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Muslims in Eastern Christian Law, 1000–1500

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David M. Freidenreich

Although most members of the Eastern churches lived in a majority Muslim society, works of Eastern canon law from 1000 to 1500 devote relatively little attention to Muslims. Scholars of Eastern Christianity have studied the impact of Islamic law on its Christian counterpart, but the place of Muslims themselves within Eastern canon law has not previously been examined. The present essay surveys references to Muslims and other foreigners within the normative literature of the Armenian, Coptic, Syrian Orthodox, and Church of the East traditions, contrasting these references with those found in Western canon law.[1] We will consider the ways in which references to Muslims reflect the influence of Islamic power and civilization on the Eastern churches, as well as the manner in which Christian authorities seek to preserve Christian distinctiveness in the face of internal pressures toward assimilation.

Western ecclesiastical authorities active during the first half of the second millennium devoted significant attention to Muslims. Indeed, they set aside a discrete section of their topical legal collections to often unprecedented laws governing 'Jews and Saracens [i.e. Muslims] and their Christian servants'. Normative literature of the Roman Catholic Church portrays Muslims as posing a significant military and physical threat to Christians, and it contains a host of crusade-related laws governing Christian-Muslim interaction. Western canon law also presents Muslims living in Christian lands as equivalent to Jews and therefore imposes upon Muslims the extensive Roman Catholic corpus of

[1] Surprisingly, it appears that Greek Orthodox normative literature from this era devotes no attention at all to Muslims. A search for the terms *Sarakēn** and *Hagarēn** in works from 1000 to 1500 designated as legal in the *Thesaurus Linguae Graecae* yields a number of hits, but none in the context of normative statements. A few normative statements refer to *ethnik**, 'gentiles', but the context of these statements offers no reason to presume that Muslims are the intended referent. John McGuckin, author of *The ascent of Christian law. Patristic and Byzantine reformulations of Greco-Roman attitudes in the making of a Christian civilization*, Yonkers NY, 2012, observes in private correspondence that, despite his exhaustive studies of Orthodox canon law, he too is unaware of specific laws relating to Muslims other than an occasional liturgical reference to how to Christianize them sacramentally. (On this subject, see the entry on Ritual of Abjuration in *CMR* 1, pp. 821-24, and also p. 95.)

restrictions known as Jewry law.[2] Not one of these statements, however, applies to the canon law of the Eastern churches.

The Eastern Christian communities did not witness anything like the explosion of new legal material within the Roman Catholic Church during the High Middle Ages. Rather, Eastern canon law of the 11th through 15th centuries was conservative in all senses of that term. The most important works of law created in this period are collections that preserve earlier norms, many of which predate the rise of Islam. These collections include the law codes of Abū l-Faraj ʿAbdallāh ibn al-Ṭayyib (q.v.), secretary to the catholicos of the Church of the East (d. 1043); Mxitʿar Gosh, a monastic teacher within the Armenian church (d. 1213); Gregory Barhebraeus, *maphrian* of the Syrian Orthodox Church (d. 1286) (q.v.); and ʿAbdishoʿ bar Brikhā of Nisibis, metropolitan of the Church of the East (d. 1318).[3] Also noteworthy is the *Synodicon* of the Syrian Orthodox Church (1204), a chronological compendium of legal material whose concluding sections date from the 11th and 12th centuries.[4] None of these works contains a section devoted to Muslims or other non-Christians.

[2] See further David M. Freidenreich, 'Muslims in Western Christian Law, 1000–1500', *CMR* 3, pp. 41–68.

[3] Abū l-Faraj ʿAbd Allāh ibn al-Ṭayyib, *Fiqh al-Naṣrāniyya, 'Das Recht der Christenheit'*, ed. and trans. (German) W. Hoenerbach and O. Spies, 2 parts in 4 vols, Louvain, 1956-57 (*CSCO* 161-62, 167-68); R.W. Thomson, *The lawcode [Datastanagirkʿ] of Mxitʿar Gosh*, Amsterdam, 2000; Gregory Barhebraeus, *Nomocanon*, ed. P. Bedjan, Paris, 1898; *The Nomocanon of Metropolitan Abdisho of Nisibis. A facsimile edition of MS 64 from the collection of the Church of the East in Thrissur*, ed. I. Perczel, Piscataway NJ, 2005. The *Nomocanons* of ʿAbdishoʿ and Barhebraeus were published in Latin translation by Angelo Mai, *Scriptorum veterum nova collectio e Vaticani codicibus*, vol. 10, Rome, 1838; page numbering in this volume is not consecutive. (Although Mai published the Syriac text of ʿAbdishoʿ's *Nomocanon* in the same volume, all citations of Mai here are to the Latin.) References to Muslims in these works were found through the application of fulltext scanning technology to the translated texts; scanning was unnecessary for *The lawcode of Mxitʿar Gosh*, as Thomson not only provides an excellent index but also devotes a significant portion of his introductory essay to the topic of Muslims. I did not consult an Armenian text of Mxitʿar's work due to my own linguistic limitations, but otherwise checked translations against the original.

