *Colección canónica Hispana, III*, ed. Martínez Díez and Rodríguez, 355; Palazzo, “Le rôle des libelli.”

113 Isidore of Seville, *De ecclesiasticis officiis*, 2.13, 2.21, in *Sancti Isidori episcopi Hispanensis*, ed. Lawson, 72–73, 95–97.

114 Braulio of Zaragoza, *Vita sancti Aemiliani*, 24, in “La vita di S. Emiliano,” ed. Cazzaniga, 33; *Passionarium Hispanicum*, 53.11, ed. Yarza Urquiola, 1382–83.

water, while Susanna and the Elders and Daniel in the den of lions symbolized safety in the Lord against false accusation. Of the two *ordines*, the guide for hot water is nearly twice as long as for cold water, more developed for use, aligning with the balance of the documentation; this recurrent usage is reflected by reference to *more solito* (“the usual manner”) in its text.¹¹⁵ The only major divergence from the casebook is that, in both texts, the liturgy is written out “notarially,” leaving placeholders typical of template charters to be filled in with the persons and charges at issue, yet these all presuppose that it will be the accused undergoing the ordeal, not a neutral *innocens* as in the documents. Whereas the casebook ordeal belongs more in the sphere of “civil law” as part of settling disputes over property, the “user guide” ordeal, aimed at those on trial for punishable offences, is its “criminal law” counterpart. This distinction, however, may be more apparent than real: in Francia, where *ordines* on the MS B model put the accused to the ordeal, Queen Theutberga had a champion reach into the cauldron on her behalf during the trial for incest in 858 which attended the ill-advised campaign by Lothar II (r. 855–869) to divorce her.¹¹⁶ In the famous dispute between the abbeys of Saint-Denis and Fleury over ownership of serfs in the 820s or 830s, meanwhile, it was initially proposed that witnesses for each side should break the impasse by battling it out with staves and shields, before cooler heads prevailed.¹¹⁷ For the following translation, I have formatted the text according to its manuscript layout, using boldface for all forms of rubrication, and added numbering for ease of reference.

115 Barrett, *Text and Textuality*, 306–8.

116 Heidecker, *Divorce of Lothar II*, 65–67; Stone and West, *Divorce of King Lothar*, 36–38, 95, 143–77.

117 *Miracula sancti Benedicti*, 25, in *Miracles*, ed. Davril, Defour, and Labory; Wormald, *Making of English Law*, 30–31, 70–72.

Translation: The Liturgy¹¹⁸

[A] Here begins the exorcism, or the blessings, of the hot water in which the hand is put to the judgement of God.

[1] When you wish to put men to the testing of the judgement of hot water, first make them enter the church with all humility, and, prostrate in prayer, let the priest say these prayers:

First prayer:

[1.1] Lord, succour those seeking your mercy, and grant pardon to those making confession, and spare the suppliant, so that we who are scourged for our faults may be saved by your mercy. Through [Jesus Christ Our Lord, amen].

Second prayer:

[1.2] We beseech you, Almighty God, look upon the tears of an afflicted people, and turn away the wrath of your outrage, so that we who acknowledge the guilt of our frailty may be delivered by your comfort. Through [Jesus Christ Our Lord, amen].

Third prayer:

[1.3] God, you who with all power behold us, safeguard us within and without, so that we may be protected from all adversities in body as well as cleansed of perverse thoughts in mind. Through [Jesus Christ Our Lord, amen].

[2] Once these prayers have been completed, let them rise together, and before those men let the priest sing mass, and you¹¹⁹ should make them give an offering at that mass. But when they have reached communion, before they take communion let the priest question them with an oath and say:

[2.1] I call upon you, men, by the Father and the Son and the Holy Spirit, and by your Christianity which you have accepted,¹²⁰ and by the only begotten Son of God whom you believe to be the Redeemer,

118 This translation is based on *LIP*, 793–99; cf. *Del uso de las pruebas judiciales, llamadas vulgares*, ed. Villa-amil y Castro, 31–37.

119 Second person: this could imply that someone other than the priest (perhaps the judge) is the addressee.

120 Acts 19:13, the “original” formula for exorcism, whereby the Jewish exorcists of Ephesus attempted to cast out demons by saying, “I call upon you, by Jesus, whom Paul preaches.”

and by the Holy Trinity, and by the Holy Gospel, and by the relics which are kept in this holy church, not to presume in any way to approach this sacred communion, nor to take part by receiving it, if you have done *this or that*, or have conspired in it, or know some truth of it, or have learned who has done it.

