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CONTEMPLATING CONVIVENCIA: COSMOPOLITANISM, EXCLUSIVISM AND RELIGIOUS  
IDENTITY IN IBERIA

by

JOHN FRANCIS SULLIVAN II

Under the Direction of Louis A. Ruprecht Jr.

ABSTRACT

Visigothic *Hispania*, Islamicate *al-Andalus* and Christian *Spain* are names representing three scriptural monotheistic civilizations in Iberia. *Al-Andalus* has stood apart from this list by representing a time and a place of *convivencia* in which Christians, Jews and Muslims cooperated and coexisted. Why and how the Islamicate civilization in *al-Andalus* differed from the Visigoths or the Spanish, despite all three sharing a religious orientation is an historical puzzle. By exploring the legal status of Jews within the legal regimes of Christian Rome and Visigothic *Hispania*, this thesis will suggest that it is cosmopolitanism and its converse exclusivism that best explain concepts of *convivencia* or coexistence in the face of religious diversity.

INDEX WORDS: Convivencia, Iberia, Islam, Muslim, Spain, Cosmopolitanism, Jew, Christian, Roman, Visigoth, Exclusivism, Law, Theodosius, Constantine, Diogenes, Cosmopolitan

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JOHN FRANCIS SULLIVAN II

A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of

Master of Arts

in the College of Arts and Sciences

Georgia State University

2012

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2012

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IDENTITY IN IBERIA

by

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August 2012

**DEDICATION**

For Lou, strength and honor.

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## 1 INTRODUCTION

Medieval Iberia (c. 711 CE – 1492 CE) is often upheld as a model of social organization by contemporary scholars who privilege terms such as coexistence or *convivencia*. Such terms are designed to foreground the categories of tolerance and intolerance as they may have been reflected within the regimes that ruled in that place and time. In this thesis, I will explore Iberia, not in terms of tolerance or intolerance, but by using a different set of variables in order to highlight what may be a more broadly applicable and ultimately more illuminating picture of what actually emerged. My starting point will be a close study of the legal regimes and their response to religious minorities, specifically Jewish minorities, in Late Antique Iberia under the legal systems of the Romans and then the Visigoths which served as an important prelude (and as a counterpoint) to the social organization of Medieval Iberia.

In the first half of this thesis I develop an analytical template for examining the regimes of Iberia according to the categories of cosmopolitanism versus exclusivism. These terms are intended to reflect very different social responses to pluralism and diversity, especially where emerging notions of religious identity are paramount.

I then use this template to examine Iberia in Late Antiquity in its period of transition from a province of the later Roman Empire to a semi-independent kingdom of several Visigothic regimes between 419 CE and 711 CE. To lend specificity to the study, I focus on the changing legal status of Jews within the legal regimes of a nascent Christian *imperium* that eventually declared itself an independent Nicene kingdom, one far more exclusivist in orientation. Several law codes produced by these successive regimes (the *Codex Theodosianus*, *Lex Romana Visigothorum* and the *Lex Visigothorum*) neatly illustrate the shift from a comparatively

cosmopolitan orientation toward religious pluralism to a comparatively exclusivist one that tended in the end toward outright expulsion. By utilizing the categories of cosmopolitanism and exclusivism, I hope to show that the story of shifting legal regimes in Iberia may not be reduced to religious categories nor may it be reduced to a story comparing tolerant Muslims to intolerant Christians. I do not treat religion as an independent variable in this way. The phenomenon of cosmopolitanism and social tolerance is far more complex sociological matter than such simplistic interpretations allow.

### *What's in a name?*

Iberia is one of several names for the peninsula south of the Pyrenees that is currently home to the modern nations of Spain and Portugal. The names associated with Iberia derive from different peoples, from different places, and from different moments in time. Each name for Iberia implies a different story about the people, places and times in which that name emerged. In this thesis I would like to discuss three specific names associated with this peninsula: Visigothic *Hispania*, Islamicate *Al-Andalus*, and Christian *Spain*. By closely examining certain aspects of these three names, I will tell another story, a story about cosmopolitanism, exclusivism and religious identity and how they influenced the unique history of this place.

### **1.1 Engaging Iberia**

The names Visigothic *Hispania*, Islamicate *Al-Andalus* and Christian *Spain* each contain two parts. *Hispania*, *Al-Andalus* and *Spain* are geographic place names that will be relatively easy to explain. Visigothic, Islamicate and Christian, however, are more complicated and will require significantly more explanation in order to understand each name and what they are intended to represent.

### 1.1.1 *Temporal Bookends and the Iberian Difference*

Histories are often delimited by temporal bookends. These bookends are used to mark the beginnings and ends of periods in which a particular history or histories take place. When discussing Western Civilization, historians often utilize a series of general names to denote historical periods.<sup>1</sup> And similarly three such names or periodizations have relevance to my story of Iberia: Late Antiquity, the Middle Ages, and the Renaissance. While these periods have come to be generally accepted as essential to the story of Western Civilization, the specific dates that are accepted as temporal bookends tend to vary from author to author. The common temporal bookends I will be assuming are as follows: Late Antiquity,<sup>2</sup> 312 CE (the conversion of Constantine) to 632 CE (the death of Muhammad); the Middle Ages 800 CE (the crowning of Charlemagne as Holy Roman Emperor) to 1348 (the height of the ‘Black Death’);<sup>3</sup> and the Renaissance, 1375 CE (the publication of Boccaccio’s *Decameron*)<sup>4</sup> to 1527 CE (the Sack of Rome and Treaty of Bruges between Charles V and Pope Clement VII).<sup>5</sup>

The specific temporal bookends I will employ in my history of Iberia relate specifically to the three names I described previously. The temporal bookends for Visigothic *Hispania* are 419 CE (the arrival of the Visigoths in Iberia)<sup>6</sup> and 711 CE (the Muslim invasion of Iberia). Islamicate *Al-Andalus* is likewise bookended by the 711 CE invasion of Iberia and 1492 CE (the capitulation of the Nasrid kingdom in Granada). Finally, Christian *Spain*, is designated by the

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<sup>1</sup> See for example, Donald Kagen, Steven Ozment and Frank M. Turner, *Western Heritage* (Upper Saddle River, NJ: Pearson Prentice Hall, 2007).

<sup>2</sup> Late Antiquity is something of a scholarly designation. The History textbook *Western Heritage* dates Late Antiquity from 250 CE (“The Age of Empires: Rome and Persia”) to 800 CE (The crowning of Charlemagne as Holy Roman Emperor). Scholars like Seth Schwartz tend to bookend Late Antiquity from some point in the reign of Constantine (r. 306 CE – 337 CE) to the rise of Islam after the death of the Prophet Muhammad (632 – 640 CE); see Seth Schwartz, *Imperialism and Jewish Society, 200 BCE to 640 CE* (Princeton: Princeton University Press, 2001). I will use this later convention.

<sup>3</sup> Kagen, *Western Heritage*, 192, 292.

<sup>4</sup> Kagen, *Western Heritage*, 318.

<sup>5</sup> Kagen, *Western Heritage*, viii.

<sup>6</sup> Roger Collins, *Visigothic Spain 409-711* (Malden, MA, Blackwell Publishing, 2004), 26.

temporal bookends of 1212 CE (the Battle of Las Navas de Tolosa)<sup>7</sup> and 1492 (the conclusion of the *Reconquista* and the unification of a Catholic Kingdom in Iberia). The dating of Christian *Spain* represents a deliberate overlap with Islamicate *Al-Andalus* that is intended to reflect the period of the *Reconquista* as well as the coexistence, interplay and distinctions between these two civilizations in the shared territory of Iberia.

When my history of Iberia is set next to the traditional periodization of western civilization, something interesting occurs; the timelines do not match up. Visigothic *Hispania*, for example, straddles the period of Late Antiquity and extends into the Middle Ages. Likewise, Islamicate *Al-Andalus* begins in the Middle Ages, but extends well into the period of the Renaissance. Finally, Christian *Spain* begins in the Middle Ages and continues through the Renaissance and into the Early Modern period. This incongruity between the temporal bookends that I am using for Iberia and the bookends outlined in *Western Heritage*, gives us our first inkling that this story of Iberia is not a story about “The West,” but instead represents something different. This difference is a phenomenon that I will refer to in several instances as the “Iberian Difference.” The Iberian Difference refers to both the unique history of this territory and the consequences that result from both its physical and metaphorical separation from “The West.”

### 1.1.2 *In the year 1492...*

Part of the distinction between Iberia and the traditional story of the “West” is that Iberia was ultimately not a part of the West or Europe in the times in which my history takes place. My history of Iberia ends in 1492 CE specifically because this is the point at which Iberia seems to be integrated into the story of Christian Europe and The West. 1492 CE is a monumental date in

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<sup>7</sup> David Levering Lewis states “this epic battle between Christians and Muslims... took on the deep tincture of religious fanaticism that became official Western ideology three years later when Pope Innocent III ordained the crusade against heretics, Jews and Muslims at the Fourth Lateran Council,” in *God’s Crucible* (New York: W.W. Norton, 2008), 252. See also Stephen O’Shea, *Sea of Faith* (New York: Walker and Company, 2006), 205-230.

the history of Western Civilization involving the first voyage of Columbus, the first contact with the New World, and the beginning of the so-called Age of Discovery. 1492 CE is also a significant date in my history of Iberia, but for very different reasons. It represents the end of Islamicate *Al-Andalus*, and the expulsion of the Jews from Iberia in that same year. From the Christian Spanish perspective, 1492 CE also represents the victory of the *Reconquista* in Iberia, and the return of Christian rule to the peninsula. Thus, while Western Europe was having a Renaissance, Iberia was undergoing a *Reconquista*. These divergent interpretations of the importance of 1492 CE also represent another example of the Iberian Difference when we think about the concept of “Golden Ages.” From a Western or Spanish perspective, the traditional “Golden Age” of Spain (*Siglo de Oro*) takes place after 1492 CE in the 16<sup>th</sup> and 17<sup>th</sup> centuries.<sup>8</sup> Conversely, the time before 1492 CE, especially in the 10<sup>th</sup> and 11<sup>th</sup> centuries in Islamicate *Al-Andalus*, is referred to as the “Jewish Golden Age.”<sup>9</sup>

Because my history of Iberia ends in 1492 CE, it is not a story about the West nor a broader history of Western civilization, but is instead a story that takes place betwixt and between traditional Western or European temporal bookends. As we explore the Iberian Difference in the context of history, peoples and societies we will see that this history of Iberia does not reveal something Western or European, but rather something distinctly Iberian.

### 1.1.3 Peoples and a Peninsula

Although *Hispania*, *Al-Andalus* and *Spain* are demarcated by different temporal bookends, the all correspond to the same territory, Iberia. The territorial name was changed over time by the peoples who inhabited and controlled it. *Hispania* is the first and the oldest name in my story. *Hispania* was the name given to a territory of the Roman Empire after it was captured in

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<sup>8</sup> Jane S. Gerber, *The Jews of Spain* (New York: The Free Press, 1994), 28.

<sup>9</sup> *Ibid.*

218 BCE during the Second Punic War with Carthage.<sup>10</sup> It was following this acquisition that Iberia became the Roman Province of *Hispania*.<sup>11</sup> *Hispania* enjoyed a long history as a Roman province, and contributed two key figures in my story: the Emperors Hadrian and Theodosius. Within this thesis, *Hispania* will always be accompanied by a modifier. Roman *Hispania* denotes the period of Roman rule from 218 BCE to 409 CE (the date of the arrival of the combined forces of the Suevi, Alans and Vandals).<sup>12</sup> With regard to the name ‘Visigothic’, Roger Collins indicates that “it is now generally accepted that the self-identification of the people who are now known as the Visigoths (and who would have thought of themselves as just being Goths) was the product of the years that followed the battle of Adrianople in 378 [CE].”<sup>13</sup> Following Alaric’s sack of Rome in 410 CE, the Goths eventually migrated west, displacing the Suevi, Alans and Vandals and assuming control of Iberia in 419 CE.<sup>14</sup> The Visigoths are the name for the people “derived from a confederacy of different ethnic groups... who came to make themselves masters of Spain in the course of the fifth century.”<sup>15</sup> Visigothic *Hispania* will thus refer to the Visigothic civilization in Iberia (419 CE – 711 CE).

*Al-Andalus* (“The land of the Vandals”) is the Arabic name for the Iberian territory under Muslim rule (711 CE – 1492 CE). While the extent of Iberian territory under Muslim control changed within these temporal bookends, *Al-Andalus* is the generic name I will use for references to Islamicate Iberia.

Finally, *Spain* is the name that I will use to refer to the lands associated with the northern Catholic kingdoms in Iberia. I am using this name in part to reflect the eventual conclusion of

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<sup>10</sup> A.T. Fear, “Prehistoric and Roman Spain,” in *Spain: A History*, ed. Raymond Carr (New York: Oxford University Press, 2000), 20-21.

<sup>11</sup> J.S. Richardson, *The Romans in Spain* (Cambridge: Blackwell Publishers, 1996), 9.

<sup>12</sup> Collins, *Visigothic Spain*, 11.

<sup>13</sup> *Ibid*, 20.

<sup>14</sup> *Ibid*, 26.

<sup>15</sup> *Ibid*, 24.

the *Reconquista*, which was a unified Catholic kingdom in Spain, but also to suggest the emergence of new forces that led to the rise of Spanish nationalism later on. As with *Al-Andalus*, the lands associated with Christian *Spain* were in flux, with different parts of the territory occupied at different times. Because I am using *Spain* as a name to represent a unified Catholic trajectory post-1212 CE, I will use specific kingdom names such as Asturias, Castile, Portugal, or Navarre when referring to the non-Muslim regimes in Iberia between 711 CE and 1212 CE. With Christian *Spain*, the bookend of 1212 CE also represents a change in military orientation. Prior to 1212 CE, the independent Catholic Kingdoms of Iberia typically engaged in raids, however this was exchanged in the battle of *Las Navas de Tolosa* for a state of “all-out war.”<sup>16</sup> The interest of Pope Innocent III in Spain, and his call for a Crusade<sup>17</sup> that was answered by several Catholic kingdoms, as well as monastic knightly orders like Santiago and Calatrava,<sup>18</sup> implies a battle not for political, economic or territorial gain, but over *religion*, a subject that will need to be further explored in relation to Iberia and its peoples.

#### 1.1.4 *Imperial Identities*

As we saw in the previous section, the differences in place-names are derived from the peoples who employed them. While divided chronologically, Visigothic *Hispania*, Islamicate *Al-Andalus* and Christian *Spain* also refer to social, cultural and political complexes of people that represent what has been traditionally called “civilization.” These three civilizations are expressed by the modifiers: Visigothic, Islamicate and Christian. These three names are particularly complicated because their meanings and definitions are not simple, especially if we are curious about the role of religion in this history of Iberia. A cursory glance at the three names does not help us to understand them fully, but does suggest some initial matters of

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<sup>16</sup> O’Shea, *Sea of Faith*, 216.

<sup>17</sup> *Ibid.*

<sup>18</sup> O’Shea, *Sea of Faith*, 209.

importance. Christian, at the very least, seems to express a clear association with a religious tradition. “Islamicate” seems to suggest a connection to Islam, but that connection is complicated by the presence of the suffix “-ate.” Lastly, ‘Visigothic’ does not seem to express any clear connection to religion and instead appears to reflect an ethnicity. It is also unclear how these three modifiers relate to the people and temporal bookends with which I have associated them. In the case of *Hispania*, for example, the modifiers Roman and Visigothic both serve to differentiate between two historical civilizations that share the same place-name. Roman *Hispania* and Visigothic *Hispania* involve different time periods to be sure, but it is the people and their civilizations that distinguish them from each other.

The names ‘Roman’ and ‘Visigothic’ reflect the dominant civilization in their respective periods in *Hispania*. If a civilizational name is a reflection of the socio-cultural complex it represents, then we might conclude that the socio-cultural complex, or some aspect thereof, is what best identifies the civilization. Collectively then, Visigothic, Islamicate and Christian are names that represent three dominant civilizations, or what I will refer to as imperial identities. Using this model, “Visigothic” is the name for the imperial identity associated with the dominant civilization occupying *Hispania* from 419 CE to 711 CE. How “Visigothic” was defined, how it was different from “Roman,” and what role religion played in the socio-cultural complex associated with that name will be discussed in Chapter 2.

Similarly, “Islamicate” is the name for the imperial identity associated with the dominant civilization in *Al-Andalus*. While we might infer ethnicity from a name like “Visigothic,” “Islamicate” is not as self-evident as an “ethnic” designation. If Muslims or Islam are associated with *Al-Andalus*, then Arab or Islamic might seem to be better modifiers for this civilization; “Islamicate” is therefore not an obvious or self-evident choice. The term “Islamicate” was

coined by historian Marshall G.S. Hodgson and is used to “refer not directly to the religion, Islam, itself, but to the social and cultural complex historically associated with Islam and the Muslims, both among Muslims themselves and even when found among non-Muslims.”<sup>19</sup> In selecting the modifier ‘Islamicate’, I am intentionally suggesting a connection between the culture and civilization in *Al-Andalus* and the religion, society and culture associated with Muslims and Islam.

‘Christian’ is the name that may seem the most self-evident to a modern American audience, but it is in fact more complex, because, whereas this name is traditionally used to represent a religious tradition, I am using it in association with a civilization. It is for this reason that we need to take a closer look at the concept of imperial identity, and of “identity” in general, in order to understand the impact that conceptions of identity may have on a civilization.

According to the intellectual historian, David Hollinger, “identity is a social process by which a person becomes affiliated with one or more acculturating cohorts.”<sup>20</sup> Hollinger is here discussing identity in the context of a modern individual. “Identity” therefore needs to be explained in terms of the individual affiliation (personal identity) as well as the empire or civilization (the acculturating cohorts) for this concept to have descriptive value in my history of Iberia.

Personal identity is somewhat easier to grasp, as it is the more familiar idea in the era of modern individualism.<sup>21</sup> Identity in the case of the modern individual typically involves categories such as race, ethnicity, gender, class, and sexual orientation. For modern individuals, these identities, along with others, might be thought to constitute the essence of an individual to

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<sup>19</sup> Marshall G.S. Hodgson, *The Venture of Islam: Conscience and History in a World Civilization, Vol. 1: The Classical Age of Islam* (Chicago: University of Chicago Press, 1974), 59.

<sup>20</sup> David Hollinger, *Postethnic America: Beyond Multiculturalism* (New York: Basic Books, 2005), 6.

<sup>21</sup> See Charles Taylor, *Multiculturalism: The Politics of Identity* (Princeton: Princeton University Press, 1994), 25-75.

the extent that they are essential to their conception of self-identity. We should recognize, however, that these modern categories of identity may not have been in play for pre-modern individuals in Visigothic *Hispania*, Islamicate *Al-Andalus* and Christian *Spain*, who may have conceived of their personal identity very different terms.

Pre-Visigothic<sup>22</sup> personal identities (which did not include “religion” as a separate category or identity<sup>23</sup>) appear to focus on three primary categories of identity: family or tribal affiliation, geographical or city affiliation, and vocational affiliation. Thus, persons might conceive of their personal identity based on affiliations drawn from these three areas. In the case of Muhammad Ibn ‘Abdullah, the eventual Prophet of Islam, he was the son of ‘Abdullah, a member of the Quraysh tribe, from the city of Mecca, in the Arabian region of the Hijaz and worked as a merchant. Thus, Muhammad’s personal identity was constituted by this combination of affiliative categories. Religion could still be a part of the personal identity of a Pre-Visigothic individual, however that set of beliefs and practices would seem to be embedded within the individual’s socio-cultural context.<sup>24</sup>

Imperial identity is similarly constructed, but derives from the people and socio-cultural complex of the civilization. In this way, an imperial identity is comprised of a loose coalition of components: families, tribes, cities, regions, industries and institutions related to its population and leadership. Of the components that form an imperial identity, some exert a greater influence on the civilizational identity than others, and as such, have the potential to become dominant. As

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<sup>22</sup> In the reign of Roman Emperor Theodosius (379-395 CE), “religion” became a new and separate category of identity. In the history of Iberia, from the Visigoths forward this new category was in play. ‘Pre-Visigothic’ therefore describes conceptions of identity before this category became disembedded.