I was unable to find references to Muslims in the Coptic *Nomocanon* of al-Ṣafī ibn al-ʿAssāl, published as Ignazio Guidi, *Il Fetḥa Nagast, o Legislazione dei Re*, Rome, 1897-99. There are, however, several such references in the canons from medieval Coptic church councils. These conciliar canons have been edited and translated (into English) by Oswald Burmester in a series of articles, including 'The canons of Cyril II, LXVII Patriarch of Alexandria', *Le Muséon* 49 (1936) 245-88; 'The canons of Christodoulos, Patriarch of Alexandria (AD 1047-77)', *Le Muséon* 45 (1932) 71-84; 'The canons of Cyril III ibn Laḳlaḳ, 75th Patriarch of Alexandria', *Bulletin de la Société d'Archéologie Copte* 12 (1946-47) 81-136.

[4] A. Vööbus (ed.), *The Synodicon in the West Syrian tradition*, 2 parts in 4 vols, Louvain, 1975 (*CSCO* 367-68, 375-76); this work includes the Syriac original, an English translation, and a valuable index. The present article does not survey material in the *Synodicon* from before 1000, as that material has already been discussed in David M. Freidenreich, 'Muslims in canon law, 650-1000', *CMR* 1, pp. 83-98.

Eastern Christian normative literature from the first centuries of Islam occasionally speaks of Muslims as invaders or oppressive overlords.[5] Such references, however, are entirely absent from later works of Eastern canon law, which do not portray Muslims as violent or menacing. Normative literature from the East makes no effort to establish a legal framework to support military activity, nor does it seek to regulate commercial interaction with Muslims.

Eastern ecclesiastical authorities, moreover, classify Muslims in a very different manner from their Western counterparts. Rather than conflating Muslims with Jews, Syriac-speaking authorities refer to Muslims as 'gentiles' (*ḥanpē*), that is, non-Christian non-Jews.[6] While ʿAbdishoʿ often places Muslims and Jews in the same category for legal purposes, he never conflates the two and, indeed, suggests that the latter are more odious; he states, for example, that Christian marriage rituals are distinct from those of 'the gentiles and the crucifiers'.[7] Barhebraeus also frequently refers to Muslims as 'gentiles', but sometimes uses the term *ḥanpē* in its original sense of 'pagan'.[8] Thus, Barhebraeus declares that 'As for unbelievers, we know of six different kinds: pagans (*ḥanpē*); Magians [i.e., Zoroastrians]; Jews; Saracens (*Sarqāyē*); Christians who hold heretical views about [Christ's] divinity, namely Arians and the like; Christians who hold heretical beliefs about the unity of [Christ's] nature and substance, like the Phantasiasts'.[9] Barhebraeus is even clearer than ʿAbdishoʿ with respect to the inferiority of Jews to Muslims: Christians, he teaches, should avoid consuming meat prepared by a Jewish butcher more than they avoid meat prepared by Hagarenes (*Hāgārāyē*) because Jews pose a greater threat to Christian faith.[10] No Eastern Christian authority applies

[5] See Freidenreich, 'Muslims in canon law, 650-1000', pp. 86-90.

[6] In Ibn al-Ṭayyib's Arabic-language *Fiqh al-Naṣrāniyya*, this term is rendered *ḥunafā'*.

[7] 'Abdishoʿ, *Nomocanon*, § 2.2 (Perczel, p. 63; Mai, p. 44). For a clear example of ʿAbdishoʿ's division of humanity into orthodox Christians, heretical Christians, Jews, and gentiles, see § 1.4 (Perczel, p. 45; Mai, p. 37).

[8] The ambiguity of the term *ḥanpē* makes it impossible to determine with certainty whether medieval authorities believed that laws from the pre-Islamic era that referred originally to idolaters applied to contemporary Muslims. This essay contains references to pre-Islamic laws only when there is reason to believe that these laws applied to Muslims.

[9] Barhebraeus, *Nomocanon*, § 8.3 (Bedjan, pp. 132-33; Mai, p. 69).

[10] Barhebraeus, *Nomocanon*, § 35.1 (Bedjan, p. 458; Mai, p. 229). On this passage, see further D.M. Freidenreich, 'Fusion cooking in an Islamic milieu. Jewish and Christian jurists on food associated with foreigners', in D.M. Freidenreich and M. Goldstein (eds),

to Muslims laws that relate specifically to Jews; indeed, these authorities devote even less attention to Jewry law than to laws regarding Muslims.[11]

The world envisioned in the Armenian *Lawcode of Mxit'ar Gosh* consists of Christians and 'foreigners' (*aylazgi*); the latter term, according to Robert W. Thomson, was commonly used by Armenians to refer to Muslims. Mxit'ar generally subsumes Muslims within the broader category of foreigners and refers to 'Mohammedans' (*Mahmetakank'*) only rarely, when discussing beliefs and laws particular to Muslims; Jews receive virtually no attention.[12] Mxit'ar does not draw on Jewry law, but rather on an idiosyncratic interpretation of the Old Testament, when formulating many of his laws regarding Muslims. Thus, for example, he states that Christian slaves go free in the seventh year, foreign slaves who accept baptism are set free when they have served for the amount of their purchase price, and those foreigners who do not accept baptism may be retained indefinitely.[13] Apparently inspired by Deuteronomy 14:21, Mxit'ar teaches that Christians may sell to foreigners the meat of animals forbidden for Christian consumption, such as the meat of an ox that has gored a Christian or that of an animal afflicted by an evil spirit,[14] and he cites Deuteronomy 21:22-23 when he urges Christian kings to bury foreigners on the day they are executed.[15]

Crossing religious borders. Interaction and intellectual exchange in the medieval Islamic world, Philadelphia, 2012, 144-60.