[3] If they have remained silent, however, and made no declaration of it, let the priest come up to the altar and take communion in the usual manner;¹²¹ later do¹²² let him take communion with them.¹²³ Now when they take communion before the altar, let the priest recite:

[3.1] May this body and blood of Our Lord Jesus Christ be with you for the testing today.

[4] Once the mass has been finished, let the priest go down to the appointed place where that ordeal is to be carried out,¹²⁴ and bring with him the book of the Gospels and the Cross, and sing a brief litany. And when he has completed that litany, let him exorcise and bless that water before it is heated up, speaking thus:

[4.1] I exorcise you, creature of water,¹²⁵ in the name of God the Father Almighty, and in the name of Jesus Christ His Son Our Lord, that you become exorcised water to escape all power of the Enemy and his opposition, and lest the Enemy himself or his manifestation be able to contest the justice of God in any way, even as He prevails who is to come to judge the living and the dead and the world by fire.¹²⁶ **Amen.**

121 *more solito*: the first of several invocations of “custom.”

122 Superscript: “but.”

123 When exactly those who have not confessed here should take communion is unclear.

124 The selection of a site for the ordeal was typically made by *placitum* (written agreement).

125 Banishing the diabolical *creatura* from the water: the essence of the pre-baptismal liturgy.

126 II Peter 3:1–13 (cf. Zephaniah 1:18; Malachi 4:1; Hebrews 10:26–27), where the future judgement by fire corresponds to the past judgement by water in the Great Flood (see Genesis 7).

And another [exorcism]:

[4.2] I exorcise you, creature of water, in the name of God the Father Almighty, and in the name of Jesus Christ His Son Our Lord, that you become exorcised water to escape all power of the Enemy¹²⁷ and every phantom of the Devil, so that if *this man* has put his hand in you and proven innocent of *this offence*, may the mercy of Almighty God deliver *that man* by whom he was charged.¹²⁸

[4.2.1] And if, far be it, he is guilty and has dared with arrogance to put his hand in you, let the power of the same Almighty God deign to reveal this in him, so that every man may fear and tremble at the holy name of the glory of Our Lord, who lives and reigns as God throughout all ages.

Prayer:

[4.3] Lord Jesus Christ, you are a righteous judge, strong and patient and most merciful,¹²⁹ through whom all things were made, God of gods and Lord of lords,¹³⁰ who for us men and for our salvation came down from the bosom of the Father and deigned to take on flesh from the Virgin Mary, and through your Passion redeemed the world on the Cross, and descended to Hell, and bound the Devil in outer darkness, and freed from there all the righteous who had been held there for original sin by your great power.

[4.3.1] We beg you, Lord, deign to send your Holy Spirit down from the height of the ark of heaven upon this creature of water, which we take it upon ourselves¹³¹ to heat up and boil on the fire, so that you may prove and reveal a just judgement upon *this man of that name* through it. **[4.3.2]** We humbly implore you, Lord, who as a sign at Cana in Galilee made wine out of water by your wondrous power,¹³² and led the three boys Shadrach, Meshach,

127 To this point the prayer repeats 4.1.

128 This could be a cross-reference to the ordeal law where it safeguards the accuser from counter-charge.

129 Psalms 7:12.

130 Deuteronomy 10:17, where God as judge shows no partiality and accepts no bribe.

131 *presummimur*: ambiguous; alternatively “we are expected,” perhaps referring to ordeal law or practice.

132 John 2:1–11, the first miracle performed by Christ, analogous to the miraculous transformation of the water of the cauldron into an instrument for the judgement of God.

and Abednego out from the furnace of burning fire unharmed,¹³³ and delivered Susanna from false accusation,¹³⁴ who opened the eyes of the man born blind,¹³⁵ who raised Lazarus of the four days from the tomb,¹³⁶ and reached out a hand to Peter as he was drowning in the sea.¹³⁷ **[4.3.3]** Do not look upon our sins in this prayer, but deign to reveal your true and holy judgement before all here, so that if *this man*, in this cause for adjudication,¹³⁸ specifically for *this or that*, and at this moment, has put his hand into this water, boiling on the fire, and he is not guilty of this cause for adjudication, you may deign to guarantee it to him that no injury, no wound may appear on the same hand by which he should meet the accusation without guilt. **[4.3.4]** And again, Almighty God, we your unworthy and sinner servants humbly implore you to see fit also to reveal your holy, true, and just judgement to us in this same place, such that if *this man*, in this cause for adjudication, [specifically for] *that*, is guilty of some wrongdoing, with the Devil as his inciter or pride arousing him, in deed or conspiracy, and has aimed to subvert or violate the judgement of this test, and, trusting to evil genius, has dared with arrogance to put his hand into this water; your mercy may be made known in this, so that what he has done unjustly can be discerned upon his hand. **[4.3.5]** And let him thereafter go through true confession and penance¹³⁹ and

133 Daniel 3:8–30 (cf. Jude 1:23), whereby the fiery furnace of Nebuchadnezzar stands for the hot water of the cauldron, from which the innocent have nothing to fear.

