SYRIAC CHRISTIANS IN THE MEDIEVAL ISLAMIC WORLD:
LAW, FAMILY, AND SOCIETY

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Abstract

This dissertation examines the emergence and development of traditions of family law among East Syrian and West Syrian Christians in Muslim-ruled Syria, Iraq, and Iran between the late eighth and early fourteenth centuries CE. With the general interest of integrating the history of these demographically and culturally significant communities into the narratives of medieval Islamic societies, the dissertation argues that bishops of the Syriac churches developed traditions of family law in order to foster conceptions of Christian community within the Islamic world grounded in marital practice. At the same time, their cultivation of law as an intellectual discipline entailed engaging with broader intellectual trends in the Islamic Middle East.

After reviewing the historiography of Syriac Christian law, the dissertation focuses on three law books composed by East Syrian bishops in the late eighth and early ninth centuries and investigates their techniques for instilling Christian distinctiveness in common Middle Eastern practices of marital life. By introducing Christian ritual dimensions into the contracting of betrothals and by prohibiting close-kin marriage, polygyny, and divorce, the bishops redefined certain regional practices as constitutive of Christian communal belonging. Even as they articulated distinctively Christian norms for household life, however, these bishops appropriated common institutions of Middle Eastern legal culture and engaged in disputes broadly characteristic of legal discourse in the Islamic Middle East, particularly over the authoritative sources of norms within religious legal traditions.

The dissertation’s final section moves to the thirteenth and early fourteenth centuries to trace the longer-term convergence of Syriac Christian family law with
Islamic traditions. It demonstrates how the West Syrian Bar Hebraeus produced a comprehensive but hybridized summary of communal law by reconfiguring Shāfiʿī family law and assembling it with a variety of Christian sources. His East Syrian contemporary ʿAbdīšōʿ bar Brīkā, on the other hand, drew on the more extensive resources of East Syrian law to compose summary legal works that largely, though not wholly, avoided appropriating from Islamic *fiqh*. In composing systematic statements for their respective communities, however, both writers responded in different degrees to normative conceptions of social hierarchy and gender suggested by Islamic legal traditions.
Acknowledgments

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Chapters of this dissertation have been presented in a number of venues: excerpts of chapter four at the Middle East Studies Association Annual Meeting in Denver, November 2012, and the Sixth North American Syriac Symposium at Duke University, June 2011; a version of chapter five at the second Late Antiquity and Early Islam Roundtable at the University of Oxford in September 2011; and an excerpt of chapter six at the December 2011 MESA Annual Meeting in Washington, D.C. A version of chapter five will be published as “Polygyny and East Syrian Law: Local Practices and Ecclesiastical Tradition,” in Robert Hoyland, ed., *Christians, Muslims and Jews in the Early Medieval Mediterranean World: Minority Perceptions and Minority Constructions* (Princeton: The Darwin Press, forthcoming).

At the end of a one hundred thousand word project that has taken several years to complete, finding the right words to recognize the debts that I’ve incurred along the way feels like the hardest part. I hope the following does some degree of justice to the teachers, peers, friends, and loved ones who made this long trip possible.
The first time I met my advisor, Professor Michael Cook, he asked me to sight-read an Arabic text about a man jumping around in front of a Ḥimyarite king. If I didn’t really know what I was getting into at the time, I’m glad I had the good sense to jump in myself. Ever since I set foot in Professor Cook’s legendary NES 502 course in the fall of 2008, he has been the consummate advisor and intellectual guide. Besides reading every word of this dissertation in multiple forms, his analytical rigor, breadth of knowledge, and subtle humor have shaped this project in numerous ways of which I doubt I’m even fully aware. I consider it nothing short of a privilege and honor to be counted among his students.

I’ve known Adam Becker since my time at New York University, when I subjected him to my undergraduate thesis. I hope he feels, as I do, that my scholarship has progressed under his guidance since then. Adam is largely responsible for sparking my interest in Syriac, and I can think of few other teachers who can do critical theory and Syriac transliteration correction at the same time. Just as importantly, he’s a model of how a scholar of the pre-modern world can remain both theoretically engaged and politically committed, and if I don’t always succeed at living up to that example I know I’m better for trying.