[11] In Barhebraeus' *Nomocanon*, the only laws that relate solely to Jews are prohibitions against Christian consumption of Jewish unleavened bread (§§ 4.1, 5.3) and Christian observance of Passover or Jewish fasts (§ 5.3). 'Abdisho' includes in his *Nomocanon* a prohibition against commensality with Jews (§§ 5.17, 6.6.17).

[12] See Thomson's discussion of Mxit'ar's terminology in *Lawcode*, 23, 47-49. References to 'Mohammedans' appear in Introduction § 9 (pp. 100-1, on the errors of Islamic belief and practice), Introduction § 10 (pp. 102-3, on Islamic law), §§ 101, 181, 183 (pp. 183, 230-31, on Islamic inheritance law). Thomson does not list 'Jews' in his otherwise robust index of terms. The only reference to Jews I have encountered appears in a statement that distinguishes orthodox Christians 'from the Jews and from the barbarians and from the Samaritans, and from the schismatics and from the sectaries, and from the Muslims' (*Lawcode*, Introduction § 9, p. 101); this list appears to constitute a historical survey of pre-Christian, Christian, and post-Christian religions.

[13] Mxit'ar, *Lawcode*, § 56 (Thomson, p. 158). Foreign slaves are also not subject to the protections afforded to believing slaves struck by their masters: § 59, p. 162. Cyril II of Alexandria (c. 30) forbids selling a Christian slave to 'one of the dissidents' (*aḥad min al-mukhālifīn*); Burmester identifies this term as referring to Muslims ('Canons of Cyril II', 286).

[14] Mxit'ar, *Lawcode*, §§ 65, 248 (Thomson, pp. 162, 302).

[15] Mxit'ar, *Lawcode*, § 113 (Thomson, p. 194); Mxit'ar urges kings not to execute Christians at all. He encourages Christians to avoid serving as executioners, regardless of whether the victim is a Christian or a foreigner (§ 220, p. 266), but holds that a priest – who is forbidden from killing, even in self-defense – may kill a foreigner in order to save his companions (§ 170, p. 223).

The different ways in which Eastern and Western ecclesiastical authorities conceive of Muslims, and the different sources they employ as precedents, have much to do with the different scope and tenor of their laws regarding Muslims. Within the Eastern churches, one of those sources was Islamic law itself.

The influence of Islamic law and power within Eastern canon law

The pervasive influence of Islamic law on its Eastern Christian counterparts is evident within the content and structure of many Eastern law codes. Versions of 'Islamic inheritance law' (*mawārith al-Muslimīn*) circulated within both the Church of the East and the Syrian Orthodox Church.[16] In his *Nomocanon*, Gregory Barhebraeus employs the organizational system and some of the content found in a code by the Shāfi'ī jurist Abū Ḥāmid al-Ghazālī (d. 1111) (q.v.), albeit without acknowledgment of this source.[17] The lack of a section devoted to non-Christians in the works of Barhebraeus and other Eastern Christian authorities may stem in part from the lack of a section devoted to non-Muslims in works by al-Ghazālī and his Muslim counterparts. Al-Ṣafī ibn al-'Assāl (q.v.), author of the most comprehensive and systematic Coptic *Nomocanon* (published in 1238), draws extensively upon Islamic sources when discussing matters of civil law, including in his treatment of the

[16] Ibn al-Ṭayyib, *Fiqh al-Naṣrāniyya*, introducing a text associated with Johannan ibn al-A'raj (Hoenerbach and Spies, ii.1 [ed.], p. 189/ii.2 [trans.], p. 190). The introduction to the first of several texts on inheritance laws within the Syrian Orthodox *Synodicon* describes these regulations as being 'according to the law of the Arabs' (*ak nāmōsā de-ṭayyāye*); see Vööbus, *Synodicon*, ii.1 (ed.), p. 64/ii.2 (trans.), p. 68. See further H. Kaufhold, *Syrische texte zum islamischen Recht*, Munich, 1971; idem, 'Islamisches Erbrecht in christlich-syrischer Überlieferung', *Oriens Christianus* 59 (1975) 19-35; A. Vööbus, *Important new manuscript sources for the Islamic law in Syriac. Contributions to the history of jurisprudence in the Syrian Orient*, Stockholm, 1975.