134 Daniel 13: the episode of Susanna and the Elders stands for protection by God against false charges, as the ordeal miraculously guarantees; Piñol i Bastidas, “*Libera Domine*”; cf. Firey, *Contrite Heart*, 42–60.

135 John 9: when Christ heals the man born blind with water from the Pool of Siloam, it is an opportunity to do the work of God in the world, just as the ordeal miraculously heals blindness to the truth.

136 John 11:1–44, whereby the sickness and death of Lazarus are another opportunity for Christ to be glorified in the world, and his four days entombed prefigure the Resurrection after three; see below.

137 Matthew 14:22–33; Mark 6:45–52; John 6:16–21, whereby Peter walking on water with the help of Christ stands for the inability of the hot water in the cauldron to harm the innocent.

138 *raeputationis*: not a term used in the Visigothic code.

139 Penance is the subject of much Visigothic canon law: Lozano Sebastián, *La penitencia canónica*.

attain correction, so that your holy and true judgement might be revealed to all nations, through you, the Redeemer of the world, who are to come to judge the living and the dead and the world by fire, amen.¹⁴⁰

And another exorcism:

[4.4] Now you, creature of water, I call upon you by the living God, by the holy God, I call upon you by Him who in the beginning divided you from dry land,¹⁴¹ I call upon you by the living God, who poured you from the spring of paradise, and ordered you to go forth in four rivers, and directed that the whole earth be watered.¹⁴²

[4.4.1] I call upon you by him who at Cana in Galilee turned you into wine by his power, who walked upon you with his holy feet, who assigned the name of Siloam to you.¹⁴³ I call upon you by God, who cleansed Naaman the Syrian of his leprosy in you,¹⁴⁴ saying: Holy water, blessed water, you water which wash away filth and cleanse sins. **[4.4.2]** I call upon you by the living God to show yourself clean, and not to preserve any phantoms, but to become an exorcised spring¹⁴⁵ for driving off and purging and proving every falsehood, and finding out and proving every truth of the matter, so that he who has put his hand in you, if he has maintained the truth, may receive no wound in you. **[4.4.3]** And if he maintains falsehood and iniquity, let him show up with his hand scalded by the fire, so that all men may recognize the power of Our Lord Jesus Christ, who is to come with the Holy Spirit to judge the living and the dead and the world by fire, amen.¹⁴⁶

[5] After these [exorcisms], let him cast off their clothes and dress him, *or them*, in the clean clothes of the Church, that is, the dress of an exorcist or of a deacon,¹⁴⁷ and make them, *or him*, kiss the Gospel and the Cross

140 This formula for judgement is repeated from 4.1.

141 Genesis 1:9–10, which shows the power of God over water.

142 Genesis 2:10–14, which shows the service of water to the living.

143 Three of the miracles of Christ from 4.3 are repeated here.

144 II Kings 5, whereby the leprosy of Naaman is transferred to Gehazi for his greed, a punishment was often threatened in the sanction clause of charters: Barrett, *Text and Textuality*, 329.

145 The same word (*fons*) doubles for the baptismal font.

146 This formula for judgement is repeated from 4.1.

147 See Isidore of Seville, *De ecclesiasticis officiis*, 2.8.4, in *Sancti Isidori episcopi*

of Christ, and sprinkle over them some of that water. And for those who are to enter unto the ordeal of God, let him give them all some of that blessed water to drink. Now when he has given some to each one, he will say:

[5.1] This water He has given you, *or you all*, for the testing today.