<sup>23</sup> See Schwartz, *Imperialism and Jewish Society*, and Daniel Boyarin, *Border Lines* (Philadelphia: University of Pennsylvania Press, 2007) for the emergence of ‘religion’ as an independent category of identity.

<sup>24</sup> See Boyarin, *Border Lines*, for a full discussion of religion as an embedded practice.

a result, a civilization's orientation can be most influenced by what I am calling its dominant category of identity.

### 1.1.5 *Dominant Categories of Imperial Identity*

The concept of a dominant category of identity is my way of describing the defining characteristic of a particular civilization. In this way, any given civilization may have an implicit hierarchy of identity in which the category that sits atop that hierarchy exerts a dominant influence. The presence and impact of such a dominant identity category can be seen in the way that the civilization responds to diversity both from within and without. To use my earlier example of Muhammad, his civilization, prior to the rise of Islam, revolved around the city of Mecca and the Quraysh tribe that constituted the dominant political and economic power in the region.<sup>25</sup> As Hodgson states, “the most important trading centre of western and central Arabia was Mecca in the *Hijaz*.”<sup>26</sup> The Meccan society's imperial identity was therefore comprised of a city or geographic identity (Mecca and the *Hijaz*) as well as a family or tribal one (the Quraysh). In addition to their caravan expeditions, part of the Quraysh's primary business in Mecca was managing pilgrimages to the *Ka'ba*, which then housed the 360 deities worshipped by many individuals and groups in and around the Arabian Peninsula.<sup>27</sup> The Quraysh managed and profited from all aspects of these pilgrimages, along with fairs and other markets organized for the many visitors to the city,<sup>28</sup> thus we might conclude that part of the Quraysh's imperial identity included the vocational category of “merchant,” of which Muhammad was an exemplary figure.<sup>29</sup> As the Muslims emerged as a new affiliative unit within Meccan society, the Quraysh

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<sup>25</sup> Hodgson, *The Venture of Islam: Vol. 1*, 155.

<sup>26</sup> *Ibid*, 154.

<sup>27</sup> Frederick Denny, *Introduction to Islam* (Boston, Prentice Hall, 2011), 40.

<sup>28</sup> Hodgson, *The Venture of Islam: Vol. 1*, 155.

<sup>29</sup> *Ibid*, 158.

had to respond to them, and their eventual response was exceedingly negative.<sup>30</sup> Despite the clearly religious nature of Islam, the Quraysh's response appears not to have been solely about religion, but was likely also about commerce. More than anything, Muhammad and his new religious group threatened the Quraysh's commercial success by calling for the exclusive worship of one deity as opposed to the 360 then housed in the *Ka'ba*, and actively impeding the business of pilgrimage.<sup>31</sup> It would be easy to imagine the conflict between the Muslims and the Quraysh as one of religion, but the Quraysh were ultimately fighting on behalf of all deities and in defense of the lucrative commercial enterprise associated with them. As Hodgson suggests, the pre-Islamic religious system practiced by most Bedouins was "chiefly on the basis of bargaining [for favor]" in which "there seems to have been little higher moral challenge."<sup>32</sup> Thus, it seems less likely that Muhammad's new affiliative group constituted a threat to the Quraysh on the basis of what we would call their "religious" difference, unless we understand that the Muslims' worship and monotheistic beliefs were in conflict with the worship of multiple deities in the *Ka'ba*, where that worship represented a significant portion of the Quraysh's economic well-being and by extension their merchant identity.

The concept of a dominant category of imperial identity within a civilization, along with an accompanying response to diversity, are the variables that I am using to determine what I will refer to as a given Iberian civilization's relative 'cosmopolitanism' or 'exclusivism'. And, while those two terms have not yet been discussed, I will suggest that they represent end points on a spectrum that describes the orientation and response of a given society toward diversity.

How then do we assess a dominant identity category within a civilization, a response to diversity, or its cosmopolitan or exclusivist orientation? The most effective way of determining

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<sup>30</sup> Denny, *Introduction to Islam*, 56.

<sup>31</sup> Denny, *Introduction to Islam*, 51.

<sup>32</sup> Hodgson, *The Venture of Islam: Vol. 1*, 159.

this information is by attending to the diversity within each civilization and examining the civilizational response to that part. Then, if we are to manage anything comparative, or suggest any interpretations regarding the civilizations in Iberia based on this information, we need to have a common method for examining how the leadership of each civilization responded to a common aspect of affiliative diversity along with a common vehicle of responding to that diversity. Fortunately two such constants *are* available for the three civilizations I am studying in Iberia: Jews (a significant diverse minority) and the Law (a relative constant in imperial affairs). Jews were a recognized minority and a symptom of diversity within Visigothic *Hispania*, Islamicate *Al-Andalus* and Christian *Spain*.

When individuals negotiate their personal identity, they make choices; when civilizations negotiate their imperial identity, they make laws. The laws in each civilization that directly relate to the Jews are therefore suggestive of implicit dominant categories of imperial identity and their identification will be particularly instructive in determining the cosmopolitan or exclusivist tendencies within that civilization.

## **1.2 *Cosmopolitanism, Exclusivism and Identity***

Two of the most significant terms used in the subtitle of this thesis are ‘cosmopolitanism’ and ‘exclusivism.’ ‘Cosmopolitanism’ and ‘exclusivism’ are terms that can be used to describe both the orientation of a civilization in response to diversity, as well as the orientation of a category of identity, which if dominant within a civilization, may influence the overall cosmopolitanism or exclusivism of that civilization. Before I engage these two concepts directly, I wish to explain why their identification is so important to my understanding of Iberia in history. On a very rudimentary level, cosmopolitanism represents an inclusive orientation that allows for broad participation of diverse groups within a society, whereas exclusivism permits far less

participation and is inherently more exclusive in its orientation with regard to diversity. How this orientation affects the relationship between civilizations and their diverse components is vital to understanding a civilization's history by revealing what we might call the guiding principles that can greatly affect the experience of the people within that civilization.

The relationship between any given civilization and its constituent affiliative groups can be described in terms of “wholes” and their constituent “parts.” In discussing the *polis*, Aristotle described it as “belonging to the class of compounds in the same way as all other things that form a single whole, but a whole composed, nonetheless, of a number of different parts.”<sup>33</sup> Daniel Richter, in his book *Cosmopolis*, employs this Aristotelian conception of wholes and parts to describe the emergence of nationalism and cosmopolitanism within ancient societies. As he states, “the discrete units that constitute the whole must be at once the same and different; *different* to the extent that they remain parts, and yet *same* insofar as they are properly considered a unified whole. The central question is, what sorts of parts properly constitute a whole?”<sup>34</sup> I will adopt and build upon Richter's discussion of parts and wholes by posing his central question to the three civilizations in my history of Iberia, and suggesting some tentative answers through an examination of Jewish minorities and of various legal regimes. In so doing, I will explore various categories of identity (the parts) and their relationship to Visigothic *Hispania*, Islamicate *Al-Andalus* and Christian *Spain* (the wholes), in an effort to understand the historical impact and consequences of each civilization's answer to that central organizational question; how are parts related to, and integrated into, a whole?

The wholes, here represented in the form of three civilizations, each revolve around what I am calling a dominant category of identity. Returning to the example of Muhammad and

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<sup>33</sup> Aristotle, *Politics*, 1274b32. Significantly this is the very beginning of his discussion of citizenship in such a *polis*.

<sup>34</sup> Daniel S. Richter, *Cosmopolis* (New York, Oxford University Press, 2010), 17.

Meccan society, the Quraysh were confronted with a new “part,” the Muslims, and were left to determine how that part fit into the larger whole of Meccan society. Because of the commercial threat that the Muslims eventually posed to the Quraysh, the Quraysh’s response to the Muslims suggests that the Muslims were a part that could not be integrated into Meccan society, because of their beliefs and actions, leaving them to be persecuted, oppressed, and ultimately forced to flee Mecca as a result.<sup>35</sup> An examination of the Quraysh’s response to the Muslims reveals two important aspects of dominant categories of identity. The first is that dominant categories of identity can themselves be exclusivist, which may in turn be reflected in the civilization in which that identity is dominant. In the Meccan example, the Muslims’ monotheism was threatening to an aspect of the Meccan economy which was built around polytheism. Based on this conflict, it was deemed necessary for the Quraysh to exclude the Muslims from their society due to that group’s inability or unwillingness to participate because of their dominant category of identity, which was monotheism. This example also introduces us to the concept of a “trump” category. “Trump” categories ultimately supersede other identity categories, but the manner in which they operate reveals their cosmopolitan or exclusivist orientation. An exclusivist “trump” category is one that not only supersedes, but precludes other categories. In other words, the trump category prevents the incorporation of identity categories that would be in conflict with it. ‘Merchant’ is not a trump category; as we will see in a later chapter, merchant is one of the more cosmopolitan of personal identity categories. In this conflict between the Muslims and the Qurayshi Meccan society, the trump category was *monotheist*. Muhammad was a merchant, a Meccan and a member of the Quraysh, but when he became a Muslim, his exclusivist monotheism put him in conflict with the polytheistic Quraysh and their polytheistic commercial enterprise in Mecca. It was not the Quraysh’s dominant commercial identity which precluded Muhammad from

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<sup>35</sup> Denny, *Introduction to Islam*, 64.

participating in Meccan society, but Muhammad's monotheism, which trumped his other identities of Meccan, Qurayshi and merchant. However, because it was the Quraysh who were the dominant *power* in Mecca, it was Muhammad and the Muslims who were excluded until such time as they themselves achieved dominant power in Mecca after 630 CE. Thus, it was the exclusivism of Muhammad's and the Muslims' dominant category of identity, their monotheism if you will, that trumped their ability to affiliate with the polytheistic aspects of Quraysh's cosmopolitan commercial identity, and that led to the Quraysh's response.<sup>36</sup>

Understanding dominant and "trump" categories of identity will make it much easier to understand the broader concepts of cosmopolitanism and exclusivism and how they relate to personal and imperial conceptions of identity, especially after "religion" joins family and tribe, or geography and city, as well as vocation as a new category of identity in the fourth century CE. Before turning to that fundamentally Roman story, we must first understand an aspect of the societies in which that category held sway, namely, cosmopolitanism and exclusivism.

### **1.3 *Cosmopolitanism***

"Cosmopolitanism" has been the subject of great deal of recent discussion. In its modern form, Immanuel Kant is a progenitor, an Enlightenment figure with whom contemporary thinkers such as Kwame Anthony Appiah, Seyla Benhabib, Steven Cohen, Martha Nussbaum and Steven Vertovec are all in critical conversation.<sup>37</sup> But the idea of cosmopolitanism is an ancient one, with a Stoic pedigree, as Daniel Richter emphasized in an important book published just last year.<sup>38</sup> I will have more to say about that ancient idea shortly, but more salient to the purposes of

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<sup>36</sup> Denny, *Introduction to Islam*, 56.

<sup>37</sup> The ongoing discussion of Cosmopolitanism can be seen in the following works: Kwame Anthony Appiah, *Cosmopolitanism* (New York, W.W. Norton and Company, 2006), Seyla Benhabib *Another Cosmopolitanism* (New York: Oxford University Press, 2006), Steven Vertovec and Robin Cohen, *Conceiving Cosmopolitanism* (New York: Oxford University Press, 2002). See also Carol Breckenridge, ed., *Cosmopolitanism* (Durham, Duke University Press, 2002).

<sup>38</sup> Daniel Richter *Cosmopolis* (New York: Oxford University Press, 2011), 3-18.

this thesis is the way in which cosmopolitanism has been rehabilitated by scholars in Islamic Studies and applied to new projects, to which my own is deeply indebted. Though Marshall Hodgson's work was an important cosmopolitan premonition and preamble, of most immediate relevance to my work is *Rethinking Islamic Studies: From Orientalism to Cosmopolitanism*, edited by Richard Martin and Carl Ernst, as well as a recent article by Islamicist Bruce Lawrence.<sup>39</sup> Still more striking is the slate of new books exploring the theme of Islamic cosmopolitanism just this year.<sup>40</sup> Clearly, cosmopolitanism is an idea whose time has come in the field of Islamic Studies.

Of particular value to my own approach has been David Hollinger's *Postethnic America: Beyond Multiculturalism*. In this book, Hollinger suggests a new way of approaching the limiting nature of modern conceptions of identity, which he believes now "implies fixity."<sup>41</sup> Hollinger wants to disengage from this conception of "fixed" identity in favor of what he calls *affiliation*, an orientation and voluntary association which he believes transcends ethno-racial categories of identity to re-orient individuals and society in a way that he believes to be "postethnic." In Hollinger's definition, "[p]ostethnicity prefers voluntary to prescribed affiliations, appreciates multiple identities, pushes for communities of wide scope, recognizes the constructed character of ethno-racial groups, and accepts the formation of new groups as part of the normal life of a democratic society."<sup>42</sup> While Hollinger's "postethnicity" is directed at a modern conception of identity, his concentration on affiliation provides a useful way of

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<sup>39</sup> Carl Ernst and Richard Martin, eds., *Rethinking Islamic Studies: From Orientalism to Cosmopolitanism* (Columbia, SC: University of South Carolina Press, 2010) and Bruce Lawrence, "Muslim Cosmopolitanism," *Critical Muslim*, Issue 2 (2012).

<sup>40</sup> Included among these are, Ronnit Ricci, *Islam Translated: Literature, Conversation, and the Arabic Cosmopolis of South and Southeast Asia* (Chicago: University of Chicago Press, 2011), Carool Kersten, *Cosmopolitans and Heretics: New Muslim Intellectuals and the Study of Islam* (New York: Columbia University Press, 2011). And the forthcoming, Jocelyn Cesari, *Global Islam: Between Fundamentalism and Cosmopolitanism* (New York: Palgrave, 2013).

<sup>41</sup> Hollinger, *Postethnic America*, 7.

<sup>42</sup> *Ibid*, 116.

describing and discussing Islamicate *al-Andalus* and pre-modern conceptions of identity.

Ultimately, Hollinger's "postethnicity" closely resembles the cosmopolitanism I will describe in this history of Iberia, a connection Hollinger notes by indicating that "postethnicity is the critical renewal of cosmopolitanism."<sup>43</sup> In his own work, Hollinger describes cosmopolitanism as an orientation that "promotes multiple identities, emphasizes the dynamic and changing character of many groups, and is responsive to the potential for creating new cultural combinations."<sup>44</sup>

Hollinger's theory of postethnicity is based on a distinction between his suggestion of identity as voluntary, multiple affiliations and what he believes to be modern identity as "fixity" and singularity. I want to suggest that such a conception of identity, as affiliation, existed in the ancient world and is directly related to a pre-Visigothic understanding of identity and the earliest forms of cosmopolitanism.

### 1.3.1 *A Citizen of the World*

To understand Hollinger's conceptions of postethnicity and the idea of cosmopolitanism as applied to pre-modern civilizations in Iberia, I will turn to the ancient figure to whom we owe the term "cosmopolitan," Diogenes of Sinope. Diogenes, also known as Diogenes the Cynic,<sup>45</sup> is credited with coining the term *kosmopolites*,<sup>46</sup> from which our term cosmopolitan derives. *Kosmopolites* literally refers to a "world (*kosmos*) citizen (*polites*)" and was translated by R.D. Hicks as "citizen of the world."<sup>47</sup> This term and the idea it represents, need to be contextualized in order to establish its analytic value when applied to the history of Iberia.

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<sup>43</sup> Hollinger, *Postethnic America*, 5.

<sup>44</sup> *Ibid*, 3-4.

<sup>45</sup> Such a name derives from the derisive use of the term "dog" (*kynos*), which was invoked to refer to his animalistic mode of existence.

<sup>46</sup> Diogenes Laertius, *Lives of the Eminent Philosophers*, (Cambridge: Harvard University Press, 2005), 64-65.

<sup>47</sup> *Ibid*, 65.

Diogenes (d. 323 BCE) was an older contemporary of Alexander the Great. He lived during the Hellenistic period and was born and raised in the Black Sea port city of Sinope. Diogenes was the son of Hicesius, a banker and money changer responsible for the minting and control of the currency in Sinope. Like Muhammad in my earlier example, Diogenes also drew his personal identity from three significant pre-Visigothic categories: family, city and vocation. As we will see, Diogenes' identities were *not* fixed, however, making the term "affiliation" a more appropriate description. Diogenes had a family affiliation (as a son of Hicesius), a city affiliation (as a citizen of Sinope) and a vocational affiliation (as an apprentice to a banker/money changer). While in Sinope, Diogenes participated in an action that set in motion a chain of events that would transform him from a typical *Hellene* into a cosmopolitan dog. His primary biographer, Diogenes Laertius, reports that the history and source material about Diogenes of Sinope is sometimes conflicting and difficult to clarify. With this in mind, Diogenes of Sinope was accused of adulterating or defacing the state coinage (for which his father bore responsibility) and was either exiled or chose to leave his city to avoid prosecution. Diogenes then arrived in Athens, taking the first step in his cosmopolitan transformation by changing his *polis*-affiliation. According to Diogenes Laertius, Diogenes then became the student of Antisthenes, thereby exchanging his apprenticeship to his father the money changer for a voluntary apprenticeship to a philosopher. After Antisthenes' death Diogenes struck out on his own as an itinerant philosopher, and spent much of his time attacking other philosophers – most notably Plato, who referred to him as a "dog." Diogenes claimed the insult and saw it as accurately descriptive of his particular way of life which already involved living in the street, eating in the marketplace, masturbating in the *Agora* and barking at passersby.<sup>48</sup> In one of several reported meetings with Alexander the Great, Diogenes referred to himself as Diogenes the Cynic (*kynikos* – "dog-

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<sup>48</sup> Diogenes Laertius, *Lives of the Eminent Philosophers*, 25, 27-31, 34-35, 39, 47.

like”).<sup>49</sup> When asked by Alexander what he had done to be called this, he replied, “I fawn on those who give me anything, I yelp at those who refuse, and I set my teeth in rascals.”<sup>50</sup>

Alexander was so taken with Diogenes that he is said to have proclaimed, “had I not been Alexander, I should have liked to be Diogenes.”<sup>51</sup> While this anecdote illustrates Alexander’s fascination with Diogenes, it also underlines the philosopher’s unique and changeable character. To a certain extent, Alexander must be Alexander (son of Philip, Greek/Macedonian and King), however, Diogenes was no longer so bounded; he was ironically as free as the Macedonian King. In Athens, Diogenes changed many of his categorical affiliations. Using Hollinger’s model, Diogenes was operating with more fluid categories of identity. He was still the son of Hicesius, but that family affiliation did not appear to apply in Athens, and as we have already seen, he was no longer an apprentice money changer or citizen of Sinope. Because Diogenes’ identities were not fixed, he had the potential to affiliate with other families, cities or vocations, thus providing the opportunity for changes in his personal identity as well as the possibility for changes in what it means to be Diogenes.

Upon leaving Athens for Aegina, Diogenes was captured by pirates and later sold as a slave to Xenias of Corinth.<sup>52</sup> Diogenes was bought in order to tutor Xenias’s sons and appears to have continued in his “cynical” behavior, eventually dying at the reputed age of ninety in the city of Corinth. It was in Corinth, after his various sojourns, travels and careers that he was asked where he was from, and declared himself to be *kosmopolites*.

The legend of Diogenes is important for the story of Iberia specifically because it relates the tale of a man that possessed a personal identity drawn from each of the pre-Visigothic categories

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<sup>49</sup> Ibid, 63.

<sup>50</sup> Diogenes Laertius, *Lives of the Eminent Philosophers*, 63.

<sup>51</sup> Ibid, 35.

<sup>52</sup> Ibid, 77.