[17] This observation was first made by Carlo Alfonso Nallino, 'Il diritto musulmano nel Nomocanone siriaco cristiano di Barhebreo', *Rivista degli Studi Orientali* 9 (1921-23) 512-80 (repr. in *Raccolta di scritti editi e inediti*, vol. 4: *Diritto musulmano, diritto orientali cristiani*, Rome, 1942). According to Nallino, the work that Barhebraeus consulted was al-Ghazālī's *Kitāb al-wajīz*, the most concise of his three law codes. Hanna Khadra, *Le nomocanon de Bar Hebraeus. Son importance juridique entre les sources chrétiennes et les sources musulmanes*, Rome, 2005 (Diss. Pontificia Università Lateranense), affirms Nallino's general argument but contends that Barhebraeus actually consulted the *Kitāb al-wasīṭ*, al-Ghazālī's mid-sized code. Barhebraeus draws on work by al-Ghazālī in non-legal writings as well; see, for example, H.G. Teule, 'Barhebraeus' Ethicon, al-Ghazālī, and Ibn Sīnā', *Islamochristiana* 18 (1992) 73-86, and his entry on Barhebraeus in *CMR* 4.

qualifications for judges.[18] Tamer el-Leithy has shown that Ibn al-ʿAssāl and other Coptic authorities also reformulate elements of traditional Christian law, including those related to divorce and polygyny, in light of Islamic law. The permissiveness of the latter, Christian authorities feared, constituted an incentive for Copts to convert to Islam.[19]

It would be a gross exaggeration, however, to suggest that the civil components of Eastern canon law simply parrot those of Islamic law. I demonstrate elsewhere that Barhebraeus carefully fuses together Christian and Islamic material within the *Nomocanon*'s chapter on animal slaughter, apparently because he regards certain laws and ideas of Islamic origin to be universally applicable and not distinctively 'Islamic'.[20] Mxitʿar Gosh explicitly distinguishes the worthwhile aspects of Islamic law (which, he states, all originate in Mosaic law) from those that Muslims have deceitfully altered. Mxitʿar, as Thomson observes, pointedly contrasts various aspects of Islamic law – such as the permission to employ paid lawyers, the use of oaths of denial rather than oaths of affirmation, and the rule that daughters may not inherit in the absence of sons – with the Christian regulations Mxitʿar regards as superior.[21] The integration within Eastern Christian canon law of certain laws of Islamic origin is thus part of a broader dynamic of selective Christian acculturation within the majority-Muslim culture, a dynamic that involved both acceptance and rejection of Islamic norms.

Uriel Simonsohn argues that even the integration of elements of Islamic law within canon law reflects Eastern Christian resistance to assimilation. 'As Muslim jurisprudence gained greater importance within the new theocracy, every aspect of life was regulated according to Islamic law. Under such circumstances, ecclesiastical leaders began to realize that without a uniform and detailed civil legislation of their own they risked losing control over their communities.' Christians living under Roman rule never developed a distinctive form of civil law, so these ecclesiastical leaders drew upon elements of the Islamic civilization in which they lived to create a Christian alternative to Muslim courts. Christian law codes from the 11th to 14th centuries reflect the culmination of this process.[22]

Christian authorities seek not only to retain control over their communities but also to limit the extent to which Christians are subject to the power of Muslims. Law codes routinely forbid recourse by Christians to Muslim courts, as do a number of conciliar canons and individual authorities from that period and from earlier centuries.[23] Similarly, Johannan of Marde (d. 1164), a Syrian Orthodox metropolitan, forbids Christians from asking foreign rulers to put pressure on bishops and thus improperly influence the bishops' rulings.[24] Mxitʿar Gosh declares that bishops or priests who receive positions from Muslims are to be deposed. Christians, he also teaches, must ensure that places dedicated to the church do not fall into the hands of foreigners.[25]

[18] On this work, see F.J. Cöln, 'Nomocanonical literature of the Copto-Arabic Church of Alexandria', *Ecclesiastical Review* 56 (1917) 136-41. Ignazio Guidi, *Il Feṭha Nagast, o Legislazione dei Re*, 2 vols, Rome, 1897-99, ii, pp. vii, xi-xiii, points specifically to reliance on the 11th-century *Al-tanbīh* by the Shāfiʿī jurist Abū Isḥaq al-Shirāzī. Hubert Kaufhold, 'Der Richter in den syrischen Rechtsquellen: Zum Einfluß islamischen Rechts auf die christlich-orientalische Rechtsliteratur', *Oriens Christianus* 68 (1984) 91-113, focuses specifically on Ibn al-ʿAssāl's statements regarding the qualifications of judges and their influence on the work of ʿAbdishoʿ bar Brikhā.

[19] Tamer el-Leithy, *Coptic culture and conversion in medieval Cairo, 1293-1524 A.D.*, Princeton NJ, 2005 (Diss. Princeton University), pp, 382-447; on Ibn al-ʿAssāl's reformulation of Coptic divorce law, see specifically pp. 426-28.

[20] Freidenreich, 'Fusion cooking in an Islamic milieu'.

[21] Mxitʿar, *Lawcode*, Introduction §§ 9-10 (Thomson, pp. 100-3), which contains a wide-ranging critique of Islamic beliefs and practices; Thomson's discussion appears on pp. 50-53. Mxitʿar instructs Christians who are forced by a Muslim litigant to appear before a Muslim court that they should refrain from undertaking an oath of denial (Introduction § 8, p. 95).