[6] Then let the fires be set up under the cauldrons, and let the priest say these prayers when that water has begun to heat up:

[6.1] In the name of the Holy Trinity. God, you righteous judge, strong and patient,¹⁴⁸ who are the author and creator, clement and merciful, and who judge fairness, judge you [this], who have commanded the making of righteous judgement and look down upon the earth and make it tremble. **[6.1.1]** You, Almighty God, who redeemed the world through the coming of your only begotten Son Our Lord, and through his Passion assisted and saved the human race, sanctify this boiling water, you who saved the three boys, namely Shadrach, Meshach, and Abednego, under King Nebuchadnezzar of Babylon, in the furnace of fire, the lit oven, and through your angel brought them out unharmed.¹⁴⁹ **[6.1.2]** You, most merciful ruler, grant that if anyone is innocent of this charge, or in the cause for his adjudication of **murder, adultery, or robbery**,¹⁵⁰ and has put his hand into this water, bring it out from there safe and unharmed, you who delivered the three boys aforesaid, and Susanna from false accusation.¹⁵¹ **[6.1.3]** And so, Almighty Lord, if he is guilty and, with his heart blocked up by the devil making it calloused,¹⁵² has put his hand in this burning element of yours, let your truth be made known by this, to be revealed in the body and to save the soul through penance. **[6.1.4]** And if he is guilty of this crime, and through some mischief, either

Hispalensis, ed. Lawson, 67–68, where the deacon assisting at the altar should be vested in a white alb to represent his purity; presumably exorcists wore the same or similar, though Isidore does not say so.

148 This formula is repeated from 4.3.

149 This miracle is repeated from 4.3.

150 These three crimes, though highlighted in the manuscript, are not specified in the ordeal law.

151 This miracle is repeated from 4.3.

152 Isaiah 6:10; Matthew 13:15; Acts 28:27, from the Commission of Isaiah, whereby the Judaeans are unable to be healed.

through drugs or through diabolical incantations,¹⁵³ he has aimed to conceal this guilt of his sin, or has believed that he could manage to corrupt or outrage your justice, let your magnificent right hand purge this evil and show the truth of the matter of all things, through you, most merciful Father, who live and reign in the perfect Trinity, throughout all [the ages of ages].

Another [prayer]:

[6.2] Let us pray. God, you who delivered the blessed Susanna from false accusation,¹⁵⁴ God, you who delivered the blessed Thecla from the spectacles,¹⁵⁵ God, you who delivered the holy Daniel from the den of lions,¹⁵⁶ and rescued the three boys from the furnace of the burning fire,¹⁵⁷ deliver you the innocent and mark the perpetrators with a sign,¹⁵⁸ through Our Lord.

[7] And he who puts his hand in the water for that ordeal, let him say the Lord's Prayer and sign himself with the sign of the Cross. And let that boiling water be taken down with haste from over the fire, and let the judge¹⁵⁹ weigh down that stone, bound to the measure,¹⁶⁰ under that water in the usual manner.¹⁶¹ **[7.1]** And so, let him draw it out from there in the name of the Lord, he who enters unto the ordeal of judgement.

Afterwards, with great care, let that hand be wrapped up thus, sealed

153 Presumably to dull the pain like the salve and ointment in Gregory of Tours (see above).

154 This miracle is repeated from 4.3 and 6.1.

155 *Acts of Paul and Thecla*, 21–22, in *Apocryphal New Testament*, ed. Elliott, 368, where she is saved by the compassion of God from being burned alive.

156 Daniel 6:10–24, whereby faith in innocence before God enables triumph over false accusation; Olañeta Molina, "Modelos," 79–82.

157 This miracle is repeated from 4.3 and 6.1.

158 Daniel 13:53, where the bad judge does the opposite; and note that *factores* as a term for "perpetrators" is Roman juristic language (*Digest*, 29.5.1.21, for poisoners); Fontana Elboj, "Notas a una oscura inscripción," 166.

159 This is the first mention of the judge in the text.

160 Probably a measure of depth of submersion (though it could be an indicator of weight): from Anglo-Saxon England, see the tenth-century *Ordeal*, in *Gesetze der Angelsachsen*, ed. Liebermann, 386–87, which distinguishes between crimes requiring immersion up to the wrist and the elbow; *Laws of the Earliest English Kings*, ed. Attenborough, 170–73; Wormald, *Making of English Law*, 304–6, 367–68, 373–74.

161 *more solito*.

under the seal of the judge,¹⁶² until the third day¹⁶³ when it should be seen by suitable¹⁶⁴ men and assessed.

[B] And here begins the exorcism of cold water.

[1] When you wish to put a man to the judgement of cold water for testing, you ought to do as follows.

[2] Take those men whom you wish to put into the water. Bring them into the church, and before them all let the priest sing mass, and make them give an offering at that mass. But when they have reached communion, before they take communion let the priest question them with this oath, and say:

[2.1] I call upon you, men, by the Father and the Son and the Holy Spirit, and by the Christianity which you have accepted, and by the Holy Trinity which you have taught,¹⁶⁵ and by the Holy Gospel which you have believed, and by these holy relics, *or the holy veneration*,¹⁶⁶ which are in this [church],¹⁶⁷ not to presume to approach this sacred altar, nor to receive this sacred communion in any way, if you have committed this cause for your adjudication (specifically *this or that*), or have conspired in it, or know what drove it.