(family, geography, vocation), who either through intention or circumstance experienced these identities as fluid. Diogenes' fluid categories of identity allowed him to loosely associate with whatever ideas, people, places, practices or conventions that he saw fit. It also created the possibility for a new over-arching identity that accommodated this fluidity: an identity he named *kosmopolites*. In Richter's parlance, Diogenes created a new and larger *whole* (the world) out of the *parts* that had constituted his identity at various points in his life. It is in this way that he embodied Hollinger's conception of an individual without fixed identities, while also suggesting a key difference between Diogenes and the modern individuals Hollinger is imagining. In all the fluidity of his identity affiliations, Diogenes' "essential character" was not at stake. With "fixity," a change in any aspect or category of identity has the potential to cause conflict with the individual's essential conception of self-identity. In the modern context, a conflict between two identities held by an individual can produce an "identity conflict." Diogenes did not have this modern difficulty due to the characteristics of the pre-modern concept of self-identity that he held. For Diogenes, despite all the changes, his "Diogenes-ness" was never at issue. By this I mean that his self-identity was also fluid. If his identities changed, then what it meant to be Diogenes could also change. Thus being a son of Hicesius and an apprentice money changer from Sinope, while also being a philosopher, slave, or dog-like person associated with several different cities did not mire Diogenes in existential angst over a "fixed" identity; rather, it made him a *kosmopolites*.

### 1.3.2 *What hath Diogenes wrought?*

In claiming the identity of *kosmopolites*, Diogenes' created a new category of personal identity above and beyond his traditional pre-Visigothic categories of family, vocation, or geography. There are several consequences of his adoption of this new category that will come

to influence my interpretation of events in Iberian history. First and foremost is the creation of a “trump” category of identity. In the case of Diogenes, *kosmopolites* provided a new way of describing himself that accounted for his multiple identities, while at the same time allowed for a new one that could potentially encompass them all. Diogenes need not give up any of his other identities while identifying himself as a *kosmopolites*. For Diogenes, *kosmopolites* named his personal identity. After Diogenes, *kosmopolites* became ‘cosmopolitan’, no longer the name of an identity, but a description. In this way, ‘cosmopolitan’ describes a personal identity, but more specifically, it describes the *orientation* of the category of identity. Once ‘cosmopolitan’ shifts from being the name of a specific identity (noun: “I am cosmopolitan”) to the description of an orientation (adjective: “this is cosmopolitan”), it opens the door for ‘cosmopolitan’ to shift from describing the orientation of a personal identity to also describing the orientation of an imperial identity. And, should the cosmopolitan imperial identity become dominant, it allows the civilization to be described as cosmopolitan.

### 1.3.3 A *Cosmopolitan Empire*

Daniel Richter suggests, “[i]t is late classical Athenian ideas about the nature of the *polis* [i.e. cosmopolitan] that enable[s] early imperial ideologies of empire.”<sup>53</sup> These ideologies of empire become particularly poignant after Alexander the Great expanded the boundaries of the Greek empire all the way to modern-day Afghanistan. Alexander, inaugurated a period that historians have referred to as Hellenistic.<sup>54</sup> This period marks a Greek Empire that “stretched from the Aegean to the Indus,”<sup>55</sup> and left Alexander’s inheritors with a vast “multicultural empire.”<sup>56</sup> As such, the Greek/Macedonian Empire contained numerous peoples and socio-cultural complexes

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<sup>53</sup> Richter, *Cosmopolis*, 16.

<sup>54</sup> A term first attributed to Johann Gustav Droysen. It is typically bookended by the Death of Alexander (323 BCE) and the battle of Actium (31 BCE). See Richter, *Cosmopolis*, 11.

<sup>55</sup> Richter, *Cosmopolis*, 15.

<sup>56</sup> *Ibid.*

representing an extensive array of family, tribal, geographic, city, and vocational affiliations. The empire also created institutions and opportunities that fostered the fluidity and movement of ideas, people, and commerce. In the wake of the Alexandrian conquests however, “the Hellenistic period was a time of things and people being somehow ‘out of place’.”<sup>57</sup> This reflects the diversity and multicultural nature of the empire where boundaries have broken down and the clean lines of identity or belonging were made unclear; Persian cities become Greek cities, religion, science and philosophy intermingle, and trade networks connect far-flung corners of the ‘known world’. According to Richter, “Athenian intellectuals [were left] to imagine how the various parts of the rapidly shrinking *oikumene* formed a cohesive whole.”<sup>58</sup> In the Hellenistic period, a new way of belonging was being called for that could accommodate this diversity, and the answer was *cosmopolitan*. Richter argues that “cosmopolitan thought is a reaction to parochial, local, and ultimately ethnic modes of political thought.”<sup>59</sup> Thus, for Alexander’s Greek Empire, “Greek” could no longer simply refer to a *Hellene* or someone affiliated with a Peloponnesian *polis*, instead it had to account for many individuals, groups and socio-cultural complexes across a vast empire. Thus, the response to the diversity and multicultural aspects of the empire could be described as cosmopolitan, and because the empire was interested in accommodating the diversity and multiculturalism, we could say that their imperial orientation was also cosmopolitan. We might therefore conclude that the imperial identity of the post-Alexandrian empire was a cosmopolitan-oriented category, “Greek.”

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<sup>57</sup> Richter, *Cosmopolis*, 57.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*, 16.

#### 1.4 *Exclusivism*

As Daniel Richter notes, “human collectivities struggle to define themselves between the poles of particularism and cosmopolitanism. Even within communities, there are competing ideologies of inclusivity and exclusivity.”<sup>60</sup> Richter is essentially describing a spectrum with cosmopolitan at one end and what he names “particularism” at the other. Because I am interested in the effects of these orientations, I will select a different name for the pole opposite cosmopolitanism, an orientation that I am calling *exclusivism*. An exclusivist society is nominally defined by the exclusion of something. We might imagine this generally as a part that is deemed unfit for the whole. In terms of the spectrum above, this does not mean that cosmopolitan societies include whereas exclusivist societies exclude. Cosmopolitan societies do exclude and exclusivist societies do include, but it is the context and characteristics of the inclusion or exclusion that define their position on the spectrum and ultimately their orientation. The defining characteristic of exclusivism therefore, is not the simple fact of exclusion, but the manner of it, what I am calling *preclusion*. A civilization becomes exclusivist when it *precludes* another aspect or part of society. In terms of identity, exclusivism prohibits the incorporation of two or more identities that are in fundamental conflict with each other. In the case of Muhammad, for example, his monotheism precluded polytheism (non-monotheism). On a personal level, he could not be a monotheist and a polytheist simultaneously. As monotheism also defined Muhammad and the Muslims’ emerging society, it also could not support institutions associated with polytheism because the exclusivism their monotheism precluded polytheism. Furthermore, the fundamental threat that polytheism posed to monotheism required the Muslims to call for its elimination (or exclusion) from Meccan society. At the imperial level, exclusivist identities also serve as trump identities. Thus, when a society is oriented through an

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<sup>60</sup> Ibid, 17.

exclusivist imperial identity, that imperial identity prohibits that society (the whole) from coexisting with its conflicting parts.

### **1.5 *Exclusivism and Scriptural Monotheism***

Mark Cohen notes that, “monotheistic religions in power throughout history have felt it proper, if not obligatory, to persecute nonconforming religions.”<sup>61</sup> Given the example of Muhammad and the Muslims above, it might therefore be suggested that monotheism as a category is, on a foundational level, oriented toward exclusivism. The three religious traditions that play a role in my history of Iberia are Judaism, Christianity and Islam. These three traditions that share the common features of monotheism and a central sacred text are termed “scriptural monotheisms.” The concept of scriptural monotheism is also encapsulated in the Islamic term *ahl al-kitab* (people of the book), so named because they are linked by their sacred texts and monotheism. Since I am suggesting that scriptural monotheism has a unique tendency toward exclusivism, it would be instructive to briefly examine the scriptural monotheists who appear in the history of Iberia for evidence of this orientation.

#### **1.5.1 *The Jews***

In this thesis, I am using the orientation toward Jews within the legal regimes in Iberia to illustrate the cosmopolitanism or exclusivism of each civilization in my history. While I will use the term “Jew” or “Jews” throughout this thesis as a generic term for the people originally associated with the Roman province of Judea, the history of that term begins far earlier. The people who would come to be known as “Jews” were originally a tribal affiliation (Judah) that was a *part* of a larger tribal affiliation called Israelites.<sup>62</sup> After the Assyrians eliminated the

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<sup>61</sup> Mark R. Cohen, *Under Crescent and Cross* (Princeton: Princeton University Press, 1994), xxiii.

<sup>62</sup> Raymond P. Scheindlin, *A Short History of the Jewish People* (New York: Oxford University Press, 1998), 7.

other tribes in the Israelite *whole* (721 BCE)<sup>63</sup>, the Judah-ites became the new whole. In the course of conquests conducted by the Persians, Greeks and Romans, that tribal affiliation also became a geographic affiliation, namely the land area historically populated by the Judah-ites, or as it would become known, Judea.

The Israelites were the first of the scriptural monotheists. As such, the orientation of their monotheism toward others is a good place to start. Before becoming “Jews,” the scripture associated with the Israelites recorded their history and civilization along with their seemingly exclusivist orientation, which I am suggesting is a result of their monotheism. The first three of the Ten Commandments stated in the Hebrew Bible are specifically related to monotheism and exclusivism; “you shall have no other gods before me... you shall not bow down to [idols] or worship them for I the LORD your God am a jealous God, punishing children for the iniquity of parents, to the third and fourth generation of those who reject me.”<sup>64</sup> God later specifies these first commandments saying “I will drive out before you the Amorites, the Canaanites, the Hittites, the Perizzites, the Hivites, and the Jebusites. You shall tear down their altars, break their pillars, and cut down their sacred poles (for you shall worship no other god, because the Lord, whose name is Jealous, is a jealous God).”<sup>65</sup> When the commandments are later repeated in Deuteronomy, they follow a long discussion about the land that is being given to the Hebrews.<sup>66</sup> Moses then reminds the Hebrews of God’s exclusivism, “You have seen for yourselves what the Lord did with regard to the Baal of Peor<sup>67</sup> – how the Lord your God destroyed from among you everyone who followed the Baal of Peor, while those of you who held fast to the Lord your God

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<sup>63</sup> Ibid, 15.

<sup>64</sup> Exodus 20:2-6.

<sup>65</sup> Exodus 34:11-14.

<sup>66</sup> Deut. 1:34 – 3:17.

<sup>67</sup> Baal was a Canaanite deity.

are alive today.”<sup>68</sup> In each of these cases, being an Israelite (a tribal identity with an embedded religious practice) required obeying God’s commandments and *precluded* engaging in the embedded religious practices associated with any non-Israelite peoples or tribal groups. Taking possession of the land set aside for the Israelites by God (the beginning of a geographic identity) likewise precluded engagement in the practices of the people then residing in that land, and also required the eradication of the architecture associated with those practices within that land. In each case, the exclusivism of monotheism was enforced by the Israelites and recorded in their scripture.

### 1.5.2 *Christians*

Whereas the Jews were associated with both a tribe and geography, the Christians are harder to define. They began as a sect of Jews, and it is not altogether clear when they became something distinctly different.<sup>69</sup> Christians did not constitute a separate people from the Jews, but rather engaged in a different set of religious beliefs and practices than other Jews, but it is that difference with which they came to be identified. The Christians then found themselves at an intersection facing Pagans, Jews, and the Roman Empire. As a result, the emerging Christians needed to continually define and articulate their difference from the Jewish and Pagan parts within the Roman whole.<sup>70</sup> While their monotheism set them apart from the ‘pagan’ Romans, it did not set them apart from the other monotheists, the Jews. It was in the course of defining their particular brand of scripture and monotheism that their exclusivity surfaced. By defining and promoting their own differentiation from Jews and Pagans within the Empire, through various church councils, polemics and heresiologies, they began to reduce the sphere of exclusivity from

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<sup>68</sup> Deut. 4:3-4.

<sup>69</sup> While there is no event that signified the separation, Boyarin notes that scholars often mark the Bar Kokhba revolt (132-135 CE), in which the Christians did not participate, as the final separation between Christians and Jews. See Boyarin, *Border Lines*, 91.

<sup>70</sup> Boyarin, *Border Lines*, 4-13.

‘monotheist’ to Christian, a distinction that played a significant role in the late Empire, when those Christians become the dominant political power in Rome, and later in Iberia.

### 1.5.3 *Muslims*

As “people of the book,” Islam retained the same exclusivist orientation as the other scriptural monotheists.<sup>71</sup> The exclusivity of the Muslims’ monotheism can be seen in the first of the five pillars of Islam, the declaration of faith (*shahada*), which begins with the affirmation that “there is no god, but God.” Thus, elevating or equating anything with God (*shirk*) is considered among the gravest sins in the tradition.<sup>72</sup> This exclusivist orientation is punctuated in the early imperial history of Islam by an intolerant position toward non-monotheists, rooted in the same exclusivist monotheism that prevented the Muslims’ participation in the Qurayshi commercial enterprise in Mecca. The 360 gods in the Ka’ba clearly violated the essential premise of monotheism (a unified and singular God), thus to in any way support polytheism would be *shirk*. It is for this same reason that non-monotheism was eradicated in Mecca upon the ascension of the Muslims to power in 630 CE.<sup>73</sup>

As I mentioned previously, scriptural monotheists, exhibit a tendency toward exclusivism. The real world application of this exclusivism, however, may ultimately be a function of the circumstances and variables in the societies where monotheism and non-monotheism are present. Cohen’s designation of “monotheistic religions *in power*”<sup>74</sup> provides the necessary specificity for understanding the impact of any exclusivist orientation associated with monotheism. For the Jews, without political power after the Babylonian conquest of the Kingdom of Judah in 587

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<sup>71</sup> By associating themselves with the other scriptural monotheists through the figure of Abraham, the Muslims inherited the same exclusivist orientation as their Jewish and Christian co-religionists.

<sup>72</sup> Denny, *Introduction to Islam*, 55.

<sup>73</sup> Hodgson, *The Venture of Islam: Vol. 1*, 194.

<sup>74</sup> Cohen, *Under Crescent and Cross*, xxiii.

BCE<sup>75</sup>, they had no ability to advocate for, or enforce any kind of monotheistic exclusivism outside of their own community. Likewise, the Christians could articulate their Christian exclusivism through the polemical writings of bishops and the early church fathers as they pleased, but prior to obtaining political power in fourth century Rome, they were similarly unable to enforce it. As with Muhammad and the Muslims in pre-Islamic Mecca, they could not establish an exclusively monotheistic city because they lacked the power necessary to achieve it. It was only after their 630 CE taking of Mecca that they could enforce a monotheistic exclusivity. As we will see, however, the Muslim approach to pluralism and diversity within the early Islamic community once they do come to power, both in Mecca and later in Iberia, appears to have produced a different orientation toward diversity than their Visigothic or Christian Spanish counterparts, an orientation I will later describe as cosmopolitan. As members of a scriptural monotheism, it might have been expected for the Muslims, once they achieved political power and dominance in Mecca or Iberia, to adopt an exclusivist orientation. The fact that they did not, and instead produced a civilization that I am calling cosmopolitan, is what needs some explaining.

#### 1.5.4 *Cosmopolitanism and Exclusivism at Work*

I want to suggest that the cosmopolitan or exclusivist orientation of a given civilization is influenced by what I am calling their *dominant category of imperial identity*. In other words, the identities that come to most define or represent a civilization will dictate its cosmopolitan or exclusivist orientation. As I mentioned previously, “trump” or dominant categories do not require exclusivism. At the imperial level, a dominant *cosmopolitan* identity can work as a trump category within a society by providing a new or shared coalition that individuals and

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<sup>75</sup> Scheindlin, *A Short History of the Jewish People*, 21.

groups can voluntarily affiliate with.<sup>76</sup> It is for this reason that cosmopolitan or exclusivist orientations at the imperial level must be explored in context, because the orientation may change. In other words, the trump category may, under different circumstances, operate with both a cosmopolitan and exclusivist orientation.

#### 1.5.5 *Cosmopolitan Monotheism*

Monotheism proved to be a form of exclusivism which precluded Muhammad and the Muslims from participating in the polytheistic Meccan economy. However, it also had a cosmopolitan effect as the Muslims rose to power. While monotheism *is* a trump category, outside of its exclusivist orientation toward non-monotheism, it could be described as cosmopolitan. For the Muslims, monotheism trumped and precluded non-monotheists to be sure, but in the rise of Islam, it also began to trump tribal affiliations, geographic or city affiliations and vocational affiliations (save those associated with the non-monotheistic pilgrimage business) and any of their embedded religious practices and beliefs. As a cosmopolitan category, a dominant monotheistic identity among early Muslims was able to trump tribal rivalries when a Muslim polity was established in the city of *Yathrib* (Medina).<sup>77</sup> In this instance, Muhammad leveraged monotheism to provide a shared identity with which members of various tribes, as well as Christians, Jews and Muslims (people of the book) could affiliate. In this way, Muhammad established a monotheistic community that allowed Jews, Christians and members of competing tribes to cooperate and participate because the now cosmopolitan imperial identity of monotheism was dominant.<sup>78</sup> In this example, the dominant category of monotheism did

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<sup>76</sup> See Hollinger, *Postethnic America*, 51-79.

<sup>77</sup> Hodgson, *The Venture of Islam: Vol. 1*, 167-180.

<sup>78</sup> See Constitution of Medina in Michael Lecker, *The "Constitution of Medina: Muhammad's First Legal Document* (Princeton: The Darwin Press, 2004), and Fred Donner, *Muhammad and the Believers* (Cambridge, Belknap Press, 2010) who detailed an early proto-Islamic religious movement that incorporated Muslims, Jews and Christians built around the primacy of monotheism.

exclude non-monotheists, but it provided a fairly inclusive environment of participation and cooperation for everyone else. And, should the non-monotheists become monotheists (not necessarily Muslims exclusively), their inclusion would likely be assured.

An exclusivist imperial identity, on the other hand, works in the opposite manner of a cosmopolitan one. In form it is the same; a particular identity is elevated to a position of dominance within the civilization. However, when the dominant category is exclusivist it limits the potential for broad participation within the society and may eliminate the possibility for the inclusion of certain affiliative parts. As I stated before, when an exclusivist identity trumps other identities it precludes them. It follows suit that the more exclusivist the category, the more limiting or preclusionary would be the civilization that upholds it. Whereas monotheism was exclusivist with regard to non-monotheism, it could be considered cosmopolitan with regard to other monotheisms. Conversely, as we will see in the consideration of two Emperors in the Roman Empire, when an exclusivist category gains trump status, in this case Nicene Christianity, the sphere of exclusion within that society was so wide, at no point could it have been considered cosmopolitan even with regard to other Christians.

### ***1.6 A Tale of Two Romes***

To help us understand the distinction between dominant cosmopolitan or exclusivist categories of imperial identity, I want to turn to the Roman Empire under two Emperors in Late Antiquity, Constantine (r. 306 – 337 CE) and Theodosius (r. 379 – 395 CE). The Roman Empire had traditionally been what we would now generically refer to as ‘pagan’ in its predominant religious practice. There were Jews in the Roman Empire and there were several

conflicts between members of this minority group and the Empire.<sup>79</sup> Shortly after the turn of the millennium, a new group of Jews following the teachings of Jesus, later called Christians, began to emerge, but with an interesting difference. Whereas the religious *praxis* of Jews and Romans were embedded in their socio-cultural identities,<sup>80</sup> this new group of Jews (the Christians) was engaging in a different *praxis* [from tradition practice associated with Jews] with a different set of beliefs and some new and different scriptures (gospels) that distinguished them, and eventually came to define them as an independent group on the basis of these beliefs, *praxis* and scriptures.<sup>81</sup>

### 1.6.1 *Constantine*

In 312 CE, the Emperor Constantine “converted” to Christianity<sup>82</sup>, and the following year issued the Edict of Milan (313 CE),<sup>83</sup> officially tolerating Christianity throughout the Empire. In other words, he accepted Christians as a part of the Roman whole. In Constantine’s empire, the dominant imperial identity could be described as “Roman.” Just as the post-Alexandrians had to manage a multicultural Hellenistic “Greek” empire, the Roman Empire had to manage a multicultural “Roman” empire. Before Theodosius and the Edict of Thessalonica (380 CE), “Roman,” like Hellenistic “Greek,” implied a cosmopolitan-oriented identity. Being a Roman Citizen allowed for membership in the Empire and provided a shared form of identity with which most members could affiliate. Thus, “Romans” could participate in the Empire despite their being Christian, Jew, Pagan, Thracian, Phrygian, Briton, Julian, Ptolemy or Tervingi. At no point in Constantine’s Rome was there a Christian majority, nor was Constantine interested in

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<sup>79</sup> The Jews are credited with three revolts under the Roman Empire, the First Jewish Revolt (66-70 CE), the Kito (Quietus) revolt (115-117 CE) and the Bar Kohkba revolt (132-135 CE) – see Scheindlin, *A Short History of the Jewish People*, 27, 52.