In a whole series of meetings, seminars, and generals reading sessions since 2008, Professor Mark Cohen taught me Judeo-Arabic and introduced me to the study of non-Muslims in the Muslim world. His perspectives opened up the possibilities that led to this project, and I aspire constantly to the quality of his social-historical studies of the pre-modern Middle East. Marina Rustow kindly agreed to serve as the final examiner of this dissertation, and it’s a great pleasure to receive input on the culmination of my graduate
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Besides my advisors and the members of my dissertation committee, numerous other professors at Princeton deserve credit for my progress to this point. Manolis Papoutsakis deserves special thanks: he taught me Syriac, and his wit made learning it interesting. This project would not have been possible without him. Professor Qasim Zaman has guided me through essentially every academic and professional aspect of graduate school, and his “authority seminar” fundamentally shaped my approach to the intellectual traditions that I study. Professor Hossein Modarressi’s quiet instruction has been as helpful as his erudition is staggering. John Gager facilitated a wonderfully collaborative workshop seminar during my time at the Center for the Study of Religion. Taking part in seminars with Professors John Haldon, Eddie Glaude, Jr., Şükrü Hanioğlu, Andras Hamori, Abraham Udovitch, and Shaun Marmon has been a distinct privilege of my time in Princeton as well.

I would be remiss without mentioning the teachers at NYU who set me on the path I’m still following. My interest in interreligious relations in the pre-modern Middle East began in a seminar on that topic with Professor Adnan Husain when I was a sophomore undergrad. Philip Kennedy taught me Arabic and oversaw the completion of my first piece of original research. One of my few regrets in graduate school is not having taken the initiative to work further with Professor Everett Rowson. Tamer el-Leithy, who in the tradition of our common advisor read every last word of my undergraduate thesis, planted the idea in my head that I might come to Princeton and
work with Professor Cook. The originality and rigor of his scholarship in pre-modern Middle Eastern social history remains an inspiration.

My many Arabic teachers over the years also deserve recognition. Among my teachers in Cairo, Sayyid Fathi put up with my shifting requests to read from different jurisprudential traditions. Abdallah Siraj taught me Jāhiẓ and Ghazālī in the morning, Yemeni cuisine and Stella at night. All of his current students in the States are lucky to have him as a teacher.

I was fortunate, in an uncertain sense of the word, to witness the first few months of the Arab Spring in 2011 in Cairo. I always felt a strange disconnect studying pre-modern history while so much of consequence for the region and its people unfolded around me. I can only hope that Nashaat Abdelbaset, Ustaaz Rafaat, Ustaaz Ibrahim, al-Maki Ahmad, Iskandar Diaz-Pache Lallier, Abouna Rami Moammar, and the other friends and teachers I’ve had in Egypt and especially Syria will witness resolutions they desire.

Back in the States, the friends and peers who got me through graduate school are almost too numerous to mention. Luke Yarbrough, Thomas Carlson, and Nick Marinides were always great colleagues and traveling companions through Syriac reading groups and our shared interests in the history of eastern Christianity. Joel Blecher and I came to Princeton, wandered around al-Midan, read each other’s work, and are leaving Princeton together, which makes some kind of sense. Christian Sahner, Kathi Ivanyi, Oded Zinger, Sarah Islam, Dan Stolz, Sarah Kistler, and Jessica Marglin have all been friends and greatly helpful through their feedback on my work at various times, as were the members of Princeton’s 2011-12 CSR Religion and Culture seminar. The few chances I get to talk
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The ironies and strange convergences of studying family history while my own family had its ups and downs have not been lost on me. I wish my grandfather Charles Weitz had lived to put a copy of this dissertation on his shelf next to my father’s and uncle’s. My work may not make that much sense or be that interesting to my brother Ben, but his love and brotherly support matter deeply to me. Finally, my mother and father, Carol Hunt Weitz and Eric Weitz, have each in their different ways provided the love, support, and guidance without which I simply wouldn’t be here writing this today. I dedicate this work to both of them.
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<tr>
<td>BO</td>
<td>Assemani, <em>Bibliotheca orientalis Clementino-Vaticana</em></td>
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<tr>
<td>CSCO</td>
<td><em>Corpus Scriptorum Christianorum Orientalium</em></td>
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<td>EIR</td>
<td>Yarshater, <em>Encyclopædia Iranica</em></td>
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<td>GEDSH</td>
<td>Brock et al, <em>Gorgias Encyclopedic Dictionary of the Syriac Heritage</em></td>
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<tr>
<td>IJMES</td>
<td><em>International Journal of Middle East Studies</em></td>
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<td>JAOS</td>
<td><em>Journal of the American Oriental Society</em></td>
</tr>
<tr>
<td>PO</td>
<td><em>Patrologia Orientalis</em></td>
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<tr>
<td>Q</td>
<td>Quran</td>
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<tr>
<td>SR</td>
<td>Sachau, <em>Syrische Rechtsbücher</em></td>
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<td>SRRB</td>
<td>Kaufhold and Selb, <em>Das syrisch-römische Rechtsbuch</em></td>
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<td>SWST</td>
<td>Vööbus, <em>The Synodicon in the West Syrian Tradition</em></td>
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A Note on Transliteration and Dates