[3] If they have remained silent, however, and made no declaration of it, let the priest come up to the altar and take communion in the usual manner;¹⁶⁸ later do let him take communion with those who are going to be put in the water. Now when they take communion, let the priest say before the altar:

[3.1] May this body and blood of Our Lord Jesus Christ be with you for the testing today.

162 See *LI* 2.1.19–20, 10.2.6, for the judge using a seal, especially for property under dispute.

163 Jonah 1:17, 3:3–5 (cf. Isidore of Seville, *De ecclesiasticis officiis*, 1.42, in *Sancti Isidori episcopi Hispalensis*, ed. Lawson, 47), whereby he spent three days in the belly of the whale, the basis for the three-day fast; and for Matthew 12:38–42 (cf. Luke 11:29–32), the Sign of Jonah, by which Christ will be Resurrected from the heart of the earth after three days.

164 *idoneis*: this term is used regularly in Visigothic law to designate freeborn witnesses, amongst others; see *LI* 2.4.3, 2.4.5, and s.v. idoneus, 524.

165 *docuistis*: the passive voice or a verb of learning seems indicated; or this could be scribal error for *docuit is*, “he [Christ or Paul] has taught,” inspired by the “original” formula for exorcism in Acts 19:13.

166 This seems to allow for the possibility of a church lacking any relics.

167 Supplying “church” from A.2.1.

168 *more solito*.

[4] Once the mass has been finished, let the priest receive the Cross, the Gospel, and the incense, and let them proceed to the appointed place, with sprinkling of the blessed water, where they are to be tried. And when they have come to that place, let him give those men some of the blessed water to drink. Now when he has given some to each one, let him say:

[4.1] This water I¹⁶⁹ have given you for the testing today.

[5] Afterwards let him call upon the water in which he must put them, speaking thus:

[5.1] In the name of the Lord God, the Father Almighty, who created you in the beginning and ordered that you be supplied for human needs, who also ordered that you be divided from the waters above.¹⁷⁰ I call upon you by the ineffable name, the Lord Jesus Christ, namely, the Son of the living God, under whose feet He caused you, the sea and this¹⁷¹ element, to be trodden upon,¹⁷² who also wished to be baptized in you with the element of the waters.¹⁷³ I call upon you by the Holy Spirit, who descended upon the baptized Lord.¹⁷⁴ [5.1.1] I call upon you by the holy and indivisible Trinity, by whose will the element of the waters was divided, and the people of Israel managed to cross it with dry footsteps,¹⁷⁵ and also by conjuring whom Elisha caused the iron which had come off the haft to bob upon you,¹⁷⁶ not in any way to receive these men (named *this and that*), if in any respect they are guilty of what they¹⁷⁷ cast before them, whether that is by acts or by consent or by any device, but to cause him to float upon you.¹⁷⁸

169 First person: note that at A.5.1 this is third person.

170 Genesis 1:9–10.

171 Strikethrough: “the sea and this.”

172 Matthew 14:22–33; Mark 6:45–52; John 6:16–21.

173 Matthew 3:13–15; Mark 1:9, where Christ is baptized in the River Jordan.

174 Matthew 3:16–17; Mark 1:10–11; Luke 3:21–22; John 1:32–34, where a dove representing the Holy Spirit alights upon the baptized Christ.

175 Exodus 14:21–22, whereby the Israelites crossing the parted Red Sea on dry ground symbolizes the inability of its waters to harm them (unlike the pursuing Egyptians).

176 II Kings 6:1–7, whereby the head of the borrowed axe is safely fished out of the River Jordan, prefiguring in a sense the retrieval of the stone in the ordeal of hot water.

177 This refers to the accusers.

178 Curiously, this procedure reverses the miracles of the floating axe-head and Christ walking on the water; in that floatation here is reserved for the guilty; it must

[5.1.2] And let no instance of wrongdoing manage to achieve anything against you, and no deceptions be concocted by demons, lest the enquiry of God or his revelation be possibly concealed.