<sup>80</sup> Boyarin, *Border Lines*, 8.

<sup>81</sup> Boyarin, *Border Lines*, 7-8.

<sup>82</sup> Noel Lenski, ed. *The Cambridge Companion to the Age of Constantine*, (New York: Cambridge University Press, 2006), 3.

<sup>83</sup> *Ibid*, 72.

establishing Rome as a Christian empire. He was an Emperor with a nominally Christian personal identity, ruling an empire with a “Roman” imperial identity. He was born a pagan, converted to Christianity, but could still have a pagan funeral,<sup>84</sup> because his Empire’s dominant identity was “Roman” and not Christian.

### 1.6.2 *Theodosius*

Theodosius (r. 379-395 CE) was in a different position than Constantine. When he became Emperor of Rome in 379 CE, he was a Christian who ruled what had become a predominantly Christian empire. When he issued the Edict of Thessalonica (380 CE) declaring Nicene Christianity to be the official state religion,<sup>85</sup> he effectively changed the Empire’s imperial identity from “Roman” to Nicene (Catholic) Christian. “Nicene Christian” represented a new highly exclusivist form of affiliation. A Nicene Christian Roman empire not only excluded the pagans that were previously accepted as part of the Roman whole, but was then in a position to exclude non-Christian monotheists, and even non-Nicene Christians.<sup>86</sup> In religious terms this is often characterized as the rise of Christian orthodoxy, but for my purposes, it is a significant piece of evidence for the emergence of another new category of identity: *religion*.

While there were embedded practices that could be categorized as *religion* present in Constantine’s Rome, none of them yet constituted a separate category of identity.<sup>87</sup> In the time between the Edict of Milan and the Edict of Thessalonica, *religion* emerged as a separate, and potentially trump, category of identity. The defining and differentiation of Christianity had been in process for years in the writings of the early church fathers, bishop’s councils, sermons, homilies and especially heresiologies. As Daniel Boyarin argues, “a significant part of the

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<sup>84</sup> Ibid, 267-268.

<sup>85</sup> Stephen Williams and Gerard Friell, *Theodosius: The Empire at Bay* (London, B.T. Batsford Ltd., 1994), 53

<sup>86</sup> See detailed law codes regarding ‘pagans’, Jews, “heretics” and other non-Catholic Christians in the *Codex Theodosianus*. See Clyde Pharr, trans. *The Theodosian Code* (Princeton: Princeton University Press, 1952).

<sup>87</sup> See Boyarin, *Border Lines* and Schwartz *Imperialism and Jewish Society*.

function of heresiology... was to define Christian identity – not only to produce the Christian as neither Jew nor Greek but also to construct the whatness of what Christianity would be, not finally a third race or *genos* but something entirely new, a religion.”<sup>88</sup> Boyarin is suggesting that Christian *religion* was not “embedded” or contained within other categories of identity, but now represented an independent category. This distinction would play a significant role as the Emperor Theodosius rose to power.

Where Constantine’s edict accepted Christianity as a part of the “Roman” whole, Theodosius’ edict effectively made Christianity *the whole*. The elevation of Nicene, or Catholic, Christianity as a dominant imperial identity through the Edict of Thessalonica transformed what might have been described as a cosmopolitan Rome into an exclusivist Rome. In addition to establishing Nicene Christianity as the official religion of the Roman Empire in his edict, Theodosius also enacted a series of laws that would form the beginning of what later became known as the *Codex Theodosianus* or Theodosian Code. Andrew S. Jones concludes, “the common goal of this discursive universe [Roman Law, historiography, orthodoxy] was the reorganization of significant aspects of life under a single, totalized, imperial Christian rubric.”<sup>89</sup> I would push Jones’ argument a bit further and suggest it is more specifically a Nicene or Catholic Christian rubric, something that impelled the Roman Empire toward an even greater degree of exclusivism.

The *Codex Theodosianus* is a significant data-point in my history of Iberia because it outlined the legal status of Jews in the fourth and fifth century Roman Empire. It also served as the legal foundation for the *Lex Romana Visigothorum* (aka, the Breviary of Alaric), the first law code issued by the Visigoths after their settling in *Hispania*. The *Lex Romana Visigothorum*

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<sup>88</sup> Boyarin, *Border Lines*, 4.

<sup>89</sup> Boyarin, *Border Lines*, 202.

connects the Visigoths to the Roman Empire through a shared legal orientation toward their respective minority Jewish populations. However, as we will see in the next chapter, establishing an independent Visigothic society in *Hispania* and later converting to Nicene Christianity radically altered the Visigoths' legal orientation toward the Jews. This change reflected another difference that had profound consequences for all involved.

## 2 VISIGOTHIC HISPANIA (419-711 CE)

In any society viewed as a “whole,” conceptions of identity - and especially what I have referred to as “trump categories” of identity - may serve to establish conceptual borders, providing the criteria by which various sub-groups may or may not be recognized as legitimate “parts” of the imagined “whole.” Naturally, this is a question of social membership, and membership hinges on recognition.<sup>90</sup> Categories provide important conceptual tools with which such recognition may be offered or withheld. A great deal of recent work theorizing such categories of identity has emphasized their imaginary and constructed quality.<sup>91</sup> To call such categories “imaginary” does not, of course, suggest that they are unreal. As David Hollinger puts the point eloquently and aphoristically, “[r]acism is real, but races are not.”<sup>92</sup> Socially constructed categories are very real in the context of law, as we shall see.

In the historical periods under consideration here, modern categories of race and nation did not yet exist, though I find it suggestive that the emergence of the new discourse of Christian *Spain* in the fifteenth century may well represent an emerging form of proto-nationalism.<sup>93</sup> This is one reason that I have selected the taxonomy of “cosmopolitanism and exclusivism” to describe the social and cultural and legal terrain on the Iberian peninsula in the Visigothic period; the former term has an ancient pedigree as we saw in the last chapter. Cosmopolitanism

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<sup>90</sup> For more on this “politics of recognition,” see Charles Taylor, *Multiculturalism: The Politics of Identity*, edited by Amy Guttmann (Princeton University Press, 1994), 25-75.

<sup>91</sup> Three of the canonical texts in this area are: Eric Hobsbawm and Terence Ranger, eds., *The Invention of Tradition*, (New York: Cambridge University Press, 1983); Cornelius Castoriadis, *The Imaginary Institution of Society*, Kathleen Blamey, trans. (Cambridge, MA: MIT Press, 1987); and Benedict R. Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, rev. ed. (New York; Verso, 2006).

<sup>92</sup> David Hollinger, *Postethnic America: Beyond Multiculturalism* (New York; Basic Books, 1995, 2000), 39.

<sup>93</sup> Pablo Diaz has referred to *Hispania* under the Visigoths as both an “ethnic” and “territorial” monarchy (Pablo Diaz, “Visigothic Political Institutions,” in *The Visigoths*, 337), while Isabel Velazquez has identified *Hispania* as an independent Visigothic legal regime. (Isabel Velazquez, “Jural Relations as an Indicator of Syncretism” in *The Visigoths*, 228-9), and finally, Roger Collins identification of the Visigothic desire for unity (Collins, *Visigothic Spain*, 38-63) in *Hispania* and the accompanying exclusivism (and possible exile or expulsion) associated with it are all suggestive of a social imaginary that included thoughts about land, people and identity that had ethnic and territorial overtones.

and exclusivism, then, may be thought of as relative extremes on a wide spectrum of cultural attitudes toward pluralism, attitudes toward the proper political relation of parts to wholes, as well as conceptions of the implicit permeability of imaginary identity-borders and the severity with which they may be policed.

In Visigothic *Hispania*, the operative notion of the conceptual whole shifted decisively on two occasions: first, from Roman to Visigothic; and then again, from Visigothic to Nicene Christian. In both cases, a metaphorical or imaginary border was established to assist in the social construction of a dominant cultural and imperial identity; such border-drawing significantly altered the criteria for recognition as a legitimate part of the new social whole.

Jews represented one such “part” residing within the “whole” of Roman *Hispania* before it gradually became Visigothic. The increasing exclusivism of Visigothic *Hispania* I described in the previous chapter is well illustrated by various law codes and the legal status of Jews they seem to imagine and construct. New legal regimes create new social imaginaries; that is the central idea I am exploring in this chapter.

Indeed, as we will see, the new Visigothic legal regimes went so far as to re-imagine what territory could reasonably be policed. Whereas traditional Roman law contented itself with the policing of behaviors, later Visigothic laws made “the secret recesses of minds” legitimate territory for imperial policing. As I hope to show, the increasing exclusivism of Visigothic *Hispania*, as reflected in various legal regimes and the legal statuses of Jews they established, offer clear and compelling evidence of a hardening of the imaginary border separating a Nicene Visigothic identity from that of at least some of its constituent parts, Jewish and other. The logical extreme of such exclusivist regimes may well be expulsionist, and while the Visigothic regime was interrupted by the Muslim conquests before such a trajectory could be developed,

there were signs that things were trending in that direction under the Visigoths. It is in this sense that the later Christian Spanish, believing themselves to be heir to the Visigothic history and imagining themselves in continuity with those regimes,<sup>94</sup> would complete the task initiated under the Visigoths, articulating the first legal regime of actual expulsion on the Iberian peninsula.

### 2.1.1 *What is a Visigoth?*

‘Visigoth’ is not a name that anyone in Iberia had used to describe themselves.<sup>95</sup> As historian Peter Heather states, “‘Visigoth’ is the modern designation for that Gothic group which, under Alaric, sacked Rome in 410 CE and then went on to be settled in Aquitaine in 418 or 419.”<sup>96</sup> Heather indicates that it was this same group that “establish[ed] a kingdom independent of the Roman Empire, and spread its domination across large parts of southern Gaul and Spain.”<sup>97</sup> The English name ‘Visigoth’ (lat. *Visigothus*, pl. *Visigothi*, meaning West-Goth) was first used in 1647 to distinguish the Western Goths from the Ostrogoths in the east.<sup>98</sup> Use of the term ‘Visigoth’ throughout this thesis will therefore reflect the scholarly terminological consensus used to identify this particular group of Goths and the subsequent by-products (laws, acculturating cohorts etc.) of their civilization.

The story of Visigothic *Hispania* is one of increasing unity, but at the expense of an increasing exclusivism. In this story of Iberia, “Visigoth” comes to signify difference. When cosmopolitan Roman *Hispania* gradually became Visigothic *Hispania*, the new rulers differed in religion, and to a certain extent, differed in legal policy from the Roman Empire, resulting in a new legal regime that set them apart from their *Hispano*-Roman, Jewish and other residents. In

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<sup>94</sup> A fuller discussion of the ideological connection between the Christian Spanish and the Visigoths can be seen in Xenia Bonch-Bruevich “Ideologies of the Spanish Reconquest.” *Mediterranean Studies* 17 (2008), 27-45.

<sup>95</sup> Peter Heather, ed., *The Visigoths* (San Marino (R.S.M.): The Boydell Press, 1999), 43.

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*, 43.

<sup>98</sup> Oxford English Dictionary online located at <http://oed.com.ezproxy.gsu.edu/viewdictionaryentry/Entry/223940>.

the beginning of the period in Visigothic *Hispania*, “Visigothic” gradually came to signify something “not Roman.” When Visigothic *Hispania* became Nicene in orientation, “Visigothic” came to denote a religious and territorial *unity* regarding the majority of the population and the rulers and the church, with consequences for non-Nicene minorities that were profound.

## **2.2 Visigothic Hispania, Stage One: From Roman to Visigoth**

The exclusivism that I will argue gradually came to characterize Visigothic *Hispania* emerged over an extended period of time, marked by several major cultural and conceptual shifts. The imagined social whole in *Hispania* shifted at least twice in the period from 419 CE to 711 CE. These shifts are evidenced by two different law codes that will illustrate the shifts I associate with these two different periods.

### *2.2.1 The Temporal Bookends of Visigothic Hispania*

Two distinct legal regimes serve to distinguish the two distinct Visigothic periods that I want to discuss in this chapter. I will date the first period from 419 CE (the arrival of the Visigoths in *Hispania*) to 589 CE (the formal conversion of the Visigoth leadership to Nicene Christianity). This first period features the law code that is commonly known as the *Lex Romana Visigothorum*.<sup>99</sup> I will date the second period from 589 CE (the Third Council of Toledo) to 711 CE (the arrival of the Muslim conquerors). This second period features the law code that is commonly known as the *Lex Visigothorum*. These two periods and these two law codes coincide with the shifts from Roman *Hispania* to Visigothic *Hispania*, and from Visigothic *Hispania* to its more narrowly Nicene form. It is within the law codes of these two regimes that we also see a shift in the legal status of Jews that I am arguing provides evidence for the increasing exclusivism of the Visigothic regime.

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<sup>99</sup> The law code is also known as the *Breviary of Alaric*. These two names are used interchangeably by some scholars. See for example Collins, *Visigothic Spain*, 225 and Velázquez, “Jural Relations as an Indicator of Syncretism” in *The Visigoths*, 226.

### 2.2.2 From Roman Hispania to Visigothic Hispania

Throughout the reign of the Emperor Theodosius (r. 379 CE – 395 CE), *Hispania* was a province of the Roman Empire. The people of *Hispania* reflected a diversity similar to the rest of the Roman Empire and including a significant minority population of Jews.<sup>100</sup> When the Visigoths arrived in 419 CE, *Hispania* was populated by *Hispano*-Romans, a name that designated the imperial citizens of Roman *Hispania*. Along with these residents were Jews and any remnants of the Suevi, Alans and Vandals that may have remained after the majority relocated to North Africa.<sup>101</sup> As a Roman province, *Hispania* was governed by the laws of the Empire, specifically the laws we find today in the *Codex Theodosianus*, hereafter *CT* in the notes.<sup>102</sup> When Nicene Christianity was established as the official religion of the Empire in 380 CE,<sup>103</sup> it became more interested in policing the border of religious orthodoxy and naming heresy as heresy, in contradistinction to the way a previously decentralized Christian empire had operated. The majority of *Hispano*-Romans appear to have been Nicene Christians when the Visigoths arrived,<sup>104</sup> and as such likely had at least a general understanding of the imagined world that differentiated Nicene Christians from “heretics” and Jews in the Empire.

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<sup>100</sup> Norman Roth notes that “There is no way of ascertaining even remotely the number of Jews who were living in Visigothic Spain.” However, he also notes that Jews were concentrated in urban centers including “Toledo, Mérida, Seville, Tarragona and Narbonne.” The fact that the Jews warranted laws specifically targeting them suggests that their population was significant enough to impact Visigothic society. See Roth, *The Jews in Visigothic Spain*, 11.

<sup>101</sup> See Guido Donini and Gordon B. Ford Jr., trans. *Isidore of Seville’s History of the Goths, Vandals, and Suevi*. (Leiden: E.J. Brill, 1970), 11-12, 39.

<sup>102</sup> The *Codex Theodosianus* [I am using Clyde Pharr trans., *The Theodosian Code* (Princeton: Princeton University Press, 1952)] is an extensive law code reflecting the laws of the Roman Empire between 313CE (the reign of Constantine) and 438 CE (the reign of Theodosius II), the bulk of which reflect the laws promulgated under Theodosius I (r. 379CE – 395CE) and later compiled in 438 CE.

<sup>103</sup> Theodosius proclaimed the adoption of Nicene Christianity as the official religion of the Roman Empire in an edict issued at Thessalonica in 380CE.

<sup>104</sup> Joseph N. Garvin, “A Catholic Bishop and an Arian King,” in Olivia Constable ed., *Medieval Iberia* (Philadelphia: University of Pennsylvania Press, 2012), 5.

The Jews were distinguished from other residents of *Hispania* by laws specifically differentiating them from other Roman citizens in the *Codex Theodosianus*. As Seth Schwartz notes,

[t]he laws... can be viewed as components of a structural shift, in which the relations between the Jews and the state were radically redefined... [W]hat changed under Christian rule [in the Roman Empire] was the emperors' promotion of religious uniformity – as opposed to cultural uniformity containing a diffuse and rather vague religious component. [Thus, these laws] move far in the direction of identifying Roman citizenship with orthodox Christianity.<sup>105</sup>

With the *Codex Theodosianus*, “the emperors [Theodosius and his descendents] now explicitly recognized Jews as a legitimate *religious* organization,” which Schwartz suggests was a response to “changes in the position of the Jews in cities that were increasingly dominated by Christians.”<sup>106</sup> As Schwartz points out, “by their very existence, [the laws about the Jews in the *Codex Theodosianus*] constitute a significant innovation because they imply that by the late fourth century, the Roman state consistently regarded the Jews as a discrete category of humanity.”<sup>107</sup> What I take Schwartz to mean is that the Romans were beginning to think about Jews in a different way than they had previously, and I believe that this shift in thinking had an effect on the Visigothic orientation toward Jews in *Hispania* when they imported the *Codex Theodosianus* into their legal regime.

### 2.2.3 Policing Borders: The Jews and the *Codex Theodosianus*

Under the legal regime inscribed in the *Codex Theodosianus*, the Jews of the Roman Empire found themselves legally distinguished from Nicene Christians among others. We might say that Theodosius had defined a new whole (Nicene Christian) of which the Jews could be a recognized and legitimate part, but only under certain conditions.

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<sup>105</sup> Schwartz, *Imperialism*, 199-195.

<sup>106</sup> *Ibid.*, 192.

<sup>107</sup> *Ibid.*, 187.

In any border situation, the weakest points of the border must be the most heavily defended, while the elements most likely to cross the border are the ones against which the strongest offense must be applied. One of the weak points along the metaphorical border separating the Nicene Christian Empire from its non-orthodox parts concerned proselytizing and conversion. I believe that the imagined world envisioned by the Nicene Christians and its metaphorical border are reflected in the laws of the *Codex Theodosianus*. The *Codex Theodosianus* contains sixteen Books, which are broken down into Titles, which are then further separated into specific Laws. The language of the laws in Book XVI, Titles VIII and IX, of the *Codex Theodosianus* makes a distinction between Christians and Jews and Christianity and Judaism. Both are recognized and described as *religions*, and while Judaism was never made illegal, “the sect of the Jews is forbidden by no law,”<sup>108</sup> there is a clear concern about proselytizing and conversion. There are no laws in the *Codex Theodosianus* requiring or disallowing conversion to Christianity, but the laws do make clear that any conversion to Christianity should be considered irreversible.

Jews shall not be permitted to disturb any man who has converted from Judaism to Christianity or assail him with any outrage. (336 CE)<sup>109</sup>

It was also imagined as what we might call a “one-way street.”

If any person should be converted from Christianity to Judaism and should join their sacrilegious gatherings... his property shall be vindicated to the ownership of the fisc. (353 CE)<sup>110</sup>

Along with the concern that the converted Christian remain in the faith, many of the laws in the *Codex Theodosianus* seem to focus on the lingering cultural (and possibly religious) influence of Jews on Christians, as well as the relationship between Christians and Jews in which the Christians were to be the dominant group.

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<sup>108</sup> *Codex Theodosianus*, Book 16, Title 8, Number 9.

<sup>109</sup> *CT* 16.8.5.

<sup>110</sup> *CT* 16.8.7.

We decree that the Jews also shall be admonished that they perchance shall not become insolent and, elevated by their own security, commit any rash act in disrespect of the Christian religion. (412 CE)<sup>111</sup>

The later date for this law and the language suggesting Jewish “insolence” suggests a Jewish population in the Roman Empire that continued to press for their rights, clearly with some degree of success. The phenomenon indicated in this law reflects a level of frustration with the Jews that would significantly trouble the Visigoths when a similar phenomenon continued to occur in *Hispania*.

The laws of the *Codex Theodosianus*, while pursuing Christian primacy, also warned about corruption or pollution (usually from engaging in Jewish rites or rituals).