All Arabic words and personal names are transliterated according to a modified form of that used in *The Encyclopedia of Islam*, second edition (substituting q for k and j for dj). Less familiar place names are also transliterated in this manner. Well-known place names are given according to standard English usage (e.g., Baghdad and Cairo rather than Baghdād and al-Qāhirah).

For Syriac transliteration I have opted to indicate gemination (e.g., *ṭṭ* in *dubbāṭē*) and to use macrons to differentiate between long and short vowels. I do not denote spirantization of the consonants b, g, d, k, p, and t other than in widely used versions of proper names (e.g., “ph” in Ephrem). I render the phoneme [ʃ] as *sh* in Arabic and *š* in Syriac. For Syriac names, I have not used an entirely consistent system of transliteration. In general, I have tended to employ the Latin or Romanized versions of the Greek for Syriac names of Greek origin (e.g., Dionysius and Kyriakos rather than Diyonisiyos and Quriyaqos) unless an Anglicized version is standard in scholarship (e.g., Timothy and George rather than Timotheos and Georgios). I have tended to fully transliterate Syriac names of Semitic origin (e.g., *Īšōʿ* barūn, *Yaʿqōb, ʿAbdīšōʿ*) unless, again, an Anglicized version is widely used in scholarship (e.g., Ephrem, Jacob of Edessa, Gabriel of Başra).

Most of the individuals who appear in this dissertation thought about the passage of time in terms of one or both of the Seleucid and *hijrī* calendars. To avoid cluttering the text with multiple dating systems, I have taken the authorial prerogative of imposing Common Era dating on them all.
Introduction

A Muslim Litterateur on Christian Marriage in the World of Islam

Despite the great number of monks and nuns, and the fact that most priests among them imitate [the monks’] celibacy… and the fact that someone among them who does marry cannot exchange his wife, marry another in addition to her, or take concubines – despite all this, they have covered the earth and filled the horizons, and exceeded [other] peoples in number and amount of progeny.¹

- Abū ʿUthmān al-Jāḥiz, *The Refutation of the Christians*

Abū ʿUthmān al-Jāḥiz (d. 868/9), one of the great litterateurs and social commentators of the ʿAbbāsid Caliphate, was apparently quite unhappy with the good lot of the Christian population in the Iraq of his day. Despite the fact that they were subjects of a Muslim empire, ʿAbbāsid Christians were counted among the most prominent physicians and astrologers in the capital, bore good Muslim names like Ḥusayn and ʿAbbās, and were admired by the Muslim masses for their learning and high status. At least, this is the state of affairs of which Jāḥiz informs his readers in his wry and acerbic treatise *The Refutation of the Christians* (*al-Radd ʿalā ʾl-naṣārā*).

In between repudiations of Christian doctrine and complaints about the high status of Christian noblemen, Jāḥiz saw fit to include in the *Refutation* the few brief comments on Christian marriage and sexual practices noted above. And while we should take such blanket generalizations with a grain of salt (like many great writers, Jāḥiz was partially in the business of entertainment by way of hyperbole), his words intimate something very interesting. From the perspective of a ninth-century Muslim living in the central lands of the ʿAbbāsid Caliphate, Christian distinctiveness rested not only in theological doctrines

like the incarnation and the trinity, rituals like baptism and the Eucharist, or institutions like churches and monasteries, but also in marital practices. A high value on celibacy, prohibitions of divorce, polygyny, and concubinage – to Jāḥiẓ, these principles were characteristic of Christians and decidedly different from the rhythms of Muslim conjugal life.