[5.1.3] Now, being called upon by the name of Christ, we direct you to obey us through the name of Him whom every creature serves, whom the cherubim applaud together, saying: **Holy, Holy, Holy**, Lord God of hosts,¹⁷⁹ who also reign over and rule all things through the unending ages of ages. **Amen.**

[5.2] I call upon you, *that man*, by the conjuring of Our Lord Jesus Christ, I call upon you by all the angels and archangels, and by all the saints of God, and by the day of fearful judgement, and by the twenty-four elders who praise God every day,¹⁸⁰ and by the four evangelists Mark and Matthew, Luke and John—and by the twelve Apostles, by the twelve Prophets, and by all the holy martyrs of God, by the holy confessors and holy virgins, by the principalities and potentates, by the dominions and powers of the heavens,¹⁸¹ by the cherubim and seraphim, and by all the heavenly ranks of angels. **[5.2.1]** I call upon you by the three boys, Shadrach, Meshach, and Abednego,¹⁸² and by the 144,000 martyrs who suffered for the name of Christ,¹⁸³ and by the holy Mary, mother of Our Lord Jesus Christ, and by the holy people of God, and by that baptism which renewed you by the hands of the priest. **[5.2.2]** I call upon you: if in this matter you have committed any theft or murder or adultery, or have been complicit in it, and have such a blocked-up and calloused heart¹⁸⁴ that you have believed that you can cause this adjudication, the judgement of God,¹⁸⁵ to be voided or overturn it by some mischief, if you are guilty, let your heart weaken and that water not receive

signify guilt as rejection of baptism, since according to Ambrose that entailed full submersion in water.

179 Isaiah 6:2–3; Revelation 4:8, whereby (in the latter version) the seraphim praise the heavenly throne from a sea of glass.

180 Revelation 4:4.

181 Colossians 1:16; Ephesians 1:21.

182 Daniel 3:8–30 (cf. Jude 1:23), though the fiery furnace fits the ordeal of hot better than cold water.

183 Revelation 7:1–8, whereby their “sealing” precedes the “harming” of the land and the sea.

184 Isaiah 6:10; Matthew 13:15; Acts 28:27.

185 *iuditium Dei*.

you, nor the Enemy¹⁸⁶ be able to prevail through any evil against this element—rather let the power of God be revealed and proclaimed in this place by the conjuring of Our Lord Jesus Christ. **[5.2.3]** Wherefore we strenuously implore you, Lord: make such a sign in *this man* that, if he is guilty in this cause for adjudication, the truth of the matter may be proclaimed by this judgement of yours, and the water may in no way receive him. **[5.2.4]** Now do this, Lord, for your praise and glory, by the conjuring of your name, so that all may recognize that you are our blessed and immortal God, throughout the immortal ages of ages, amen.

[6] Now after the oath of the water, let him cast off their clothes and dress them in the clothes of the exorcists,¹⁸⁷ and tie cords around them one by one according to the ritual custom,¹⁸⁸ and make them kiss the Gospel and the Cross. And after these [steps], let him sprinkle over each of them some of that blessed water, and utter the following solemn charge, and cast them straightaway into that water one by one. Mind, you ought to do all of this while fasting, so let them not eat beforehand, nor those who put them in the water.¹⁸⁹ The exorcism follows:

[6.1] I exorcise you, creature of water, in the name of God the Father Almighty, and in the name of Jesus Christ His Son Our Lord, who reigns with the Father and the Holy Spirit, that you become exorcised water to purge all power of the Enemy and every phantom of the Devil, so that if *this man* has lowered himself into that water and is innocent of this cause for adjudication, may the mercy of Almighty God deliver him,¹⁹⁰ and this element of yours receive him. **[6.1.1]** And if he is guilty and has lowered himself with arrogance into that water, let it not receive him, but your power be made manifest in him, so that every man may fear and tremble at the holy name of your glory, through all the ages of ages. **Amen.** **[6.1.2]** Lord, deliver the innocent and mark the perpetrators with a sign.¹⁹¹ **Amen.**

186 Superscript: “the Enemy.”

187 See note above on A.5.

188 *rite consuetudinis*.

189 I Samuel 7:6, where in the judgement of the Israelites they draw and pour out water, fast, and confess.

190 Superscript: “him.”

191 See Daniel 13:53.

Conclusion

And if a complaint has been made before the judges on grounds of suspicion, he whom they have held to be suspicious should defend himself by oath and by hot water, through the hands of good men.