No Jew whatever shall purchase a Christian slave or contaminate an ex-Christian with Jewish religious rites. But if a public investigation should disclose that this has been done, the slave shall be forcibly taken away, and such masters shall undergo a punishment suitable and appropriate for the crime. It is further added that if there should be found among the Jews any slaves who are either still Christians or ex-Christian Jews, they shall be redeemed from this unworthy servitude by the Christians upon payment of a suitable price. (384 CE)<sup>112</sup>

The above law comes from Book III, Title I (On Contracts of Purchase), Law 5 and concerns a regulation regarding the purchase of Christian slaves by Jews. While the concern about Jews owning Christian slaves, and the power dynamic it contained, occurred in much earlier Roman Laws, the specific concern about circumcision repeatedly turns up in the new laws, as stated in the following:

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<sup>111</sup> *CT* 16.8.21.

<sup>112</sup> *CT* 3.1.5.

The Jews themselves shall be punished by proscription of their goods and by exile for life if it should be established that they have circumcised a man of Our [Christian] faith or have ordered him to be circumcised. (423 CE)<sup>113</sup>

Circumcision and the Roman reaction to it have a long history. According to correspondence received by Dr. Louis A. Ruprecht Jr. from Dr. Michael Lippman,<sup>114</sup> circumcision was often considered to be genital mutilation and sometimes considered the equivalent of castration, as Emperor Hadrian among others had done. It is not clear if the concern of the above law was for involuntary genital mutilation or what contemporary Christian rhetoric has come to call “Judaizing”, but later in *Lex Visigothorum* (654 CE) I’m convinced it had become a form of Judaizing.

The concern of the above laws was not with the presence or even participation of Jews in the Empire, but rather it concerned the dominance of Christians as well as the pollution or corruption of Christians, specifically by their willing or unwilling engagement in Jewish practices. The concerns about corruption or pollution of Christians by Jews, as reflected in the laws of the *Codex Theodosianus*, indicate that the border of Nicene Christianity was somewhat porous with regard to the mixing of Christians and Jews in many types of social relationships. The sheer number of laws addressing Christians and “Jewish” practices suggests it was an ongoing challenge for the newly Nicene Roman regime.

Given that the *Codex Theodosianus* is organized chronologically, we can see that the laws, whether they worried about Judaizing or not, *were* worried about conversion of Christians. Over time the laws in the *Codex Theodosianus* regarding conversion grew increasingly more exclusivist, as can be clearly seen in the Title 9 subheading of Book XVI. Title 9 (No Jew Shall

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<sup>113</sup> *CT* 16.8.26.

<sup>114</sup> From correspondence dated 21 September, 2005.

Have a Christian Slave) concerned slavery and ownership and reflected a progressive problematizing of Jews owning Christians at all.

If any Jew should purchase and circumcise a Christian slave or a slave of any other sect he shall not retain in slavery such circumcised person. But the person who endured such treatment shall obtain the privilege of freedom. (336 CE)<sup>115</sup>

This law was promulgated before the Edict of Thessalonica (380 CE), in which Nicene Christianity had established itself as the state religion of the Empire. The law says nothing evaluative about Judaism and is only concerned with Christian slaves being circumcised. While circumcision physically marked the covenant between the Hebrews and God and reflects a command from God to Abraham that he circumcise his household,<sup>116</sup> nothing in the language of the law indicated whether this progression of laws concerns a Jewish rite or simply continues the worry about genital mutilation or castration. When a similar law, Title 9, Law 3 was promulgated in the Empire *after* the Edict of Thessalonica, it seems to have upheld the earlier Constantinian convention.

Jewish masters without any fear of chicanery may have Christian slaves, on the sole condition that they permit such slaves to retain their own religion. (415 CE)<sup>117</sup>

Very quickly however, the language began to change.

A Jew must not purchase a Christian slave or acquire one by title or gift. But a Jew may possess in his own property all other slaves who are established as adherents of the true religion, even though he is himself an adherent of a nefarious superstition, if he appears to have already obtained them, or if he should hereafter acquire them under title of an inheritance or a trust fund, provided that he does not unite them, either unwilling or willing, with the pollution of his own sect. [I]f this general rule should be violated, the authors of such crime shall suffer capital punishment, as well as

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<sup>115</sup> CT 16.9.1.

<sup>116</sup> Genesis 17:9-14.

<sup>117</sup> CT 16.9.3.

proscription of their property. (417 CE)<sup>118</sup>

The last law on this subject in Title 9 makes the matter very clear.

No Jew shall dare to purchase Christian slaves. For We consider it abominable that very religious slaves should be defiled by the ownership of very impious purchasers. (423 CE)<sup>119</sup>

In an additional effort to protect the integrity and purity of Christians in the Empire, the laws of the *Codex Theodosianus* began to require an increased separation and marginalization of Jews within the Empire and reflected an increased interest in policing the imagined border separating the Nicene Christians from the Jews.

Those persons who live in the Jewish superstition shall hereafter be barred from seeking entrance to the imperial service.

No Jew shall receive a Christian woman in marriage, nor shall a Christian man contract marriage with a Jewish woman. For if any person should commit an act of this kind, the crime of this misdeed shall be considered the equivalent of adultery. (388 CE)<sup>120</sup>

Beyond these restrictions, the Jews retained control of their business practices (from a law dated 388 CE),<sup>121</sup> and maintained a surprising control over their own religious practices (from a law dated 396 CE).<sup>122</sup> By curtailing the interactions and relationships that would offer the best opportunity for proselytizing, or Judaizing, the laws of the *Codex Theodosianus* effectively established a metaphorical border between Jews and other Romans, over which the Nicene Christians retained policing power and authority. By “both empowering and marginalizing the Jews, in effect declaring that the Jews were for most purposes a unique category of humanity,

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<sup>118</sup> CT 16.9.4.

<sup>119</sup> CT 16.9.5.

<sup>120</sup> CT 3.7.2.

<sup>121</sup> CT 16.8.10.

<sup>122</sup> CT 16.8.8, 13-14.

like neither orthodox Christians nor pagans and heretics, who were gradually outlawed,”<sup>123</sup> the Nicene regime suggested that while the Jews may be one *with* them, they were not one *of* them.

### 2.3 Visigothic Hispania and the *Lex Romana Visigothorum*

As Isabel Velázquez observes, “the Visigoths had arrived in *Hispania*... looking for places to settle.”<sup>124</sup> She continues, “[the Visigoths] were a minority with respect to the [*Hispano*]-Romans but... grew in independence, [such that] when the [Western] Empire collapsed, the Visigoths took control of the political system and replaced it with another, created and shaped by themselves.”<sup>125</sup> Velázquez notes that, “as the Goths consolidated their settlements, they began to issue laws, conscious that establishing them in writing in the Roman style generated a firmer control than simple tradition.”<sup>126</sup> She concludes that, “the intention was to establish a common legal system for the inhabitants of the territories [*Gallia* and later *Hispania*] which were progressively controlled by the new power... the Visigoths.”<sup>127</sup>

The establishment of Visigothic control in *Hispania* resulted in “the significant transfer... of the Roman imperial system to another socio-political structure which was formed as a result of the settlement of the Visigoths [in] *Hispania*.”<sup>128</sup> The Visigoths in this first period utilized existing Roman law codes as a foundation for the Visigothic law codes that they issued in *Hispania*. One such law code is known as the *Lex Romana Visigothorum* (dated 506 CE, hereafter *LRV* in the notes).<sup>129</sup> Velázquez observes that “Alaric’s *Brevarium* [i.e. the *Lex Romana Visigothorum*]... is a continuation of the *Codex Theodosianus*.”<sup>130</sup> Velázquez further suggests that Alaric II, who ordered the compilation of the *Lex Romana Visigothorum*, had a

<sup>123</sup> Schwartz, *Imperialism and Jewish Society*, 192.

<sup>124</sup> Isabel Velazquez, “Jural Relations as an Indicator of Syncretism” in *The Visigoths*, 229.

<sup>125</sup> *Ibid.*, 228.

<sup>126</sup> *Ibid.*, 229

<sup>127</sup> *Ibid.*, 227.

<sup>128</sup> *Ibid.*

<sup>129</sup> See *Lex Romana Visigothorum*. Gustav Hänel trans. (Leipzig, 1848).

<sup>130</sup> Velazquez, “Jural Relations as an Indicator of Syncretism” in *The Visigoths*, 230.

“desire to be seen as the legitimate heir of the Empire.” While the *Lex Romana Visigothorum* may have been perceived as a continuation of Roman law, and specifically the *Codex Theodosianus*, it was not a wholesale importation. The laws and language relating to religious groups and the Roman Empire in the *Codex Theodosianus* posed some serious challenges for the Visigoths of the first period. Specifically, while the organizational structure and laws of the *Codex Theodosianus* could serve as a basis for Visigothic law, they were not written by or intended for the Visigoths.

### 2.3.1 *Lex Romana Visigothorum*

The laws of the *Codex Theodosianus* were issued by a series of Nicene Christian Emperors whose state religion was Nicene Christianity. The *Lex Romana Visigothorum*, conversely, was issued by an Arian-Christian Visigothic King who did not share a religious affiliation with Theodosius and the Nicene Christian emperors. While religious differences would later play an increasing role in relations between the ruling Visigoths and their subject populations, the differences between the Nicene Christians who issued the *Codex Theodosianus* and the Arian Christian Visigoths who adapted it for the *Lex Romana Visigothorum* would initially pose a different problem. Specifically, importing a Nicene Christian law code that was, in part, interested in establishing Nicene Christian orthodoxy and naming heresy into an Arian Christian Visigothic law code, required some significant editing.

Since the Visigothic leadership in the first period were Arians, the *Codex Theodosianus* presented a particular challenge, namely its Nicene Christian authors directed some of the legal language and anti-heretical positioning at the very Arianism of the Visigoths.<sup>131</sup> As such, the

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<sup>131</sup> See *CT* 16.5 (The Heretics) and specifically *CT* 16.5.12 “The vicious doctrines hateful to God and man, namely, the Eunomian, the Arian, the Macedonian, the Apollinarian, and all other sects which are condemned by the sincere faith of the true religion.” *CT* 16.5.13 “The Eunomians, The Macedonians, The Arians, and likewise the Apollonians are names infamous for their false doctrines among the offices of the holy religion.”

Visigoths needed to heavily redact the laws in order to eliminate anything that would have questioned their authority, and certainly anything that would have named them as heretics. While the intention may have been to protect their own religious affiliation and rule, the decision to redact the *Codex Theodosianus* also marked a defining position against the Roman Church in Iberia. As long as the Visigothic leadership held to their Arian Christianity, they were denying Nicene Christianity the position of orthodoxy in *Hispania*.

Evidence for the Visigothic redaction of the *Codex Theodosianus* can be clearly seen in Book XVI as it appears in the *Lex Romana Visigothorum*. Of the eleven Titles present in Book XVI of the *Codex Theodosianus*, only five are present in the *Lex Romana Visigothorum*.<sup>132</sup> As Jean Gaudemet, indicates in his commentary on the *Lex Romana Visigothorum*, laws specifically relating to the administration of the Roman Empire are not included,<sup>133</sup> however many of the laws that dealt with religious matters also did not make the cut. Absent from Book XVI of the *Lex Romana Visigothorum* are Title 1: On Catholic Faith (*De Fide Catholica*), Title 3: On Monks (*De Monachis*), Title 4: On Those Persons who Quarrel About Religion (*De His Qui Super Religione Contendant*), Title 5: On Heretics (*De Haeretics*), Title 6: That Holy Baptism Shall Not Be Repeated (*Ne Sanctum Baptisma Iteretur*), and Title 10: On Pagans, Sacrifices, and Temples (*De Paganis, Sacrificiis, et Templis*). The list of titles *excluded* from Book XVI as it appears in the *Lex Romana Visigothorum* suggests a desire on the part of the Visigothic leadership to avoid mandates that might conflict with their own Arianism, or impair relations between Arians and other Christians living in *Hispania*. Of the Titles that remained, two addressed Jews specifically. These were Title 8: On Jews, Caelicolists,<sup>134</sup> and Samaritans (*De*

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<sup>132</sup> Hänel, *LRV.*, 244-253.

<sup>133</sup> Jean Gaudemet, trans., *Le Bréviaire D'Alaric et Les Epitome* (Italy: Typis Guiffré, 1965), 24.

<sup>134</sup> The exact nature of this group or their specific challenge to the Empire is not clear. From their description in the law and the references to earlier laws on apostasy within this law, I surmise that they were baptized Christians who

*Judaeis, Caelicolis, et Samaritanis*) and Title 9: That No Jew Shall Have a Christian Slave (*Ne Christianum Mancipium Judaeus Habeat*).

From Book XVI, Title 8, only laws 5 (CT 16.8.5) and 7 (CT 16.8.7) regarding Jews who convert to Christianity and Christians who apostatize are included.<sup>135</sup> From Book XVI Title 9, laws 1 (CT 16.9.1) and 4 (CT 16.9.4) regarding the Jewish ownership of Christian slaves and their religious integrity are included.<sup>136</sup> From this limited survey, it seems clear that the primary concern for the Visigoths was in maintaining the border between Jews and Christians that had been established in the *Codex Theodosianus*. The Visigoths did include CT 3.7.2, regarding the inter-marriage of Christians and Jews, in the *Lex Romana Visigothorum*,<sup>137</sup> thus signaling a nascent concern for Nicene Christian purity that would become much more prominent in the second period with the *Lex Visigothorum*. Given the laws and the language regarding Jews in the *Lex Romana Visigothorum*, it is likely that Jews in *Hispania* found themselves in a similar situation under the Visigoths of the first period as they had enjoyed under the Romans. Specifically, the Jews were recognized as a part, albeit a potentially troubling part from the Visigothic Christian perspective, of the Visigothic whole in *Hispania*.

The focus of the laws in Book XVI of the *Codex Theodosianus* and *Lex Romana Visigothorum* concerned practices. At this time, Christians troubled themselves less in what Jews believed. While church leaders sometimes referred to Jewish beliefs and practices as stemming from an error in thinking, neither the laws in the *Codex Theodosianus* nor the *Lex Romana Visigothorum* attempted to legislate changes in thinking; they simply regulated the

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engaged in Jewish practices, but more specifically encouraged others to do the same, in part operating within the unclear distinction between what practices were specifically Jewish and what were Christian. The term does not appear to occur with any regularity in documents outside of the *Codex Theodosianus*.

<sup>135</sup> LRV 16.3.1-2.

<sup>136</sup> LRV 16.4.1-2.

<sup>137</sup> LRV 3.7.2.

*effects* of the supposed errors in thinking. As such, the primary focus of the laws in the *Codex Theodosianus* and *Lex Romana Visigothorum* involved practices or actions and the limitation of their ability to corrupt or impede Christians.

In the Late Roman Empire and the first period of Visigothic *Hispania*, the regulation of thought, belief and faith typically lay within the purview of the Church as promulgated by Church councils and other pronouncements. The Council of Chalcedon (451 CE) provides a relatively contemporary example that reflects this. A letter from Pope Leo I (pap: 440 CE – 461 CE) which was read into the record of the Council, included his response to the trial and conviction of Eutyches for heresy in 448 CE.

[Eutyches] refused to understand doing good; he meditated unrighteousness on his bed. What could be more unrighteous than to have impious opinions? Into this folly fall those who through some impediment of unclarity are hindered from recognizing the truth. Ignorant therefore of what ought to be thought about the Incarnation of the Word of God, and refusing to labour in the wide field of the divine scriptures so as to become worthy of the light of knowledge from that source, he ought at least through attentive listening to have made his own that common and not discordant confession which is professed by the whole multitude of the faithful, that it believes in God the Father Almighty, and in Christ Jesus his only-begotten Son our Lord, born from the Holy Spirit and Mary the Virgin – three declarations by which the machinations of virtually all the heretics are defeated.<sup>138</sup>

Pope Leo I expressed the same concerns about “error” that were suggested in the laws of the *Codex Theodosianus* and *Lex Romana Visigothorum*, however, he was concerned with the elimination of error through correct thinking and a the imposition of orthodox faith – a significant aspect of the Council of Chalcedon. While religiously the laws of the *Codex Theodosianus* and *Lex Romana Visigothorum* suggest this same concern, at no point do they attempt to legislate “thinking.”

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<sup>138</sup> Richard Price and Michael Gaddis, trans., *The Acts of the Council of Chalcedon* (Liverpool: Liverpool University Press, 2005), 407.

A famous story from the reign of Theodosius is instructive for exploring the subtle distinctions between the spheres of the Church, the State and the laws that would emerge in the Late Antique Roman Empire. Theodosius found himself in an uncomfortable position when a Jewish synagogue at Callinicum was destroyed by “fanatical monks... in direct defiance of the law that expressly protected Judaism [CT 16.8.9].”<sup>139</sup> This social, legal and religious conflict pitted the Emperor against Bishop Ambrose of Milan. According to Roman law at the time, the destruction of a synagogue was forbidden, and any subsequent destruction had to be compensated.<sup>140</sup> When Theodosius ordered the bishop of Callinicum (and later the people of Callinicum)<sup>141</sup> to pay for the rebuilding of the synagogue, Bishop Ambrose protested the order and openly agitated against Theodosius’ command. Ambrose believed “that Jews should no more be protected by the law than heretics,”<sup>142</sup> and threatened to cease offering communion in Milan until Theodosius withdrew the order. Theodosius, for whatever interplay of political and religious reasons (being a staunch Nicene Christian himself), eventually rescinded the repayment order and backed off of the issue entirely.<sup>143</sup> This event is significant for my story of Iberia specifically because it represents the desire of leaders within the Nicene Christian Church to consider Jews along with heretics and have an influence on the imperial laws of the regime. While Bishop Ambrose did not achieve this outcome, his desires serve as a foreshadowing of Visigothic *Hispania* in which the Nicene Christian

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<sup>139</sup> Williams and Friell, *Theodosius*, 64-65.

<sup>140</sup> See (CT 16.8.9) “[it is] unlawful.. to destroy or despoil the synagogues [of the Jews]. (CT 16.8.25) “No synagogue of the Jews shall be indiscriminately taken away from them or consumed by fire. Jews shall be granted as compensation therefore, places in which they can construct synagogues commensurate with those that were taken away.”

<sup>141</sup> Williams and Friell, *Theodosius*, 65.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

Church and the Visigothic State achieved this desire after the Third Council of Toledo in 589 CE.

As evidenced by both the *Codex Theodosianus* and the Council of Chalcedon, it is apparent that Nicene Christianity was in the business of policing orthodoxy by identifying heresy. Bishop Ambrose's suggestion that Jews should share a legal status with heretics indicated a different perspective than that represented in the comparatively more tolerant Roman law. That Ambrose was able to influence the imperial policy of the Empire in opposition to its own law, suggests the level of power that the Nicene Christian Church had achieved. It also serves as a premonition of the effect that a "hand in glove" relationship between the King and the bishops of Toledo would have in the second period in Visigothic *Hispania*. This latter relationship amounted to an increasingly joint legal venture uniting the Nicene Christian Bishops and Nicene Visigothic emperors that would have profound consequences for Jews in the *Lex Visigothorum* (654 CE).

#### **2.4 Stage II: Visigothic to Nicene Visigothic**

The last Arian King of the Visigoths was Leovigild (r. 569-586 CE).<sup>144</sup> As Pablo Diaz notes, Leovigild "devoted great effort to a unifying religious policy... but failed due to his insistence on taking the Arian creed as its theological reference, a minority creed [in *Hispania*] which therefore distanced him from his *Hispano*-Roman subjects."<sup>145</sup> Leovigild's desire for unity was realized by his son Reccared, who took Visigothic *Hispania* in a new and ultimately game-changing direction. What Leovigild desired and Reccared achieved could best be described as a redefining of the whole in Visigothic *Hispania*. Diaz suggests that prior to Reccared, Visigothic

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<sup>144</sup> Collins, *Visigothic Spain*, 50.

<sup>145</sup> Pablo Diaz, "Visigothic Political Institutions," in *The Visigoths*, 337.

*Hispania* could be described as an “ethnic monarchy.”<sup>146</sup> In this way, the whole consisted of an Arian Visigothic regime in which all of the regime’s subjects, including the *Hispano*-Romans, were a part. Following the conversion of the Roman Emperor to Nicene Christianity and the naming of Arianism as heresy, Arianism may have been later identified as an affiliation associated with the Gothic peoples who continued to espouse it. Thus, Arianism may have been understood as something that Visigoths practiced, redefining it as an ethnographic practice associated with that group.