[22] Uriel Simonsohn, *Overlapping jurisdictions. Confessional boundaries and judicial choice among Christians and Jews under early Muslim rule*, Princeton NJ, 2008 (Diss. Princeton University), pp. 161-65 (citation on p. 165), summarized in Simonsohn, 'Seeking justice among the "outsiders". Christian recourse to non-ecclesiastical judicial systems under early Islam', *Church History and Religious Culture* 89 (2009) 199-216, pp. 209-11, and revised as Simonsohn, *A common justice. The legal allegiances of Christians and Jews under early Islam*, Philadelphia, 2011. Thomson, *Lawcode of Mxit'ar Goš*, p. 52, similarly argues that Mxitʿar Gosh compiled his lawcode in order to forestall the need for Christian recourse to Muslim courts.

[23] Canons of Christodoulos (1048), c. 29 (Burmester, 'Christodoulos', pp. 77, 82); Canons of Cyril II (1086), c. 12 (Burmester, 'Cyril II', pp. 268, 282); undated canons of Johannan of Marde (d. 1164), c. 31 (Vööbus, *Synodicon*, ii.1 [ed.], p. 250/ii.2 [trans.], p. 263); Mxitʿar, *Lawcode*, §§ 2, 9 (Thomson, pp. 72, 99-102); ʿAbdishoʿ, *Nomocanon*, §§ 4.1-2 (Mai, pp. 65-66). On the reasons why Eastern Christians were attracted to Muslim courts and the efforts of Christian authorities to prevent such recourse, see Simonsohn, *Overlapping jurisdictions*, pp. 175-212. Simonsohn cites the canons of Christodoulos and Cyril II as well as many other sources from before the year 1000, including some absent from the essay 'Muslims in Canon Law, 650-1000', *CMR* 1, pp. 88-89. A similar discussion, including consideration of the canon by Joḥannan of Marde, appears in Simonsohn, 'Communal boundaries reconsidered. Jews and Christians appealing to Muslim authorities in the medieval Near East', *Jewish Studies Quarterly* 14 (2007) 343-55.

[24] Canons of Johannan of Marde, c. 32, in Vööbus, *Synodicon*, ii.1 (ed.), p. 250/ii.2 (trans.), p. 263. In the following canon, Joḥannan also condemns Christians who speak ill of, oppose, or revolt against secular rulers.

[25] Mxitʿar, *Lawcode*, §§ 48, 250 (Thomson, pp. 154-55, 303; see also pp. 56-57).

Mxit'ar draws upon and inverts elements of Islamic *dhimmī* law in the process of creating laws for an Armenian Christian kingdom. Within such a kingdom, Mxit'ar holds, foreigners alone are liable to pay the poll-tax.[26] In another inversion, he holds that the blood-money due to the family of a murdered foreigner is only one third that owed to the family of a murdered Christian.[27] Explaining that 'it is natural for [foreigners] to rejoice at our death', Mxit'ar urges severity in the punishment of foreigners who commit manslaughter, even though he advocates leniency for Christians so as to facilitate their repentance. In a Christian court, Mxit'ar declares, foreigners may not testify concerning Christians.[28] Barhebraeus holds the same position, while explicitly allowing Jews and Muslims the opportunity to offer testimony regarding a co-religionist; when doing so, Jews may swear on the Torah and 'Muslims [*Mashlimānē*] on their book', just as Christians may swear upon the Gospels.[29]

The preservation of distinctively Christian rituals and households

Efforts on the part of Eastern Christian authorities to establish an autonomous judicial system reflect an attempt to preserve a sense of Christian distinctiveness despite the similarities between Christians and Muslims and, indeed, the attractiveness to Christians of appealing to Muslim courts and officials. Ecclesiastical authorities similarly seek to prevent Christians from adopting the evidently attractive wedding and funeral rituals common among Muslims. 'Abdisho' of Nisibis emphasizes that the wedding ritual serves to distinguish Christians from Jews and gentiles. He condemns gentile funeral practices and forbids Christians from engaging

[26] Mxit'ar, *Lawcode*, § 2 (Thomson, p. 119). Mxit'ar proceeds to forbid Christian princes from taxing Christians who are also subject to taxation by foreigners 'because it is right to take tax from foreigners, but not from [believers]' (p. 120). Earlier, however, Mxit'ar states that foreigners who surrender to the besieging army of a Christian king are exempt from the poll-tax but may be taxed in other ways (p. 115).

[27] Mxit'ar, *Lawcode*, § 2 (Thomson, p. 116). Thomson (p. 55) mistakenly asserts that this distinction is grounded in the Old Testament, which, in fact, contains no statement to this effect. Rather, it would seem that Mxit'ar inverts the opinion of those Sunnī jurists who hold that the blood-money due to a Christian's family is only one-third of that due to a Muslim's family. See Yohanan Friedmann, *Tolerance and coercion in Islam. Interfaith relations in the Muslim tradition*, Cambridge, 2003, p. 48.

[28] Manslaughter by foreigners: Mxit'ar, *Lawcode*, § 173, (Thomson, p. 225); see also § 232-33, pp. 288, 290. Leniency toward Christians: § 2 (pp. 116-17). Testimony of foreigners: Introduction § 7 (p. 87).