From a certain perspective, Jāḥiẓ’s observations are not entirely surprising. Christian bishops throughout the Mediterranean world had been admonishing lay people for centuries that Christian teaching as embodied in the Gospels and Pauline epistles condoned certain sexual practices and institutions and condemned others. In Jāḥiẓ’s time, however, the notion that Christian difference and communal belonging could be delineated in legal terms and inscribed in marital practice took on a new import for the various Christian communities living under Muslim rule. In response to a diverse array of impetuses, ecclesiastical elites sought to develop legal traditions that would regulate family life and produce an idea of Christian marital practice distinct from that of the Muslims, Jews, and Zoroastrians among whom Middle Eastern Christians lived. This dissertation is an investigation of that effort among the Syriac churches of medieval Syria, Iraq, and Iran, and its consequences for the development of broader social formations in the medieval Middle East.

*Christians, Muslims, and Law in the Historiography of the ʿAbbāsid Caliphate*

Historiography of the medieval Middle East has long noted that the closing decades of the Umayyad Caliphate and the early centuries of the ʿAbbāsids were marked
by fervent intellectual productivity in the increasingly Arabophone heartlands of the great expanse of territory under Muslim rule. The fruits of this activity were geared in large part toward consolidating the boundaries of a range of nascent and formative religious traditions, not least the forms of Islam itself that would predominate in later centuries. The early eighth century emergence of new intellectual disciplines among Muslim scholars, especially law (fiqh) and theology (kalām), exemplified their efforts to sort out the base requirements – doctrines, practices, genealogical pedigree – of belonging to the Muslim umma.² Ongoing encounters between Muslims, Christians, Jews, and some others, particularly in the caliphate’s urban centers and courtly circles, spurred the development of a culture of theological disputation.³ Attested by the various polemical and apologetic treatises produced from the eighth century on, disputation afforded learned religious elites the opportunity to give doctrinal definition to their respective traditions as they sought to prove their truth claims against one another. Also beginning in the eighth century, a wide variety of sectarian movements, ranging from the Karaites and other anti-Rabbanite Jews to proto-Shīʿī groups to the many heterodox millenarian movements of Iraq and Iran, challenged the notions of orthodox tradition propagated by their contemporaries and rivals.⁴ At the same time, the reception of classical Greek and,


to a lesser extent, Indian learning into Arabic under the early ʿAbbāsid caliphs added new techniques, concepts, and cosmologies to the mix of ideas from which religious scholars drew to shape confessional identities.⁵

In this intellectual, temporal, and geographical milieu – Muslim-ruled Syria, Iraq, and Iran from the late seventh into the tenth centuries – we find as well a marked endeavor among Christian ecclesiastical elites to develop legal traditions particular to their respective communities. Throughout this period Melkite, West Syrian, and especially East Syrian bishops put great effort into consolidating their communities’ textual legal heritages in compendious manuscript codices, translating legal works from Greek and Syriac into Arabic, convening synods and issuing canonical legislation for the faithful, and writing jurisprudential treatises in various areas of civil law; and they attempted all of this on a much wider scale than any of their ecclesiastical predecessors.⁶ Particularly striking is the great quantity of family law – regulations concerning marriage, divorce, and inheritance – produced by the bishops who took part in this broad but diffuse endeavor. Christian ecclesiastical elites in the early centuries of the Muslim-ruled Middle East thus evinced a newly prominent, vested interest in regulating the conjugal lives of the lay believers over whom they claimed pastoral authority.

What accounts for this profusion of Christian civil, and especially family, law in the late Umayyad and early ʿAbbāsid periods? Though relatively understudied, this phenomenon is not unknown to historians of the medieval Middle East. Modern

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⁶ On these processes see chapter one.
scholarship on the topic has generally set the development of Christian law against the
backdrop of the caliphate’s social and institutional structures, the roots of which lie in
Sasanian models of government and late antique patterns of sectarianization. A largely
dominant view has been that a number of discrete religious communities – Muslims,
Christians, Jews, Zoroastrians, and some others – lived under an Islamic government that
recognized those religious differences as the primary markers of its subjects’ identities.

As long as non-Muslims paid taxes and accepted the authority of the caliphate, each
religious community was allowed a certain degree of communal autonomy from state
oversight in order to regulate its internal affairs through its own institutions. The
consolidation of communal legal traditions was thus a requisite of life in the caliphate’s
communitarian social order.