The Imperial conversion of the Visigothic leadership to Nicene Christianity, enabled Reccared to create a “territorial” monarchy, which “helped toward a rapid fusion of Goths and [*Hispano*]-Romans.”<sup>147</sup> The monarchy was “territorial” specifically because it united a large portion of the population that defined their identity not only by their religious affiliation, but also by nature of their location, *Hispania*. By converting the Visigothic leadership to Nicene Christianity, Reccared changed the whole. The new whole was Nicene Christian and now reflected the majority of the population in Iberia. As such, while the regime shared the religious identity of the Roman Empire, the society was distinctive by virtue of its “territorial” affiliation with *Hispania* and the specific manifestation of Nicene Christianity in that place. It is this difference, another Iberian difference if you will, that was confirmed by the Third Council of Toledo.

#### 2.4.1 *The Third Council of Toledo and The Nicene Visigoths.*

The Third Council of Toledo (589 CE) confirmed King Reccared and the Visigothic leadership’s official conversion to Nicene Christianity.<sup>148</sup> This Council was significant for several reasons. First, it brought the Visigoths within the orthodox Nicene *Hispano*-Roman

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<sup>146</sup> Ibid.

<sup>147</sup> Ibid.

<sup>148</sup> David Nirenberg, “The Visigothic Conversion to Catholicism,” in *Medieval Iberia*, 12.

majority in Iberia, while still recognizing the Jews as a separate group. It also represented a shift in the Visigoth's differentiation from the Romans, in that the Visigoths now shared the Nicene Christianity of the Roman Empire and abandoned the Arianism that had previously seemed to identify them as non-Roman. As we will see, this shift in religious affiliation ironically did not make them more Roman; if anything, it arguably made them more "Visigothic."

The Jews were mentioned in the Third Council of Toledo, and the language seems to portray them as separate and distinct from Christians in a way similar to both the *Codex Theodosianus* and the *Lex Romana Visigothorum*. However, the language in this pronouncement seems to focus much more on Christian power and the protection of Nicene purity, clearly reflecting the new concerns and interests of the bishops of Toledo.

It is not permitted for Jews to have Christian women as wives or concubines, nor to purchase slaves for their personal use. And if children should be born of such a union, they should be taken to the baptismal font. They [Jews] may not be assigned any public business by virtue of which they have the power to punish Christians. And if any Christians have been *stained* by them, by Jewish ritual, or been circumcised, let them return to liberty and the Christian religion without paying the price.<sup>149</sup>

From the *Lex Romana Visigothorum* through the Third Council of Toledo, it appears that the Jews in the first period of Visigoth *Hispania* were allowed to participate (though highly marginalized) in Visigothic society. In the years to come however, the pronouncements of Kings and Councils became increasingly exclusivist as the two regimes created a more unified front in the maintenance of orthodox Nicene identity.

The conversion of the Visigothic leadership was likely intended to unify Visigothic *Hispania*. When Reccared signed his name at the Third Council, he included the name "*Flavius*,

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<sup>149</sup> From the Third Council of Toledo, David Nirenberg, trans., in Constable, *Medieval Iberia*, 17, my emphasis.

the family name of the emperors of the Constantinian dynasty.”<sup>150</sup> As Diaz notes, the use of this name was intended to “compare him to the emperors Constantine and Marcian, who had presided at Nicaea and Chalcedon respectively.”<sup>151</sup> In aligning himself with the *Flavian* emperors, Reccared may simultaneously have inserted himself into the Nicene Christian project of defining orthodoxy by identifying and eliminating heresy.

The Third Council of Toledo symbolized a new relationship between the Visigothic Kings and Nicene Church that would later result in the production of the *Lex Visigothorum* in 654 CE. Diaz suggests that the model inaugurated by the Third Council of Toledo includes “the consecration of power... sanctioned by the Catholic hierarchy,”<sup>152</sup> which he suggests “became the model for a form of government that was fundamental to the western tradition.”<sup>153</sup> Diaz also argues that “the Visigothic Councils were a political institution in themselves, the supreme legislative assembly responsible for regulating the running of the state and the highest court in the realm.”<sup>154</sup> A political and religious *imperium* that was unified by Nicene Christianity and reflected in the law achieved in Visigothic *Hispania*, what Bishop Ambrose and the Catholic Church in the Western Roman Empire could not. It was in the midst of this cooperative unity between the Nicene Christian Church and the Visigothic State that the whole in Visigothic *Hispania* gradually shifted from Visigothic to Nicene Visigothic. The new Nicene Christian unity, which now included a unprecedented level of Church and State cooperation, presented a troubling situation for the Jews as the borders of the new whole shifted, leaving their legal status and their incorporation as a part of the new Nicene Visigothic *Hispania* in question.

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<sup>150</sup> Diaz, in *The Visigoths*, 337.

<sup>151</sup> Diaz, “Visigothic Political Institutions,” in *The Visigoths*, 337.

<sup>152</sup> Ibid. A scenario that will be epitomized by the exaltation of Khintila in the Sixth Council of Toledo.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

### 2.4.2 *An Impossible Dream*

“In 613 [CE, King] Sisebut ordered the compulsory conversion of all Jews in the kingdom.”<sup>155</sup> In the decree, the Jews were given the option of accepting conversion by baptism or leaving the kingdom.<sup>156</sup> While this action on the part of Sisebut reflected a significant shift in the legal orientation of the Visigoths toward the Jews, it also named an impossible goal. While it is unknown how many Jews accepted baptism or chose exile, it is safe to assume that it was not “all.” Indeed, the continued legislation targeting the Jews and their practices that came after this decree, suggests that the actual number of converts or exiles was far fewer than they had hoped. Regardless of the impossibility of the task that Sisebut established with this order, there were likely many Jews who did accept baptism, especially in the places where Sisebut and his supporters could exert direct control.

By forcing the baptism of Jews, Sisebut was opening his regime to the possibility that Jews would “convert” for a plethora of pragmatic and non-religious reasons, especially if the alternative was exile. Following this decree, the specter of false conversion would continue to haunt the Visigothic regimes for the remainder of their tenure as rulers in *Hispania*. Regarding Sisebut’s decree, Jonathan Elukin suggests that “Sisebut issued the law without the support from a church council [which] suggests that [the decree] was not a unified move.”<sup>157</sup> The lack of unity on the measure would be later punctuated by the critique of Isidore, the Archbishop of Seville (d. 636 CE), who observed;

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<sup>155</sup> Roth, *Jews, Visigoths and Muslims*, 13.

<sup>156</sup> Jonathan Elukin, *Living Together, Living Apart* (Princeton: Princeton University Press, 2007), 39.

<sup>157</sup> *Ibid.*

At the beginning of his reign [Sisebut] led the Jews to the Christian faith and had indeed an ardent zeal, but not in accordance with wisdom, for he forced them by power when he should have roused them by the doctrine of faith.”<sup>158</sup>

Isidore’s comments serve as a premonition of the continual anxiety that would grip the Nicene Visigothic regimes with regard to their Jewish population. From the time of Sisebut’s decree through the codification *Lex Visigothorum* (654 CE) there was ongoing preoccupation with recalcitrant Jews, their social status within the regime, and the perennial worry over their incomplete or even fraudulent conversions. From a post-Visigothic perspective, Isidore’s commentary on Sisebut’s decree seems to have been a nearly clairvoyant prediction. Seen retrospectively, every policy or law requiring forced conversion issued by the Visigoths failed to achieve the desired result. And arguably, the more intense the penalties mandated by the law, the more many Jews continued to operate outside the law, sometimes with the aid of Christian citizens in the kingdom.<sup>159</sup>

How then are we to interpret Sisebut’s 613 CE decree? Laws imagine a form of social life, therefore complete compliance with such laws would achieve the imagined institution of such an ideal. From the perspective of the Church, while Isidore may have disagreed with the means Sisebut employed, he supported their ends. The Church and the Visigothic State were unified in the belief that Jews had become an increasingly destabilizing part of the imaginary whole, even if they differed in their preferred responses to the problem. In essence, they both imagined a Nicene Christian society free from the troubling influence or corruption of non-Nicene Christians which came to be reflected in the shifting legal status of Jews in *Hispania*. Due to the impossibility of total conversion imagined by Sisebut’s decree, we might best understand the decree and the laws and church pronouncements that followed as representing the imagined

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<sup>158</sup> Donini and Ford, *Isidore of Seville*, 28.

<sup>159</sup> See for example *LV* 12.2.4,15.

world that the Visigoths or the ecclesiastical administration most wanted. The Nicene Visigoths and the ecclesiastical administration, however, failed to heed Isidore's warning and continued to issue laws and pronouncements that reflected the imagined goal rather than the pluralistic reality on the ground. As they continued to draw stricter borders separating themselves from the minority Jewish population, the Visigoths in effect called for an increased segregation of the Jews from Nicene Christian society, the border of which, whether real or imagined, would be impossible to police. Isidore's warning proved accurate as the repeated attempts to control and define the Jewish population through the law by successive Visigothic legal regimes failed to eliminate the Jewish other.

#### 2.4.3 *The Sixth Council of Toledo*

The Sixth Council of Toledo (638 CE) reflected a new system of cooperative overlap between the Church and the Visigothic State, as well as a decisive shift in imagining the place that "Jews" had in the Nicene Christian state and other State-sanctioned institutions of Visigothic *Hispania*.

The Most Excellent and Most Christian Sovereign [Khintila],<sup>160</sup> inflamed with the ardor of the Faith and in union with the bishops of the kingdom has chosen to obliterate the very foundations of the superstitious prevarication [of the Jews] and does not permit anyone who is not Catholic to reside in his kingdom. It is our farsighted concern and a worthy object of our vigilant attention to issue a decree whereby neither [Khintila's] ardor nor our labor may grow lukewarm and be undone in time to come.

Therefore with one heart and voice fully in accord with [the king] we promulgate a judgment pleasing to God, and with consensus of the magnates and illustrious men [of the kingdom] arising from their deliberation, we decree sanctions therefore: to wit, that whoever in time to come shall attain the highest authority in the kingdom shall not ascend the royal throne until he shall have sworn, among other provisions in this oath, not to permit [the

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<sup>160</sup> Khintila, sometimes Chintila, was the Visigothic King who ruled from 636 CE – 639 CE. See Collins, *Visigothic Spain*, 80.

Jews] to violate the Catholic Faith; he shall not favor their infidelity in any way whatever, nor from neglect or covetousness shall he grant access to the prevarication of such as hover on the brink of faithlessness.<sup>161</sup>

The language of the council's decree above once again reveals the concern originally voiced by Isidore. The Bishops of Toledo praised Khintila for "not permit[ting] anyone who is not Catholic to reside in his kingdom," while in the same document required the kingdom elite not to "permit [Jews] to violate the Catholic Faith." Clearly this begs the question of the Jews to whom they were referring, especially if they just claimed that only Catholics resided in the kingdom. While this obvious contradiction might suggest that there was a legal category whereby one could be both Jewish and Christian, it is more likely a reflection of the very problem to which Isidore alluded; power's uneasy relation to faith. The language of the Council's decree indicates, regardless of what the term 'Jew' meant to them, that there were still Jews in the kingdom and they were still a problem for the Nicene Visigothic regime and the Church. The fact that the Church had declared Khintila's eradication of the Jews a success when it obviously was not, further suggests that the Church might be promulgating their council decrees in an imaginary world similar to that of the Nicene Visigothic regime.

While not a legal prescription, the decree of the Sixth Council of Toledo reveals a similarity in language and logic between the council's pronouncement and the laws issued by the Visigothic regime. And, if the Church (bishops) and the State (Khintila) believed themselves to be in a "union" built upon the foundation of the Nicene Christian faith, it presages what might result when the imaginary borders and interests of the Church and the State become one and the same. The Sixth Council of Toledo ultimately reveals a contradiction born of a disconnect between the world imagined by the Nicene Visigoths and the Church and that of the real world

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<sup>161</sup> From the Decree of the Sixth Council of Toledo, translated by Jeremy duQ. Adams, in Constable, *Medieval Iberia*, 21-23.

diversity present in *Hispania*. This disconnect would be plainly illustrated, along with the increasing anxiety it created in the *Lex Visigothorum*. This new law code, which represented the combined interests of the Nicene Church and Visigothic State, would reveal an increasing concern about the Jewish presence in Visigothic society, likely caused by the continued effort to impose unrealistic laws that could never be enacted and impossible social goals that could never be achieved.

#### 2.4.4 *The Jews and the Lex Visigothorum*

The *Lex Visigothorum* (hereafter *LV* in the notes), was promulgated under King *Flavius Reccesvintus* (also known as Recceswinth) in 654 CE, “after being revised by the VIII Council of Toledo.”<sup>162</sup> The earlier *Lex Romana Visigothorum* was a new extension of Roman law within a new Visigothic regime. As such, that law code did not reflect the language or interests of the Nicene Church, especially at a time when *Hispania* was still governed by Arian Visigothic rulers. With the *Lex Visigothorum*, following the conversion of the Visigothic regime to Nicene Christianity, the interests of the Nicene Christian Church and the Nicene Visigothic State finally converged.

The *Lex Visigothorum*, like the *Lex Romana Visigothorum* before it, was organized into twelve “Books.” Books were further subdivided into “Titles,” and under the Title headings came the actual “Laws.” The *Lex Visigothorum*, Book XII (Concerning the Prevention of Official Oppression, and the Thorough Extinction of Heretical Sects) consists of two Titles; Title II (Concerning the Eradication of the Errors of All Heretics and Jews) contains eighteen Laws in total. Using this formula, the first law I will examine reads as Book XII, Title II, Law I or *LV* 12.2.1 in the notes. The *Lex Visigothorum* is the primary source of evidence for the Nicene Christian exclusivism in what I am calling the second period of Visigothic *Hispania*. This

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<sup>162</sup> Diaz, “Visigothic Political Institutions” in *The Visigoths*, 337.

imperial code reflects the hardening of the imagined border separating Nicene Christians from Jews, especially in its recasting of Jews as “heretics.” Framing Jews as heretics re-imagines them as an internal threat to Nicene Christian orthodoxy, much in the same way that Arianism had been in the Roman Empire under Theodosius. In this way, Jews also represented a threat to the purity of Nicene Christianity that needed to be expunged like any other heresy. This threat, however, was based on the presumption of a world that did not exist, and likely had as much chance of being completely eliminated as any other heresy named in the Roman Empire or the first period of Visigothic *Hispania*. The *Lex Visigothorum* also continued the failed policy of forced conversion, rather than suspending it per Isidore’s instruction. The *Lex Visigothorum* seems to be a departure from previous law codes, however, by combining the practice of forced conversion with an attempt to legislate belief. This strategy is clearest in the very first law under Book XII, Title II in the *Lex Visigothorum*.

Book XII: Title II. Concerning the Eradication of the Errors of all Heretics and Jews.<sup>163</sup>

I. *Laws having been given to True Believers, it is Now Necessary to Place Restraints upon Infidels.*

As the law penetrates the secret recesses of minds conscious of guilt, so its censure corrects the depravity of morals, and prevents the perpetration of crime.<sup>164</sup>

From the beginning of Book XII, Title II, a startling change is announced in the scope of the law’s reach as well as its characterization of the Jews. The Title suggests that Jews were considered alongside heretics, and appear likewise to have been lumped together as “infidels” in the Law. This perspective on the Jews would certainly have been in line with an anti-heretical Nicene Christian orthodoxy and echoes the equation of Jews and heretics proposed by Bishop Ambrose of Milan three centuries earlier. The casting of Jews as Christian heretics also set them

<sup>163</sup> S.P. Scott, ed. and trans., *The Visigothic Code* (Littleton, CO: Fred B. Rothman & Company, 1982), 362-380.

<sup>164</sup> *LV* 12.2.1.

apart from the Nicene Visigoths in a way that would prevent them from being viewed as a legitimate part of Visigothic society on any level, as none of the previous laws going back to the *Codex Theodosianus* had done. More remarkable than Jews being considered among Christian heretics however is the reference to “the secret recesses of minds.” By including this language in the law, The Nicene Visigoths, in the *Lex Visigothorum* implicitly joined with the Church in the proposed regulation of *thought*, defined as ecclesiastical purity or “orthodoxy.” In so doing, the Nicene Visigothic regime had incorporated the interests of the Church into the law, implicitly placing the law in the service of both Church and State. Making this equation explicit, Book XII, Title II, Law I continues:

We do not attempt to bring about this purity of soul for any other purpose than for the sake of the Church of the living God, which has invested so many different peoples with the robe of immortality, and has united them to herself with the bonds of one holy religion. For the excellence of our strength and earthly glory are derived from the virtues of God, and his influence, sometimes acting through compassion, sometimes through fear of the sword of justice, prevents the commission of sin. Following, not only the example of noble and illustrious races who restrained the illegal excesses of the people by leniency and rational laws, but also copying the rules and imitating the example of the Holy Fathers throughout the entire globe of the earth, we shall endeavor, as far as lies within our power, to reduce to action the precepts which we have received from them.<sup>165</sup>

These introductory segments in Book XII, Title II of the *Lex Visigothorum* remove all doubt that the imperial game had changed in the Nicene Visigothic legal regime. This enunciation of law reads in a manner similar to a declaration of faith, a similarity likely reflected by the close cooperation between the bishops and the authors of the code. By linking the legal interests of the regime with the ecclesiastical interests of the Nicene Church, the laws drafted the King into the formerly Church-only project of preventing the commission of sin. Law I, like Sisebut’s decree

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<sup>165</sup> Ibid.

and the Sixth Council of Toledo before it, seems to reflect an imagined world and an aspiration to purity, rather than reality. It also continued the futile attempt to eliminate through law that which could not be eliminated - namely sins, thoughts, and beliefs.

Law II of Book XII, Title II, explicitly reiterates the imagined world of the Nicene Christians, but also suggests the further impossibility of its realization by expanding the reach of the law beyond the regulation of thinking to the removal, or even prevention, of incorrect thinking through the law.

*II. Concerning the Renunciation of the Errors of all Heresies.*

[W]hatever remains in the light of the Faith should be defended, by legal edicts, from the efforts of all those who seek to contradict it; and that whatever ideas have arisen through the influence of error, be removed by legal proceedings; therefore, we decree that no man of whatever race or lineage, either native or foreigner, proselyte or old in faith, visitor or resident shall openly or silently, impugn the unity of the Catholic faith; or take part in any injurious disputes affecting the truth of said faith; or take part in any injurious disputes affecting the truth of said faith; or countenance the same by remaining silent... no one shall entertain any thoughts against the holy edicts of the true religion... Every violator of this law shall be condemned to perpetual exile, unless he should be converted from his errors by the interposition of Divine mercy, when he may be suffered to remain and live in accordance with the commands of God.<sup>166</sup>

Law II clearly articulated the desire to police Nicene Christianity using the law, but the regime seemed to be of the opinion that errors in thinking could be corrected or “removed by legal proceedings.” While this in itself seems to again be an unachievable goal, the suggestion that the impugning of Nicene Christianity “either openly *or silently*,” along with “entertain[ing] any *thoughts* against the holy edicts of the true religion” could be regulated by law is striking. This second law seems to compound the error that Isidore had previously identified. It is no more plausible to convert people to the faith (i.e. make them true believers) through law than it is to try

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<sup>166</sup> LV 12.2.2.

to legislate their private thoughts. Even if this law represented an imagined world, it imagined a border that could never be policed under any circumstances. Given the increasingly difficult proposition of policing what is not said or the manner in which they would ever determine when the silent thoughts of people within the kingdom had impugned the Faith, it is unclear what the Nicene Church or the Visigothic State thought that they were doing with this particular law. The one practical consideration stemming from this law concerns the penalty for transgression. The proposed penalty in extreme cases was exile, suggesting the emergence of a new trajectory leading from exclusivism to expulsion. Whereas the exile proposed by Sisebut was optional (or possibly a sort of self-exile), this was a penalty to be imposed upon law breakers by the State and its court. If anything, this law displays the persistent lack of religious homogeneity and the increasing anxiety and frustration on the part of the legal regime that was trying to correct it.