[29] Testimony of Jews and Muslims: Barhebraeus, *Nomocanon*, § 39.1 (Bedjan, p. 500; Mai, p. 249). Oaths of Jews and Muslims: § 40.3 (Bedjan, p. 527; Mai, p. 262).

in such behavior.[30] The Coptic Patriarch Cyril II and the Syrian Orthodox Metropolitan Johannan of Marde both link these prohibitions against the adoption of foreign wedding practices on the one hand and funeral practices on the other.[31] 'On the grounds of human love', however, funerals need not be segregated by confession. Barhebraeus cites a statement of Jacob of Edessa (d. 708) (q.v.) that permits Christians to participate in the funeral processions of pagans (*ḥanpē*), Ḥaranians, and Jews, and allows such foreigners to participate in Christian funeral processions. It seems likely that Barhebraeus repeats this teaching with Muslims in mind, and Jacob may have taught it with Muslims in mind too.[32]

Christians may fraternize with Muslims, but must distinguish themselves from their Muslim neighbors in matters of ritual. Eastern Christian authorities regularly transmit pre-Islamic laws forbidding Christian participation in the festivals of pagans (*ḥanpē*) or consumption of the food associated with such holidays; they may well intend these laws to apply to Islamic holidays as well.[33] Neither may Christians consume meat prepared by Muslim or other non-Christian butchers, except in cases of necessity, as the act of animal slaughter constitutes a religious ritual.[34]

[30] Marriage: 'Abdisho', *Nomocanon*, § 2.2 (Perczel, p. 63; Mai, p. 44). Mourning: § 5.24 (Perczel, pp. 213-14; Mai, pp. 91-92); see also Ibn al-Ṭayyib, *Fiqh al-Naṣrāniyya*, § 2.40 (Hoenerbach and Spies, ii.1 [ed.], pp. 107–108/ii.2 [trans.], pp. 110-11).

[31] Cyril II (1038), c. 25 (Burmester, 'Canons of Cyril II', 271, 285); Johannan of Marde, cc. 27-28 (Vööbus, *Synodicon*, ii.1 [ed.], pp. 247-48/ii.2 [trans.], pp. 260-61). On Cyril's condemnation of the practice of using henna as part of the wedding ritual, common among Muslims, see el-Leithy, 'Coptic culture', pp. 429-30.

[32] Barhebraeus, *Nomocanon*, § 6.1 (Bedjan, p. 70; Mai, p. 37). On Jacob of Edessa, see R.G. Hoyland, 'Jacob of Edessa on Islam', in *After Bardaisan. Studies on continuity and change in Syriac Christianity in honor of Professor Han J. W. Drijvers*, ed. G.J. Reinink and A.C. Klugkist, Leuven, 1999, 149-60; Freidenreich, 'Muslims in canon law, 650-1000'.

[33] Ibn al-Ṭayyib, *Fiqh al-Naṣrāniyya*, §2.39 (Hoenerbach and Spies ii.1 [ed.], p. 107/ii.2 [trans.], p. 110); Barhebraeus, *Nomocanon*, § 5.3 (Bedjan, p. 59; Mai, p. 31). See also the *Nomocanon* by the Coptic Metropolitan Michael of Damietta, summarized in Wilhelm Riedel, *Die Kirchenrechtsquellen des Patriarchats Alexandrien*, Leipzig, 1900, p. 107. Both of these works cite pre-Islamic laws without addressing the issue of their contemporary relevance. The Coptic Patriarch Gabriel ibn Turaik, in a series of canons promulgated in 1149, reiterates the prohibition against participation in the festival celebrations of Jews and gentiles; he also prohibits appeal to gentile astrologers and attendance at gentile theatrical performances (cc. 23, 73, epitomized in the encyclopedia of Shams al-Ri'āsa Abū l-Barakāt [d. 1363], in Riedel, pp. 62-64). Prohibitions of this nature are common in early Christian sources regarding Greco-Roman pagans; the fact that Gabriel repeats these prohibitions suggests that he has contemporary Muslims in mind.

[34] Barhebraeus, *Nomocanon*, § 35.1 (Bedjan, p. 458; Mai, p. 229; trans. in Freidenreich, 'Fusion cooking'). Barhebraeus expresses less concern about meat prepared by Muslim butchers than that prepared by Jews or pagans (*ḥanpē*), defined here as idolaters and Zoroastrians.

Sources of Eastern canon law address the subject of non-Christians in conjunction with each of the most important Christian rituals: not only weddings and funerals, but also the sacraments of communion and baptism. Non-Christians, of course, may not receive either of these sacraments, nor may they bring Christian children to church lest they mock the eucharistic offering.[35] The eucharist may not be offered on an altar that has been used by a gentile, nor may gentile objects or those embroidered with the 'Hagarene confession of faith' (*tāwditā Hāgārāytā*) be used in the holy service.[36] Christians may not converse with Jews or gentiles prior to taking communion.[37] The children of Muslims (that is, apostates from Christianity?) should be baptized using unconsecrated water and oil on a different day from the children of believers, a distinction that conveys the questionable status of such a baptism.[38]

Apostates may receive communion when they revert to Christianity and accept the appropriate penance; no rebaptism is necessary in such circumstances, although a ritual of reversion might take place.[39] Similarly, apostates may not inherit from Christian relatives, nor may Christians inherit from apostates, but apostates who revert are immediately eligible to inherit or bequeath their estates.[40] These rules reflect a belief that a baptized Christian is a Christian for life, a desire to facilitate the reversion to Christianity of apostates, and an effort to protect the exclusively Christian identity of the family unit. Inheritance takes place within a family and its Christian community; apostates have removed themselves from both.