More recent developments in the study of Muslim and non-Muslim social
formations in the late antique and medieval Islamic worlds, however, have begun to turn
this perspective on its head and change our understanding of the nature of religious
community in those milieus. Principally, recent scholarship has questioned how internally
coherent, self-contained, and autonomous the religious community as social body truly
was. Instead, this scholarship has put new emphasis on the idea of the discrete religious
community as a product of discourses of communal self-fashioning, such as theological

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7 For the emergence of Christian legal traditions in the socio-political context of the early Islamic
period, see Néophyte Edelby, “The Legislative Autonomy of Christians in the Islamic World,” tr.
Bruce Inksetter, in Robert Hoyland, ed., Muslims and Others in Early Islamic Society (Aldershot:
Ashgate, 2004), 37-82; Richard B. Rose, “Islam and the Development of Personal Status Laws
159-79; and Michael G. Morony, Iraq after the Muslim Conquest (Princeton: Princeton

8 While ubiquitous in much scholarship, perhaps the most detailed and comprehensive statement
of the “discrete, autonomous communities” model of social structure in the Sasanian Empire and
Muslim caliphate is Morony, Iraq, especially 276-506.
disputation and the other `Abbāsid-era intellectual disciplines mentioned above.\(^9\) These discourses were conducted largely by religious elites with interests in impressing their notion of religious community as the primary mode of social affiliation upon believers who moved in interlocking social networks – of kin, neighborhood, town, business partnership – not perfectly congruent with confessional community. This is not to say that non-elites did not understand religious affiliation as meaningful, but rather that the discourses of religious elites commonly positioned it as something more: the proper and uniquely privileged determinant of social action.

This new scholarly orientation has especially benefited the study of Christian communities under early Muslim rule. Though Christians almost certainly constituted a numerical majority of the population in Egypt, Syria, and Mesopotamia through the ninth century at the very least,\(^{10}\) much remains to be written to integrate their social,

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\(^{9}\) A number of recent works have contributed to this historiographical reevaluation from different angles. Arietta Papaconstantinou and Fred M. Donner have separately argued for a widespread conception among post-conquest Muslims that the community of believers included Jews and Christians, and that only later developments hardened the boundaries of the umma. See Papaconstantinou, “Between Umma and Dhimma: The Christians of the Near East under the Umayyads,” Annales islamologiques 42 (2008): 127-56; and Donner, Muhammad and the Believers at the Origins of Islam (Cambridge, Mass.: The Belknap Press, 2010), 39-144. Compare, however, Robert Hoyland’s review of Donner in IJMES 44.3 (2012): 573-76. Jack Tannous’ recent dissertation argues that the majority of Christians in late antique and early Islamic Syria and Iraq cared little about the doctrinal fine points that determined sectarian affiliation in the eyes of scholarly ecclesiastics. See “Syria between Byzantium and Islam: Making Incommensurables Speak” (PhD dissertation, Princeton University, 2010), 213-377. Uriel I. Simonsohn and Richard E. Payne have stressed that discourses promoting discrete jurisdictions and judicial institutions for different religious communities represented elite efforts to consolidate authority rather than fully realized institutional realities. See Simonsohn, A Common Justice: The Legal Allegiances of Christians and Jews under Early Islam (Philadelphia: University of Pennsylvania Press, 2011), especially 91-204; and Payne, “Christianity and Iranian Society in Late Antiquity, ca. 500-700 CE” (PhD dissertation, Princeton University, 2010), 145-240.

\(^{10}\) We will likely never have any definite demographic information on conversion, but we might note a few studies. Richard W. Bulliet’s groundbreaking, though flawed, study of conversion through biographical dictionaries posited that the major conversion processes in these regions were complete by 1010. He gives 882 as a date by which Iraq was fifty-percent Muslim and 888
intellectual, and institutional histories with that of the “Islamic world” more broadly. While Jewish history in the Islamic Middle East, by contrast, is something of an established subfield, the study of Middle Eastern Christians – despite their demographic and cultural significance – remains a large but in many respects unexplored territory in the nexus between Syriac studies (with its focus on late antiquity) and the historiography of the Islamic period (the scholarly priorities of which are revealed by its disciplinary moniker). Recent studies in the vein described above have done much to give us a broader picture of the region’s history by emphasizing that Christian communities were not self-evident social groupings with boundaries forged conclusively in late antiquity. Rather, they responded to developments in the Muslim-ruled Middle East to form particular intellectual traditions – and attendant conceptions of community – within Islamicate societies.\footnote{11} In particular, several recent studies have called new attention to the importance of law as a vehicle for communal self-fashioning. These works have approached Christian legal sources anew to argue that their claims to exclusive ecclesiastical judicial authority over lay people reflect less a stark institutional reality for Syria. See Conversion to Islam in the Medieval Period: An Essay in Quantitative History (Cambridge, Mass.: Harvard University Press, 1979), 85 and 131. Critiques of Bulliet’s methodology that imply or argue for a longer and slower process of conversion, particularly in rural areas, include Tamer el-Leithy, “Coptic Culture and Conversion in Medieval Cairo, 1293-1524 A.D.” (PhD dissertation, Princeton University, 2005), 20-23; and Tannous, “Syria between Byzantium and Islam,” 482-483, note 1,143. See also Michael G. Morony, “The Age of Conversions: A Reassessment,” in Michael Gervers and Ramzi Jibran Bikhazi, eds., Conversion and Continuity: Indigenous Christian Communities in Islamic Lands Eighth to Eighteenth Centuries (Toronto: Pontifical Institute of Mediaeval Studies, 1990), 135-50.\footnote{11} See, for example, Sidney H. Griffith’s argument that Middle Eastern sects – including the Melkites, West Syrians, East Syrians, and Copts – only fully articulated their doctrinal identities in the context of the rise of Islam and the theological dispute culture that developed in the lands under Muslim rule: The Church in the Shadow of the Mosque: Christians and Muslims in the World of Islam (Princeton: Princeton University Press, 2008), 129-55.
than an attempt to shape social life to the ideal of an autonomous community of the faithful.¹²