Law III seems to announce the specific targeting of Jews through the laws of the *Lex Visigothorum*, specifically by naming Jews as heretics.

*III. Concerning the Laws Promulgated on Account of the Wickedness of the Jews.*

For while the virtue of God, by the sword of his Word, extirpated all other heresies, root and branch, we have to lament that the soil of our kingdom is still only defiled by the infamy of the Jews.<sup>167</sup>

Clearly with this law, the Nicene Visigoths - like the Nicene Christian Church in *Hispania* - had assumed the mantle of orthodoxy, with the accompanying responsibility to identify and eliminate all Christian heresy. However, unlike any of the heresy-hunting Catholic Emperors of the Roman Empire, the Nicene Visigoths had now included Jews on their list of heretics. This law also continued to reflect the imaginary world that runs throughout the *Lex Visigothorum*. The

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<sup>167</sup> LV 12.2.3.

language of the above law assumes that the extirpation of “all other heresies, root and branch,” had already been achieved, suggesting a reality that cannot possibly have been true.

Law IV is one of the most telling laws in Title II of Book XII. While many of the previous laws seem to reflect the imagined world of the Nicene Christians, Law IV suggests the realities of legal life in Visigothic *Hispania*, along with evidence of the practical impossibility of the world imagined by the Code.

*IV. Concerning the Extirpation of the Errors of the Jews in General.*

No Jew who has received the sacred rite of baptism shall renounce the faith of the holy Christian religion, or blaspheme said faith in any way... No Jew shall flee to avoid being received by the church, or conceal himself for such purpose after taking flight... No Jew shall entertain the hope of resuming his errors or of performing the ceremonies of his infamous belief... No Jew shall entertain in his heart any perfidy against the Christian religion, and in favor of his own sect... No one shall venture to conceal a Jew who is aware of the existence of these offences which have been prohibited, or who has committed them. No one shall delay to denounce a fugitive Jew when he is found, or reveal his hiding place. Any person who violates the provisions of the aforesaid law shall be subjected to the punishment prescribed for the same.<sup>168</sup>

Many laws, especially those targeting a specific behavior, often imply the continued existence of the very behavior that the law seeks to eradicate. With this in mind, Law IV reflects the frustration of the Nicene Visigothic regime with the continued ineffectiveness of their laws regarding Jews. Rather than adopting Christianity (forced or otherwise) in heart, word and deed, it would appear that converted Jews continued to “blaspheme” Christianity, favor Judaism over their converted faith, and engage in “Jewish” practices. Furthermore, the law suggested that those Jews not yet baptized were fleeing and hiding to avoid forced baptism, and were being assisted by others within the kingdom. This law is further evidence that Isidore was correct in decrying the practice of forced conversion as its continued ineffectiveness clearly bothered the

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<sup>168</sup> LV 12.2.4.

regime. The trouble outlined in this law also foreshadows a further challenge to the Nicene Christians as their attempt to police the “secret recesses of minds” would likely be met with the same problems. The language of the law also represents the continued problem of forced or pragmatic conversion. While a person may be outwardly Christian, in the “secret recesses of minds” they may continue to “entertain” the idea of being Jewish. It was this possibility, it would seem, which posed the greatest threat to the imagined border distinguishing Nicene Christianity from other religious traditions in Visigothic *Hispania*. So troubling, and likely so common, was the incidence of Jewish converts reverting to Jewish behavior that it had to be explicitly spelled out in the law. It is with the following four laws that we begin to see the concern for “Judaizing.”<sup>169</sup>

- V. *Jews shall not Celebrate the Passover According to their Custom.*<sup>170</sup>
- VI. *Jews shall not Contract Marriage According to their Custom.*<sup>171</sup>
- VII. *Jews shall not Perform the rite of Circumcision.*<sup>172</sup>
- VIII. *Jews shall not Divide their Food into Clean and Unclean According to their Custom.*<sup>173</sup>

These laws indicate that Jewish converts continued to engage in rituals and customs associated with Judaism, and serves to confirm the impracticality and ineffectiveness of forced conversion. Whereas laws against circumcision in the Roman Empire, and possibly the Visigothic regime of the first period in *Hispania*, may not have been concerned with religious corruption or Judaizing, with Law VII it may have been trending in that direction. While nothing in the in the language

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<sup>169</sup> According to the Oxford English Dictionary, Judaizing entails either following Jewish customs rights or practices, or to make someone or something Jewish.

<sup>170</sup> LV 12.2.5.

<sup>171</sup> LV 12.2.6.

<sup>172</sup> LV 12.2.7.

<sup>173</sup> LV 12.2.8.

of Law VII suggests that it had become a form of Judaizing as yet, its inclusion in a successive series of laws targeting what appear to be Judaizing practices suggests that laws against circumcision might be on path to being more than a concern for mutilation or castration.

While the previous set of laws seemed to be focused on Jewish converts to Christianity, the next set of laws, specifically laws IX-XIV seem to suggest that there were Jews who for whatever reason (possibly through wealth, power or other connections) had not converted to Christianity.

*IX. No Jew shall Subject a Christian to Torture.*

We especially decree... that it shall not be lawful for any Jew to testify against a Christian in any legal proceeding, or business transaction, even though said Christian should be of the lowest rank or a slave; nor shall a Jew prosecute a Christian, in any action at law; or sue him upon any written contract; or subject him to torture for any reason whatever. For it seems sacrilegious to prefer an infidel to him who is a believer, and to subject the members of the followers of Christ to torture inflicted by his adversaries.<sup>174</sup>

It is evident from the language of law IX that the Nicene Visigoths were still worried about the power dynamic between Christians and Jews and were continually troubled by any situation that would give a Jew power over a Christian. It is also clear from this law that unbaptized Jews were not only still present in Visigothic *Hispania*, but that they were in a position to own slaves and were still involved in businesses and contracts with others, including Christians.

This law, by eliminating the testimony of Jews in these cases, made it more difficult, and possibly less likely, that Jews would want to engage in business with Christians, or anyone within Visigothic *Hispania*, perhaps hastening any desires toward self-exile by leaving the kingdom.

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<sup>174</sup> LV 12.2.9.

X. *No Jew shall Testify Against a Christian.*<sup>175</sup>

If he who is convicted of having uttered a falsehood becomes infamous in the sight of all men, with how much more reason should he be excluded from giving testimony who denies the truth of the Divine Faith? Jews, whether baptized or unbaptized, are therefore forbidden to testify against Christians. The descendents of Jews, however, if they are of good morals, and adherents of the Faith, shall be permitted to give evidence among Christians; but not unless their morals and their belief shall be vouched for by either the king, a priest or a judge.

This law gives further evidence of unbaptized Jews continuous presence in the kingdom and also suggests a Jewish community with power. It also reinforces the perception of Jews being in religious error by equating them with those convicted of giving false testimony. While Jews were prohibited from testifying *against* Christians, descendents of Jews could testify *among* Christians, assuming their “morals” and “beliefs” were vouched for by a person in power. It is unknown how many generations a person would need to be “vouched” for, but it serves as evidence of the Nicene Christian’s ongoing and persistent concern about “true” conversion as well as their continued worry about Jews and power.

Law XI returns to the concern about circumcision with the strangest and most confusing law in all of Title II.

XI. *No Jew shall Circumcise a Christian Slave.*

It shall be unlawful for a Jew to purchase a Christian slave, or to accept one as a gift. Should a Jew purchase such a slave or accept of him as gift and then circumcise him, he shall lose the price of said slave, and the latter shall be free. The Jew who circumcises a Christian slave shall forfeit all his property to the king. Any slave of either sex who is unwilling to become a Jew shall receive his or her freedom.<sup>176</sup>

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<sup>175</sup> LV 12.2.10.

<sup>176</sup> LV 12.2.11.

This law, like Law IV, may be another example of reality clashing with the imagined world of the Nicene Christian rulers. The law opened by stating that it was unlawful for a Jew to purchase a Christian slave. In the very next sentence, the law refers to Jews who may subsequently have purchased a Christian slave. We can only conclude from this blatant contradiction that the law against Jews owning Christian slaves, which goes back to the *Codex Theodosianus*,<sup>177</sup> was not being followed, and presumably the authors of this law imagined that this new law would likely go unfollowed yet again. While the specific concern about circumcision was likely the same as it had always been, the next line in the law confuses that interpretation. The law proscribes the circumcision of Christian slaves and then immediately discusses “slave[s] of either sex who [are] unwilling to become a Jew.” While laws that appear later in the *Lex Visigothorum* seems to suggest circumcision as a “Jewish rite,” it is unlikely that that connection is being made here. Were circumcision to have been considered a Jewish rite in this law, then the indication of “either sex” would be suggestive of some form of female circumcision. Since it is unlikely that the Visigoths or the Christian Church were worried about female circumcision, which would not be part of any known Jewish ritual in the first place, the last line of this law only makes sense if it is completely separate thought. Therefore, the last line of law XI seems to indicate that slaves of the Jews (presumably non-Christian slaves), who did not want to become Jews (in contrast to the practice extending back to Abraham), would receive their freedom. It is suggestive that the prohibition against owning Christian slaves and the increasing ways in which the slaves of Jews could be taken away, coupled with the previous penalty of complete asset forfeiture, were part of an ongoing strategy aimed at making the lives of Jews within Visigothic *Hispania* maximally unappealing. The economic penalty associated with law XI may also be tactically oriented to

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<sup>177</sup> See *CT* 16.9.5.

disempower the wealthiest Jews who seemed most likely to “get around” the increasingly exclusivist laws directed at them.

Laws XII and XIII seem to reflect the continued frustration of the Nicene Christians in their failure to bring about their imagined world of religious homogeneity.

*XII. Concerning the Penalties to be Inflicted for Offenses Committed by Jews.*

It is hereby decreed that whoever attempts to commit any of the crimes prohibited by former laws, or contained in any amendments to the same, or presumes to act in defiance of said laws, shall be either stoned to death, or burned by such of his own countrymen as may have entered into an agreement to do so. However, if the king, in his mercy, should decide to spare the life of such a criminal, he shall be delivered up as a slave to whomever the king may select, and all his property shall be given to others; and this shall be done in a such a way that the culprit can never come into possession of his property again, or recover his liberty in the future.<sup>178</sup>

Law XII may suggest that the idea of bringing about the imagined world in reality had been abandoned. The more intensified the rhetoric and the consequences presented in the law, the more problematic it would likely they would be to enforce. In this case, a law requiring the stoning to death or burning to death of Jews who commit or even “attempt” to commit any of the “crimes” previously indicated in the law, with the only non-capital recourse being enslavement for life suggests an almost insurmountable enforcement difficulty – especially if they were still unable to enforce the prohibition against Jews owning Christian slaves, as evidenced by the following:

*XIII. Concerning Christian Slaves who are Known to have been Sold or Liberated by Jews.*

Recaredus [in the *Lex Romana Visigothorum*] declaring that Christian slaves shall under no circumstances remain in the power of Jews, would be sufficient, if the depravity of the Jews had not

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<sup>178</sup> LV 12.2.12.

corrupted the mind of princes, and they had not demanded and obtained benefits for themselves contrary to the principles of justice.<sup>179</sup>

Law XIII suggests why the imagined world of the Visigoths may never have been realized.

While this law once again reveals an enforcement problem as the issue of Jews owning Christian slaves continues to be unresolved, it also implies a much broader concern of the Nicene Visigoths, specifically that Jews were consistently able to circumvent the law through various forms of negotiation. Any world that the Nicene Christians could imagine through the law could not be realized if they were unable to get the full support of their own people or even their own leadership.

Law XIV indicates just how divorced the law had become with regard to reality while also reflecting what is arguably a level of frustration among the Nicene Visigoths and the Church that had reached a fever pitch.

*XIV. Under no Circumstances shall Christian Slaves Attach themselves to Jews, or be Admitted into their Sect.*

The fatal control of Jews over Christians should therefore be abominated, and the people consecrated by the favor of God brought under the influence of Divine Love. Therefore, we promulgate the following law, to be forever obeyed, and admonish every royal officer, in all future times: that from the first year of our reign no Jew shall be permitted to have a freeborn Christian or a Christian slave, under his patronage, or in his service. Nor shall a Jew be allowed to employ any such person for hire, or avail himself of his services, under any pretext whatsoever.

Where a Hebrew circumcises a Christian, or induces one to join his sect, or perform any of his rites, he shall be beheaded. All slaves who are known to be the issue of marriages between Christians and Jews, we hereby declare shall be made Christians. And if such slaves as have been converted to the Jewish religion should desire to remain in that perfidious belief and should refuse to return to the true faith, they shall be scourged, and scalped, in the presence of

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<sup>179</sup> LV 12.2.13.

the assembled people, and delivered up to whomever we may select, to remain in perpetual servitude.

While we are not of the opinion that [this law's] provisions will be violated by anyone; nevertheless, should such a person exist, may he who audaciously disobeys it, or does not reverently observe it, be regarded by all men as the most infamous person of the century; may he lose his life at the moment when he forms the detestable resolution to break said law; and may he be oppressed by the accumulated mass of his sins through all eternity. And in the terrible time of the Day of Judgment, reserved for the coming of the Lord, may the said culprit be separated from the flock of Christ; and, placed at the left hand with the Jews, be burned with eternal fire, with the devil for his companion.<sup>180</sup>

There is no clearer evidence that Jews continued to hold power in *Hispania* than Law XIV. Not only did they continue to own Christian slaves, continue to circumcise them and/or convert them to Judaism, but evidently some of those slaves chose to remain Jews and refused to convert back to Christianity when given the opportunity to do so. In this law, Jews were forbidden to work with Christians “under any pretext whatever,” circumcising slaves now called for beheading and slaves who refused to convert back to Christianity (presumably at the end of their term of service) were to be scourged, scalped and enslaved for life. The final paragraph of the above law suggests the level of frustration felt by lawmakers. When the rhetoric becomes this heated and the legal recourse shifts to eternal damnation, the level of anxiety must be extreme. Indeed, references to the Day of Judgment, what could be considered either a prayer or curse – “may he lose his life at the moment when he forms the detestable resolution to break said law,” combined with the other “eternal” consequences may also be further evidence of the overlap or cooperation of the Visigothic State and the Nicene Church within the *Lex Visigothorum* as they seem more similar to the invocations of Bishops than they do any previous legal language. Whether imaginary or not, the world espoused by the Nicene Christian leaders through the law reflected

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<sup>180</sup> LV 12.2.14.

an increasingly exclusivist (and anti-cosmopolitan) trajectory. Law after law in the *Lex Visigothorum* proposed the segregation of Jews in business, marriage, religion and social relationships. The exclusivist and separatist trajectory of the Visigothic leadership was confirmed in Law XV which all but ordered the segregation of the Jewish community.

*XV. All Christians are Forbidden to Defend or Protect a Jew, by Either Force or Favor.*

Lest the Jews should, by means of any artifice, and through their unremitting perseverance, obtain the legal sanction for their profane rites so much desired by them, we hereby decree that no person belonging to any religious order or rank whatsoever, or any royal officials, of high or low degree, or any individual of any station or family, or any prince, or person of authority, shall encourage any Jew, whether baptized or not baptized, to remain in the practice of his detestable faith and customs; or shall conceal the fact that he is doing so; or shall induce those who have been baptized to return to the observance of their perfidious ceremonies.<sup>181</sup>

If nothing else this law is evidence that the Jews continued to press for their rights and had succeeded in enough cases that the law needed to target leaders at every level of the regime and the Church. This law also suggested that the Jews were receiving some form of aid from the very people who should have been supporting and enforcing the laws. While not fully segregationist as yet, the attempt curtail the possibility of any legal protection for Jewish practices, combined with the social, legal and economic limitations already placed upon them, continued the intended separation of Jews from Christians at all levels of society. While this law, like so many others appears reactive to realities on the ground, it also seems to suggest a strategy of encouraging self-exile by increasingly limiting the Jewish community's ability to have any meaningful congress within Nicene Visigothic society

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<sup>181</sup> LV 12.2.15.

Law XVI presents a curious interlude in the *Lex Visigothorum*. While less of a law than a declaration of fealty, it may have reflected the type of Jews that the Nicene Christians most desired in their imagined world.

*XVI. Memorial of the Jews Presented to the King.*

We, Jews of the city of Toledo, who have hereto attached our signatures, or seals, call your attention to the fact that formerly we were compelled to present a memorial to King Chintilianus [Khintila]... by which we bound ourselves to uphold the Catholic faith... But whereas perfidy born of our obstinacy, and the antipathy resulting from our ancestral errors, influenced us to such an extent that we did not truly believe in our Lord Jesus Christ, and did not sincerely embrace the Catholic faith... we [promise to] observe no Jewish customs or rites whatever, and will not associate, or have any intercourse with, any unbaptized Jews. Nor will we marry any person related to us by blood, within the sixth degree. We will not practice the operation of circumcision. We will not celebrate the Passover, Sabbath, and other festival days, as enjoined by the Jewish ritual. We will not make any distinction in our food, according to our ancient usages. We will not observe, in any way, ceremonies prescribed by the abominable practices and habits of the Hebrews. And if, at any time, we should, in word or deed, neglect to fulfill the obligations to which we have bound ourselves... in case a single transgressor should be found among our people, he shall be burned, or stoned to death, either by ourselves, or by our sons.<sup>182</sup>

While it is uncertain how many of the “Jews of Toledo” chose to sign this memorial, it does seem to reflect the ideal Jewish convert imagined by the regime. Herein, the signatories agreed not to engage in Jewish practices, associate with unbaptized Jews, and agreed to the burning or stoning of transgressors. Most striking is the agreement not to “marry any person related to us by blood, within the sixth degree.” Because of the traditional practice of Jews marrying Jews within the religion, this agreement would have effectively eliminated the hereditary lineage of Jews in *Hispania*. And while it is unknown how many Jewish families resided in the Visigothic kingdom, this agreement also all but eliminated the possibility of Jews, converted or not, from

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<sup>182</sup> LV 12.2.16.

marrying anyone who was ever Jewish. This portion of the agreement, likely another unappealing prospect for Jews living in *Hispania*, may have also reflected a desire to “breed” the Jews out of the kingdom.

If Law XVI represented the ideal Jewish convert, then Law XVII seems to reflect its opposite.

*XVII. Concerning Judaizing Christians.*

[N]o person, under any circumstances, is deserving of pardon, who is proved to have renounced a good religion for a bad one. Therefore, because a cruel and astounding act of presumption should be expiated by a still more cruel punishment, we declare, by the following edict: that whenever it has been proved that a Christian, of either sex, and especially one born of Christian parents, has practiced circumcision, or any other Jewish rite... he shall be put to an ignominious death by the zeal and co-operation of Catholics, under the most ingenious and excruciating tortures that can be inflicted. All the property of such a person shall be confiscated for the benefit of the royal treasury.<sup>183</sup>

With Law XVII it seems that circumcision had become known as a “Jewish rite,” as opposed to the old Roman legal attitude. There were hints to a consideration of circumcision by Jews as an ethnographic practice, however, as early as the histories of first century Roman historian, Tacitus.<sup>184</sup> The other rites mentioned above likely refer to the “Judaizing” practices outlined in Laws V-VIII, or we might simply look to all of the practices put forth in the memorial in Law XVI. While laws had been repeatedly promulgated outlawing the practice of circumcision, this is the first law in *Hispania* that identifies it as a Jewish rite. This law serves to further separate the practices of Jews from the practices of Christians and also presents a continued worry about the “loose affiliation” with Jewish practices, especially by those who were Christians by birth.

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<sup>183</sup> LV 12.2.17.

<sup>184</sup> “[The Jews] adopted circumcision to distinguish themselves from other peoples by this difference. Those who converted to their ways follow the same practice,” in Clifford H. Moore and John Jackson, trans. *Tacitus: The Histories and The Annals* (Cambridge, MA: Harvard University Press, 1951), 183.

The vitriol and severe punishment present in the language of this law suggests that the imagined border between Christians and Jews remained porous and the repeated laws regarding “Judaizing” practice may indicate just how porous it really was.

Book XII, Title II of the *Lex Visigothorum* concludes with Law XVIII which serves as a summation of the place of Jews in the imagined Nicene Visigothic society. This law also lays out the practical benefits of “true” conversion to Nicene Christianity.