Fuero de León (1017)¹⁹²

What makes the liturgy of trial by water translated here unique is its conjunction with a copy of the Visigothic code containing the ordeal law, and its transmission in a manuscript from the circle of Bonsom, a scribe and judge present for at least one ordeal himself. In other words, it brings law, casebook, and liturgy together, and demonstrates that contemporaries in active judicial practice understood them to belong together. Reading across the three genres of evidence allows us to see that the legal text, reflecting its anomalous, marginal place in the Visigothic code, is essentially irrelevant in court cases except for terminology, clearly ceding priority to the rituals of baptism and exorcism as sources for ordeal procedure. The rituals of MS B came to Barcelona from Francia, in *ordines* paralleling Frankish practice and liturgical text stemming ultimately from the Romano-Gallican tradition, but in mediating Scripture they have a point of comparison with the Old Hispanic rite, the distinct Iberian tradition of chant, hymns, readings, and prayers long established by this date. Consolidated by the later seventh century though likely recognizable by the end of the sixth, it was created as part of a cultural and intellectual project by the bishops after the general conversion of the Visigoths to Nicene orthodoxy at the Third Council of Toledo in 589: to educate the clergy and lay community in the text and exegesis of Scripture, and to form identity by teaching doctrine.¹⁹³ We can see a compatible pedagogical impetus in the insistent theologizing of ordeal in the rituals, a deeply textual grounding of its spiritual and social weight in serial Biblical exempla, where settling disputes through trial by water confronted the mundane with the miraculous.¹⁹⁴

The embattled king Alfonso V is an unlikely father to early medieval Iberian law, yet when he issued the *Fuero de León* in 1017 it was the first act of legislation since the fall of the Visigothic kingdom three centuries before. None of his predecessors had made new law; all had retained and respected the law of their forebears, to secure the legitimacy which that continuity

192 Oviedo 42.20; cf. *Estudios*, 547n65.

193 Maloy, *Songs of Sacrifice*, esp. 1–18, 42–104; Hornby et al., *Understanding the Old Hispanic Office*, 7–29.

194 Kirakosian, “Hoc iudicium creavit Omnipotens Deus”; Leeson, “Ordeals.”

conferred. What he attempted, beset by enemies foreign and domestic, was to reset the relationship between crown and code from passive to active, to reaffirm royal control of the realm through legislative initiative, and to restore a greater measure of “public” power to the regulation of transaction and dispute in his kingdom. The text which he promulgated in council with bishops, abbots, and *optimates* at the cathedral of León is nevertheless framed within the ongoing relevance of that code, and the two different but compatible versions of the *Fuero* surviving in the twelfth- and thirteenth-century cartularies respectively of Oviedo and Braga confirm, supplement, and revise its provisions.¹⁹⁵ One resolution calls the ordeal by name (*aqua calida*, “hot water”), and entrusts its management to “the hands of good men” (*manus bonorum hominum*), the better sort, those with the social purchase to form consensus around a settlement.¹⁹⁶ The rituals of the liturgy served this same purpose of stage-managing acceptance.

And if the form of those rituals was set down for Frankish use by Eugenius II, whose papacy ended in the very year of 827 when the law first appeared in an Iberian manuscript, is it too much to suppose that one led to the other? That first appearance is a simple rubric, little more than recognizing the existence of the practice, “How the judge should investigate cases through the ordeal of the cauldron”: its initial position ending a title on judicial procedure is perfectly sensible for this skeletal content. Even when, more than a century later, it acquired substance, the text just applies the ordeal, without defining it, to all freemen as a limit on the use of torture, but that did necessitate shifting the law to the end of another title on bringing accusations. Of course, there is no reason in principle why the Visigoths could or would not have had some such habit, one based around water, be it hot or cold. Yet all our manuscripts of the *Liber Iudiciorum* are contemporary with or later than the charters documenting its use, and the *Fuero* witnessing its revision: what they transmit is not straightforwardly the rulings of the kings of the Visigoths, but an early medieval mediation, Visigothic law in service of post-Visigothic ends, for which we have no outside control. In the casebook of trial by water, we find more parallels with the liturgy, suggesting that, whatever form ordeal law “originally” assumed in the code, it developed in time as ritual norms and court practice converged, to be written back into the past as we now have it, a law from a world elsewhere.

195 Barrett, *Text and Textuality*, 308–13.

196 “El Fuero de León,” ed. Pérez González, 15; see Miceli, “Prueba, verdad y sospecha”; Corral and Pérez Rodríguez, “Negotiating Fines”; Davies, “*Boni homines* in Northern Iberia.”