[35] Offering communion to non-Christians: Barhebraeus, *Nomocanon*, § 2.1 (Bedjan, p. 22; Mai, p. 12). Non-Christian chaperones: 'Abdisho', *Nomocanon*, § 5.13 (Perczel, pp. 198-99; Mai, p. 87). Mxit'ar, *Lawcode*, § 88 (Thomson, p. 175), speaks of foreigners who blaspheme baptism, churches, priests, the cross, or Christ; such foreigners are to be stoned to death.

[36] Barhebraeus, *Nomocanon*, §§ 1.5-6 (Bedjan, pp. 11-12, 14; Mai, pp. 7-9).

[37] Ibn al-Ṭayyib, *Fiqh al-Naṣrāniyya*, § 2.19 (Hoenerbach and Spies, ii.1 [ed.], p. 95/ii.2 [trans.], p. 99); Barhebraeus, *Nomocanon*, § 4.2 (Bedjan, p. 40; Mai, p. 22).

[38] Johannan of Marde, c. 25, in Vööbus, *Synodicon*, ii.1 (ed.), p. 246/ii.2 (trans.), pp. 259–60. In the same canon, Johannan forbids appointing a non-believer as a god-parent.

[39] Barhebraeus, *Nomocanon*, § 2.1, citing Jacob of Edessa (Bedjan, p. 22; Mai, p. 12; trans. in R.G. Hoyland, *Seeing Islam as others saw it. A survey and evaluation of Christian, Jewish and Zoroastrian writings on early Islam*, Princeton NJ, 1997, pp. 162-63). On the Ritual of Abjuration recited within the Greek Orthodox Church by those who reject Islam in favor of Christianity, see *CMR* 1, q.v., and D.J. Sahas, 'Ritual of conversion from Islam to the Byzantine Church', *Greek Orthodox Theological Review* 36 (1991) 57–69, where Sahas, p. 59, observes that aspects of this ritual suggest that it was performed by apostates returning to the church.

[40] 'Abdisho', *Nomocanon*, § 3.15 (Perczel, p. 124-25; § 3.14 in Mai, p. 62.) See also Burmester, 'Canons of Cyril III', pp. 100 (ed.), 131 (trans.).

Efforts to maintain the family unit as a thoroughly Christian domain are also apparent in the prohibition of employing Jewish or gentile wet nurses and, most obviously, in prohibitions against marriage with Muslims or other non-Christians.[41] Mxit'ar Gosh deems adultery with a foreigner to be more problematic than adultery with a Christian and, indeed, as equivalent to sodomy and bestiality. He authorizes Christian authorities to castrate non-Christian adulterers if political circumstances allow.[42] Mxit'ar holds that one may not dwell with a spouse who apostasizes, apparently to Islam.[43] According to Barhebraeus, apostasy to 'Saracenism' or other religions or heresies by the spouse of an orthodox Christian automatically annuls the marriage.[44] The Coptic Patriarch Cyril III (q.v.), in canons promulgated in 1238, allows for greater flexibility in such circumstances; el-Leithy observes that this rule accommodates the common practice of Coptic men converting to Islam for short-term advantages even while raising Christian children.[45] In another concession to the social circumstances of Christian life in the Islamic world, Barhebraeus cites Jacob of Edessa's consent to offer communion to the Christian wife of a Muslim if she threatens to convert unless this is permitted.[46]

The contents of Eastern Christian ritual and family law suggest that ecclesiastical authorities were fighting a rear-guard battle against Christians who were not, to the minds of church leaders, sufficiently committed to Christian practices, Christian households, or Christianity itself. This battle took place within a thoroughly Islamic milieu into which all Christians acculturated and a significant number assimilated. Lacking the power to prevent apostasy, church leaders chose instead to minimize

[41] Wet nurses: 'Abdisho', *Nomocanon*, § 5.15 (Perczel, p. 200-1; Mai, pp. 87-88). Mxit'ar forbids marriage to all foreigners, male or female (*Lawcode*, § 163; Thomson, p. 220). 'Abdisho', citing and reformulating pre-Islamic sources, forbids only the marriage of a Christian woman to a non-Christian man (*Nomocanon*, §§ 2.1, 2.14-15; Perczel, pp. 60, 75-77; Mai, pp. 43, 48). Cyril III, surprisingly, forbids only marriage between a Christian man and a non-Christian woman; see Burmester, 'Canons of Cyril III', pp. 93 (ed.) 118 (trans.).

[42] Mxit'ar, *Lawcode*, §§ 17, 28 (Thomson, pp. 135, 144; see also pp. 53-54).

[43] Mxit'ar, *Lawcode*, § 17 (Thomson, p. 139); see also § 18. As Thomson observes, the fact that Mxit'ar immediately discusses travel to a foreign land as a means of facilitating the spouse's reversion to Christianity suggests that the spouse in question has converted to Islam while living under Muslim rule.