*XVIII. Concerning the Perfidy of the Jews.*

[I]n order that the faith of Christ may increase in us to the utmost, the perfidious doctrines of the Jews must be destroyed to the very foundation. Therefore, in all devotion, we decree that henceforth, whenever a Jew, of either sex, renounces the perfidy of his religion, and is converted to the profession of the true Catholic faith, and repudiating the errors of his rites and ceremonies, lives a life according to the custom of the Christians, he shall be free from every burden and disability, which formerly, when attached to the Jewish faith, he would have been subject to for the public benefit; so that his privileges will increase with his freedom from those exactions imposed upon such as are blinded by the wickedness of their infidelity, and controlled by the inherited errors of their ancestors... It shall be, in every respect, lawful for all such persons who are true believers, to engage in trade, and to carry on business transactions with Christian customers. Such Jews, however, as remain obstinate, and in the perfidy of their hearts, refuse to embrace the Catholic religion, we decree shall undergo the following penalty, to wit: they shall not dare to go into foreign countries for the purposes of commerce; nor shall openly or secretly engage in trade with Christians.<sup>185</sup>

While this law may have been intended to describe the economic benefits of conversion, it seems instead to re-inscribe the mistake that Isidore had previously noted. Receiving a direct social and economic benefit upon conversion to Christianity would do far more to encourage pragmatic conversions than it would conversions of belief. Thus, this law and others like it would most

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<sup>185</sup> LV 12.2.18.

likely resulted in an exacerbation of the “conversion anxiety” that was already evident in the laws in Book XII Title II.

## **2.5 Conclusions**

The preceding examination of the laws specifically targeting Jews within the legal regimes of Visigothic *Hispania* has been animated by three basic questions: 1. What is the identity of the whole in Visigothic *Hispania*? 2. Can Jews be a part of it? 3. What are the practical consequences of the previous two answers? From the beginning of the Visigothic regime, the lawmakers thought of Jews as a socially constructed, imagined community. The laws and the legal status of Jews in Visigothic *Hispania* from 419 CE through 711 CE suggests a gradual, but progressive change in policy that coincided with what I am suggesting is a corresponding change in the way of imagining the Visigothic whole. Rome, and the empire that produced the *Codex Theodosianus*, was a cosmopolitan regime in which Jews were deemed a legitimate part of the whole. Visigothic *Hispania*, conversely, became an increasingly exclusivist and segregated society in which the imagined border grew increasingly rigid and thus increasingly difficult to police. As the legal regime shifted from Roman to Visigothic, and as the *Codex Theodosianus* was replaced by the *Lex Romana Visigothorum*, the Jews still operated as a fully functioning, if marginal, part of the whole. As the imperial identity shifted again from Visigothic to Nicene Visigothic, and as the *Lex Romana Visigothorum* was replaced by the *Lex Visigothorum*, the Jews were *re-imagined* in such a way that they could no longer be a legitimate part of the Nicene Visigothic whole (as they had been before the regime’s conversion to Nicene Christianity). This change in the legal orientation toward the Jews and the increasingly exclusivist orientation of the regime seems to indicate the elevation of “Nicene Christian” to the status of what I am calling a “trump” category of imperial identity.

When the Visigoths became Nicene, the unity that they sought to impose in *Hispania* was predominately a religious one. Because of the identification and elimination of heresy that came along with Nicene Christianity and its policing of orthodoxy, the Jews, who were eventually labeled “heretics” in the *Lex Visigothorum*, were subject to an increasingly exclusivist legal regime. As the Jews were perceived to be a continual threat to the imagined border between Nicene Christianity and non-Nicene others in the second period of Visigothic *Hispania*, the legal response gradually changed from what appears to have been a practical, if guarded, incorporation of Jews to an approach of increased exclusion and separation. The exclusivist trajectory of the Nicene Christian Church and the increasingly coterminous interests of the Nicene Visigothic legal regime ultimately “trumped” Jewish practices and thoughts.

The legal regimes in Visigothic *Hispania* never ordered the expulsion of Jews from the kingdom, however several factors suggest that expulsion might have been a future step along the road that the Visigothic regime and the Nicene Church were already travelling. Beginning with Sisebut’s 613 CE decree, exile was seen as an explicit possibility, and remained so throughout the second period. From Sisebut forward, many of the Visigothic leaders pursued a policy of forced conversion, or else strict separation of Jews within the kingdom. The continued failure of these policies to produce the desired result and the ongoing success of the Jews in circumventing the laws designed to restrict or eliminate them from society left the Nicene Visigoths with an increasing level of frustration and anxiety as reflected in their ever more unrealistic legal pronouncements. Exile is ultimately an exclusivist solution, and one that reflects the erosion of cosmopolitan alternatives resulting from policies of practical or *de facto* segregation. In the laws of the Visigothic legal regime Jews were excluded from many institutions within Nicene Visigothic society, namely, employment, commerce, religion, marriage and other social

relationships. It is this level of segregation that may have signaled a *de facto* expulsion or a form of self-exile if Jews, in light of an increasingly inhospitable and unpalatable existence in *Hispania*, eventually opted out. It is unknown if this trajectory would have ended in exile or expulsion because its progression was cut short by the arrival of Tariq Ibn Ziyad and the Muslim conquerors in 711 CE.

## **2.6 Epilogue**

### *2.6.1 Scope of the Project*

In recent years Medieval Iberia, and Islamicate *Al-Andalus* in particular, have received a great deal of attention from scholars, social and political analysts and public figures. In particular, Maria Rosa Menocal's *The Ornament of the World: How Muslims, Jews and Christians Created a Culture of Tolerance in Medieval Iberia*, Chris Lowney's *A Vanished World: Muslims, Christians and Jews in Medieval Spain* and Hamza Yusuf's lecture *900 Years: The Spirit of Al-Andalus* has each contributed to the modern perception of Medieval Iberia (namely during the period of Muslim rule) and the counter-example it offers for the current state of inter-religious conflict present in the world. A term that is often associated with these modern presentations of Medieval Iberia is *convivencia*. *Convivencia* is typically translated as "coexistence," and is frequently used to describe the religious and political situation in Medieval Iberia, usually in reference to Islamicate *Al-Andalus*. The term highlights what is often presented as a period of tolerance in which the scriptural monotheisms lived together in harmony. It is from this perspective that my project began. Unsatisfied with the presentation of *convivencia* in many of its modern applications, resulting from the tendency of authors to paint an overly idyllic picture, I sought to explore Islamicate *Al-Andalus* in contrast with Christian *Spain* in an effort understand why the Muslim-led civilization seemed to produce a society that was indeed

different and apparently more cooperative than that which followed in Spain which had ultimately resulted in an expulsion of the Jews and a *reconquista* that ended Muslim rule in Iberia. It was also readily apparent that changes in society between Islamicate *Al-Andalus* and Christian Spain had occurred in Iberia at least twice before; in the transition from Roman *Hispania* to Visigothic *Hispania* and from Visigothic *Hispania* to Islamicate *Al-Andalus*.

I knew that an accurate historical portrait of Medieval Iberia would be far more than a case of tolerant Muslims and intolerant Christians. I also recognized that theories and explanations in the vein of a “clash of civilizations” would likewise not provide an adequate explanation. In the course of my research, I began to realize that *convivencia* might not be the best term or concept to describe the civilization in Iberia that had gotten so much attention. After all, the Jews, Muslims and Christians had “coexisted” to varying degrees in both the Christian and Muslim controlled territory from the launch of the first Muslim raid in 711 CE all the way to the latter group’s final defeat and expulsion in 1492 CE. Thus, describing the civilizations and the legal regimes that dominated Medieval Iberia in terms of tolerance or coexistence did not seem sufficient to explain what would ultimately be a stark contrast between Islamicate *Al-Andalus* and Christian *Spain*. I therefore chose to explore these civilizations through the lens of cosmopolitanism and its converse, exclusivism, as a more explanatory method for understanding this difference. “*Convivencia*” or concepts like coexistence or tolerance ultimately describe the perceived outcome or result of societal factors. If we are to theorize about why or how these results occurred, a means to understand these societal factors and their broad civilizational impact requires a different method. Cosmopolitanism and exclusivism both represent a means for describing and explaining the influence of social factors, institutions and ideas that result in tolerance and coexistence. What I did not realize was that in order to truly understand the

question of “why cosmopolitanism and not *convivencia*?” and offer any cogent analysis, I would have to expand my research to the time before the arrival of the Muslims in Iberia. By selecting the changing legal status of Jews as the means to understand the cosmopolitan or exclusivist aspects of the various legal regimes that comprised Medieval Iberia, it became necessary to go back to the point when Jews were considered a separate group within a legal regime that also contained a dominant monotheistic religious identity. To accomplish this task, I had to follow the Visigoths and the Jews back to Rome under the laws promulgated by the Emperors Constantine and later Theodosius. Without this introductory material, any discussion about cosmopolitanism or exclusivism in Islamicate *Al-Andalus* or Christian *Spain* would be hopelessly decontextualized. As a result, my project changed course in order to begin much earlier in time and in a different place than originally planned. Because the backstory to Islamicate *Al-Andalus* and Christian *Spain* was so extensive, it effectively eliminated the opportunity to explore these two civilizations more clearly within the context of this project.

### 2.6.2 *Islamicate Al-Andalus*

In a future expansion of this project I will have the opportunity to explore Islamicate *Al-Andalus* in greater detail and explore the role that more cosmopolitan regimes played in altering the existing social, political and legal realities experienced by the Jews under the Visigoths. Unlike the Visigoths, the Muslim regimes were not interested in establishing an exclusive religious orthodoxy or identifying and eliminating heresy. This did mean that they had no interest in the dominance of Islam, however the Muslim regimes had legal constructs in place that afforded a unique opportunity for cooperation in the midst of conflict. The *dhimmi* system which had been a part of Islamic law and society since the early days of Muslim legal and political dominance, allowed for cooperation between the monotheisms without the need to

eliminate them. The legal status of *dhimmi* in no way eliminated conflict based on religious identity, but it mitigated the relationships and did not require Muslim religious exclusivism. In short, “Muslim” did not become a trump category in the same way “Christian” had under the Visigoths or the Christian Spanish.

While ruling in Iberia, the Muslims did not compose a new law code, but rather adapted their pre-existing *shariah* system for the new legal environment. This resulted in a legal regime and court system that was accessible to all and enabled rather than curtailed cooperation and coexistence. The Jews did indeed thrive under the Muslim legal regimes in *Al-Andalus*, likely because the cosmopolitan society present in *Al-Andalus* did not curtail their ability to participate in society anywhere to the extent that it had been under the Visigoths. In fact, where the Visigoths had prohibited the Jews from participating in government service and limited their social and economic opportunities, Jews under the Muslim regimes served in some of the highest advisory roles as well as in lucrative business partnerships. The difference was stark enough that Jewish historians often refer to Islamicate *Al-Andalus* as a “golden age” of Jewish society and culture. While “golden age” thinking is not always helpful for interrogating historical periods because of that idea’s ability to potentially color interpretations, it does serve to show the degree to which the Jews saw themselves as prospering under the more cosmopolitan regimes of the Muslims. It is in this context that cosmopolitanism serves as a much more descriptive measure of the societies in Medieval Iberia than *convivencia*. Within this thesis, and all considerations of Jews and the Law, the Christian Romans, Christian Visigoths and the Jews all coexisted, however it was the relative cosmopolitanism of each society with respect to the Jews and the nature of their coexistence within the society that was most illuminative.

### 2.6.3 *Christian Spain*

Besides needing to begin this story with the Jews in the legal regime of Rome, it was also necessary to establish the historical linkages between *Christian Spain* and *Visigothic Hispania*. It was these linkages that made me realize that a more cosmopolitan Islamicate *Al-Andalus* was indeed bookended by two more exclusivist and historically connected Visigothic and Christian Spanish regimes. Given the similarities that existed between the two civilizations, it was the progression of *Christian Spain* from an initially more cosmopolitan regime in relation to their Jewish and Muslim citizens to the pinnacle of exclusivism, an expulsion, which suggested a similar result may have occurred in *Visigothic Hispania*, if that society and its exclusivist trajectory had progressed further. An analysis of two law codes issued by the Christian Spanish, the *Siete Partidas* (mid-13<sup>th</sup> century) and the Edicts of Expulsion (1492 CE) would illustrate the progression toward exclusivism and also reflect the growing exclusivism present in the Christian Spanish regime. Much of the language and orientation of these legal documents is reminiscent of the legal positions taken by the Visigoths and also reflect a conversion anxiety that appears to have been so pronounced that it required the creation of a new office of the Inquisition which had been previously created by the Catholic Church to root out heretics. The status of the Jews within the legal regimes of *Christian Spain* display a growing exclusivism as the Christian Spanish revived and implemented their own orthodoxy and heresy project and followed it to its conclusion. Again, it is the relative lack of a cosmopolitan sensibility or cosmopolitan institutions within these Christian Spanish regimes that more readily explain the differences between them and the Muslim regimes of Islamicate *Al-Andalus* while at the same time highlighting their similarity with the regimes of *Visigothic Hispania*.

#### 2.6.4 *Contemplating Convivencia*

The future expansion of this project will conclude with an argument for examining Medieval Iberia in terms of cosmopolitanism and exclusivism and the institutions that served to promote one or the other. It is my hope to not only offer a more detailed explanation of the civilizational differences between Islamicate *Al-Andalus*, Visigothic *Hispania* and Christian *Spain*, but also to offer an alternative method for analyzing historical societies comparatively.

## BIBLIOGRAPHY

- Appiah, Kwame Anthony. *Cosmopolitanism: Ethics in a World of Strangers*. New York: W.W. Norton and Company, 2006.
- Benhabib, Seyla. *Another Cosmopolitanism*. New York: Oxford University Press, 2006.
- Bonch-Breuvich, Xenia. "Ideologies of the Spanish Reconquest and Isidore's Political Thought." *Mediterranean Studies* 17, no. 1(2008): 27-45.
- Bowes, Kim and Michael Kulikowski. *Hispania in Late Antiquity*. Boston: Brill, 2005.
- Boyarin, Daniel. *Border Lines: The Partition of Judeo-Christianity*. Philadelphia, University of Pennsylvania Press, 2004.
- Breckenridge, Carol, Sheldon Pollack, Homi Bhabha and Dipesh Chakrabarty eds. *Cosmopolitanism*. Durham, NC: Duke University Press, 2002.
- Carr, Raymond. *Spain: A History*. New York: Oxford University Press, 2000.
- Cesari, Jocelyn. *Global Islam: Between Fundamentalism and Cosmopolitanism*. Forthcoming: Palgrave, 2013.
- Cheah, Pheng and Bruce Robbins, eds. *Cosmopolitics: Thinking and Feeling Beyond the Nation*. Minneapolis, MN: University of Minneapolis Press, 1998.
- Cohen, Mark. *Under Crescent and Cross: The Jews in the Middle Ages*. Princeton: Princeton University Press, 1994.
- Collins, Roger. *Early Medieval Spain*. New York: St. Martin's Press, 1995.
- . *Visigothic Spain 409-711*. Malden, MA: Blackwell Publishing, 2004.
- Constable, Olivia Remie, ed. *Medieval Iberia*. Philadelphia: University of Pennsylvania Press, 2012.
- Coogan, Michael, ed. *The New Oxford Annotated Bible*. New York: Oxford University Press, 2007.
- Crone, Patricia. *God's Rule: Government and Islam*. New York: Columbia University Press, 2004.
- Desmond, William. *Cynics*. Berkeley: University of California Press, 2008.
- Donini, Guido and Gordon B. Ford, Jr., eds. *Isidore of Seville's History of the Goths, Vandals, and Suevi*. Leiden: E.J. Brill, 1970.

- Drinkwater, John, and Hugh Elton. *Fifth Century Gaul: a crisis of identity?* Cambridge: Cambridge University Press, 1992.
- Elukin, Jonathan. *Living Together, Living Apart: Rethinking Jewish-Christian Relations in the Middle Ages*. Princeton: Princeton University Press, 2007.
- Feldman, Louis H. *Jew and Gentile in the Ancient World*. Princeton: Princeton University Press, 1993.
- Ferreiro, Alberto. *The Visigoths*. Boston: Brill, 1999.
- Gaudemet, Jean. *Le Bréviaire D'Alaric et Les Epitome*. Mediolani, Italy: Typis Guiffre, 1965.
- Glick, Thomas F. *Islamic and Christian Spain in the Early Middle Ages*. Princeton: Princeton University Press, 1979.
- Heather, Peter, ed. *The Visigoths: From the Migration Period to the Seventh Century*. San Marino: Center for Interdisciplinary Research on Social Stress, 1999.
- Hicks, R.D. trans. *Diogenes Laertius: Lives of the Eminent Philosophers Books VI-X*. Cambridge, MA, Harvard University Press, 2005.
- Hollinger, David A. *Postethnic America: Beyond Multiculturalism*. New York: Basic Books, 2005.
- Honoré, Tony. *Law in the Crisis of Empire 379-455 AD: The Theodosian dynasty and its Quaestors*. New York: Clarendon Press, 1998.
- James, Edward, ed. *Visigothic Spain: New Approaches*. New York: Oxford University Press, 1980.
- Kagen, Donald, Steven Ozment and Frank M. Turner, *The Western Heritage*. Upper Saddle River, NJ: Pearson Prentice Hall, 2007.
- Kersten, Carool. *Cosmopolitans and Heretics: New Muslim Intellectuals and the Study of Islam*. New York: Columbia University Press, 2011.
- Lawrence, Bruce. "Muslim Cosmopolitanism." *Critical Muslim*, vol. 2 (2012).
- Lecker, Michael. *The "Constitution of Medina": Muhammad's First Legal Document*. Princeton: The Darwin Press, 2004.
- Lenski, Noel, ed. *The Cambridge Companion to the Age of Constantine*. New York: Cambridge University Press, 2006.

- Levy-Rubin, Milka. *Non-Muslims in the Early Islamic Empire: From Surrender to Coexistence*. New York: Cambridge University Press, 2011.
- Lewis, David Levering. *God's Crucible: Islam and the Making of Europe 570-1215*. New York, W.W. Norton, 2008.
- Moore, Clifford H. and John Jackson, trans. *Tacitus: The Histories and The Annals*. Cambridge, MA: Harvard University Press, 1951.
- Moorhead, Sam and David Stuttard. *AD410 The Year that Shook Rome*. Los Angeles, The J. Paul Getty Museum, 2010.
- Navia, Luis E. *Diogenes the Cynic*. New York: Humanity Books, 2005.
- North, J.A., and S.R.F. Price, eds. *The Religious History of the Roman Empire*. New York: Oxford University Press, 2011.
- O'Shea, Stephen. *Sea of Faith: Islam and Christianity in the Medieval Mediterranean World*. New York: Walker and Company, 2006.
- Pharr Clyde, trans. *The Theodosian Code*. Princeton: Princeton University Press, 1952.
- Reilly, Bernard F. *The Medieval Spains*. New York: Cambridge University Press, 1993.
- Ricci, Ronnit. *Islam Translated: Literature, Conversion, and the Arabic Cosmopolis of south and Southeast Asia*. Chicago: University of Chicago Press, 2011.
- Richardson, J.S.. *The Romans in Spain*. Cambridge: Blackwell Publishers, 1996.
- Richter, Daniel S. *Cosmopolis*. New York: Oxford University Press, 2011.
- Roth, Norman. *Jews, Visigoths and Muslims in Medieval Spain: Cooperation and Conflict*. New York: E.J. Brill, 1994.
- Scheindlin, Raymond P. *A Short History of the Jewish People*. New York, Oxford University Press, 1998.
- Scott, S.P., trans., *The Visigothic Code*. Boston: The Boston Book Company, 2010.
- Taylor, Charles ed. *Multiculturalism: Examining the Politics of Recognition*. Princeton: Princeton University Press, 1994.
- Vertovec, Steven and Robin Cohen. *Conceiving Cosmopolitanism*. Oxford: Oxford University Press, 2002.
- Williams, Stephen and Gerard Friell. *Theodosius: Empire at Bay*. London: B.T. Batsford, 1994.

Zeumer, Karolus ed. *Leges Visigothorum*. Hannover, Germany: Hahnsche Buchhandlung, 1973.