Abbreviations

- Albelda* *Cartulario de Albelda*. Edited by Antonio Ubieto Arteta. 2nd ed. Zaragoza: Anubar, 1981.
- Alfonso V* "Alfonso V, rey de León." Edited by José María Fernández del Pozo. In *León y su historia* 5:9–262. León: Centro de Estudios e Investigación "San Isidoro", 1984.
- Braga* *Liber Fidei Sanctae Bracarenensis Ecclesiae*. Edited by Avelino de Jesus da Costa, revised by José Marques. 2 vols. Braga: Arquidiocese de Braga, 2016.
- Cañizares* Cañizares del Rey, Ventura. *Colección diplomática I (569–1463)*. Edited by Manuel Rodríguez Sánchez and Óscar González Murado. Lugo: Diócesis de Lugo, 2012.
- Castañeda* *El Tumbo del monasterio de San Martín de Castañeda*. Edited by Ángel Rodríguez González. León: Centro de Estudios e Investigación "San Isidoro", 1973.
- CCCM* *Corpus Christianorum Continuatio Mediaevalis*. Turnhout: Brepols, 1967–.
- CCSL* *Corpus Christianorum Series Latina*. Turnhout: Brepols, 1954–.
- Celanova* *Colección diplomática del monasterio de Celanova (842–1230), III (989–1006)*. Edited by Emilio Sáez and Carlos Sáez. Alcalá de Henares: Universidad de Alcalá de Henares, 2006.
- Coruña* *La Coruña. Fondo antiguo (788–1065)*. Edited by Carlos Sáez and María del Val González de la Peña. 2 vols. Alcalá de Henares: Universidad de Alcalá de Henares, 2003–04.
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- FV* "Formulae Wisigothicae." Edited by Juan Gil. In *Miscellanea Wisigothica*, 70–112. 2nd ed. Seville: Universidad de Sevilla, 1991.
- León* *Colección documental del Archivo de la Catedral de León (775–1230), I (775–952)*. Edited by Emilio Sáez. León: Centro de Estudios e Investigación "San Isidoro", 1987 [nos. 1–258].
- Colección documental del Archivo de la Catedral de León (775–1230), III (986–1031)*. Edited by José Manuel Ruiz Asencio. León: Centro de Estudios e Investigación "San Isidoro", 1987 [nos. 512–895].
- LI* "Liber Iudiciorum sive Lex Visigothorum." Edited by Karl Zeumer. In *Leges Visigothorum*. MGH Leges nationum Germanicarum 1:33–456. Hanover: Hahn, 1902.
- LIP* *Liber Iudicum Popularis: ordenat pel jutge Bonsom de Barcelona*. Edited by Jesús Alturo et al. Barcelona: Generalitat de Catalunya, 2003.

- Lugo* *Colección diplomática altomedieval de Galicia, II. Documentación en escritura visigótica de la sede lucense.* Edited by Ainoa Castro Correa and Manuel Rodríguez Sánchez. 2 vols. Lugo: Diócesis de Lugo, 2019.
- Ordines* "Ordines iudiciorum Dei." Edited by Karl Zeumer. In *Formulae Merovingici et Karolini aevi*. MGH *Formulae*: 599–722. Hanover: Hahn, 1886.
- Otero* *Colección documental del monasterio de Santa María de Otero de las Dueñas, I (854–1108).* Edited by José Antonio Fernández Flórez and Marta Herrero de la Fuente. León: Centro de Estudios e Investigación "San Isidoro", 1999.
- Oviedo* *Colección de documentos de la catedral de Oviedo.* Edited by Santos García Larragueta. Oviedo: Instituto de Estudios Asturianos, 1962.
- Pino* Rodríguez Fernández, Carlos. "La colección diplomática de San Vicente del Pino." PhD diss., Universidad de Granada, 1990.
- Salrach* *Justícia i resolució de conflictes a la Catalunya medieval. Col·lecció diplomàtica, segles IX–XI.* Edited by Josep M. Salrach i Marès et al. Barcelona: Generalitat de Catalunya, 2018.
- Samos* *El Tumbo de San Julián de Samos (siglos VIII–XII). Estudio introductorio, edición diplomática, apéndices e índices.* Edited by Manuel Lucas Álvarez. Burgos: Aldecoa, 1986.
- San Millán* *Becerro Galicano Digital.* <https://www.ehu.eus/galicano/>, accessed December 7, 2023.
- Santiago* *La documentación del Tumbo A de la catedral de Santiago de Compostela. Estudio y edición.* Edited by Manuel Lucas Álvarez. León: Centro de Estudios e Investigación "San Isidoro", 1997.
- Sobrado* *Tumbos del monasterio de Sobrado de los Monjes.* Edited by Pilar Loscertales de García de Valdeavellano. 2 vols. Madrid: Archivo Histórico Nacional, 1976.

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