[44] Barhebraeus, *Nomocanon*, § 8.5 (Bedjan, p. 150; Mai, p. 77); Barhebraeus lists paganism, Zoroastrianism, Judaism, Islam [*sarkāyutā*], and Arianism.

[45] Burmester, 'Canons of Cyril III', p. 119; el-Leithy, 'Coptic culture', pp. 428-29.

[46] Barhebraeus, *Nomocanon*, § 4.3 (Bedjan, p. 41; Mai, p. 22; trans. in Hoyland, *Seeing Islam*, p. 163).

its damage within the Christian community while bolstering communal cohesiveness.

Muslims in canon law, East and West

Eastern Christian laws regarding Muslims differ dramatically from those found in Western canon law. The latter devotes hardly any attention to apostasy or the preservation of distinctly Christian rituals. Roman Catholic authorities address intermarriage, but primarily through laws imposed upon Muslims, such as the requirement of distinctive clothing. Indeed, much of Western canon law regarding Muslims is directed at Muslims, whereas the vast majority of Eastern canon law regarding Muslims is reflexive, binding solely upon Christians. The issue of recourse to non-Christian courts or officials, of course, simply does not apply in Christian Europe, nor does one find elements of Islamic law within Western canon law. These differences can all be explained by reference to the status of Eastern Christians as subject populations living under Islamic rule, in contrast to the dominant status of the Catholic Church within Europe.

Other differences between the place of Muslims within Eastern and Western canon law, however, reflect differences not in political reality but rather in the ways Christian authorities choose to perceive Muslims. Western canonists view Muslims through the prisms of crusader warfare and classical Christian anti-Judaism. As a result, Catholic canon law portrays Muslims as posing both physical and spiritual threats to Christianity, and responds with laws designed to fend off these dangers. Eastern canonists, in contrast, perceive Muslims as one amongst several non-Christian peoples or simply as paradigmatic of these gentiles. These authorities only conflate Muslims and Jews when they group all non-Christians into a single category. Eastern canon law portrays Muslims as powerful but not as inherently threatening or prone to meddle in Christian affairs without provocation.

Elsewhere, I show that Christian authorities tend to define gentiles as 'non-Christian' but Jews as 'anti-Christian'.[47] Eastern authorities continue to treat Muslims as 'non-Christians', yet Western authorities, emphasizing the degree to which Islam is similar to Judaism, elide Muslims into the 'anti-Christian' classification. Indeed, Eastern canon law regarding Muslims from the years 1000 to 1500 conforms more closely to Christian

[47] See David M. Freidenreich, *Foreigners and their food. Constructing otherness in Jewish, Christian, and Islamic law*, Berkeley CA, 2011, chs 7-8, 13.

sources from the first millennium than does its Western counterpart. A full accounting of the different status of Muslims in Eastern and Western canon law must therefore address the reasons why perceptions of Muslims evolved as they did within Christian Europe, a task beyond the scope of the present essay. The sources surveyed in this essay, however, offer a valuable baseline against which to measure the distinctly Catholic evolution of Christian ideas and laws about Muslims.

In 'Christians in early and classical Sunnī law' (*CMR* 1, 99-114), I make reference to an essay in a later volume of *CMR* that was to survey departures from classical approaches to Christians among Sunnī and Shīʿī authorities. This essay was to address the treatment of Christians by Muslim political authorities as well as Muslim responses to European Christian military conquests. I ultimately decided that such an essay would be of minimal value. My research led me conclude that Muslim rulers did not claim to be acting on the basis of Islamic law when they clearly violated classical norms regarding the status of their Jewish or Christian subjects. The sole probable exception, that of the Almohad abrogation of *Dhimmī* status in favor of conversion or expulsion, had only minimal impact on Christians.[48] Muslim responses to the rise of Christian political and economic power occurred within the framework of classical Sunnī conceptions of the proper relationship between Muslims and Christians, even as these responses stretched that framework in new ways.[49]

[48] On Almohad policies and their impact on Christians in North Africa and al-Andalus, see especially M. Fierro Bello, 'A Muslim land without Jews or Christians. Almohad policies regarding the "protected people"', in *Christlicher Norden – Muslimischer Süden*, ed. M.M. Tischler and A. Fidora, Münster, 2011, 231-47; J.-P. Molénat, 'Sur le rôle des Almohades dans la fin du Christianisme local au Maghreb et en al-Andalus', *Al-Qanṭara* 18 (1997) 389-413.

[49] On the subject of whether Muslims must emigrate from Christian lands, see especially K. Abou el Fadl, 'Islamic law and Muslim minorities. The juristic discourse on Muslim minorities from the second/eighth to the eleventh/seventeenth centuries', *Islamic Law and Society* 1 (1994) 141–87; J. Hendrickson, *The Islamic obligation to emigrate. Al-Wansharīsī's* Asnā al-matājir *reconsidered*, Atlanta GA, 2009 (Diss. Emory University); and the sources addressed in the latter work. On Islamic legal discourse responding to the rising influence of Christian commerce, see L. Halevi, 'Christian impurity versus economic necessity. A fifteenth-century fatwa on European paper', *Speculum* 83 (2008) 917–45.

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