If new insights have been offered on the importance of the emergence of Christian law, however, the substantive content of that law – and particularly its great quantity of family law – has remained largely unexamined by historians. We are fortunate to have the pioneering studies of the doctrinal evolution of eastern Christian law carried out by legal scholars like Walter Selb and Hubert Kaufhold, studies that will undergird and inform our investigation throughout this dissertation. But scholars have yet to comprehensively examine from a socio-historical perspective how Christian legal traditions, as intellectual discourses that claim regulatory authority over social practice, articulate particular conceptions of community by prescribing distinctive norms for their subjects. Similarly open to investigation is how lay people responded to such discourses, and how they endorsed other conceptions of communal boundaries through practical recognition or eschewal of the bishops’ legal norms. Examining this working of law – as an ongoing process of Christian communal self-fashioning in the context of ʿAbbāsid society – is this dissertation’s primary concern.

_Chrístian Family Law in Islamic Societies: Aims, Sources, and Methods_

In his study of Coptic conversion to Islam in Mamlūk Egypt, Tamer el-Leithy notes that, in terms of both the polemical discourses surrounding converts and the social lives of the converts themselves, “the family was the incubator of ethnic and religious

identity and the site of cultural contestation and change.” In el-Leithy’s analysis, both Muslim and Christian Egyptians understood the practices associated with the conjugal life of the household as fundamentally constitutive of the particular social and cultural identities of its members. Being a Muslim or a Christian meant practicing certain rituals and espousing certain beliefs, but it also meant a broader set of (perhaps indefinite and indistinct) manners and habits inculcated by life in a household of a particular confession.

This perspective, of course, is hardly one confined to the societies of medieval Egypt. It is in fact fairly commonplace in socio-historical scholarship to say that because households and families, in whatever form they take, are usually the basic institutions through which any given society reproduces itself, “family socialization is key to the construction of cultural or national identities.” It is with this view in mind that this dissertation approaches the development of Christian family law in the ʿAbbāsid Middle East. If the intellectual and social paradigms of Islamicate societies spurred Christian bishops to define the boundaries of their (ideally autonomous) confessional communities, regulating the practices associated with the formation, maintenance, and reproduction of households was one strategy by which to articulate a specifically Christian social identity and inculcate it among lay adherents. A tradition of family law informed by and shaped in accordance with Christian teachings would inject Christian distinctiveness into marital and conjugal practices and thereby distinguish Christians from the many adherents of other religious traditions among whom they lived.

At the same time, the very notion of cultivating law as an intellectual discipline had important consequences for Christian culture and wider social formations in the

13 El-Leithy, “Coptic Culture,” 363-64.
ʿAbbāsid Middle East. Middle Eastern Christians were heirs of a religious tradition whose soteriological vision tended to marginalize the significance of law in the mundane world, and to consider obedience to it inadequate for believers to achieve salvation. In the developing religious cultures of the Islamic world, on the other hand, law as an expression of divine guidance for humanity was a major field of intellectual inquiry for Muslims, Jews, and Zoroastrians. As Christian bishops took up the task of forging a communal law, they could not help but face many of the same conceptual challenges as their non-Christian contemporaries. Developing Christian law was thus not only a process of articulating a particular social identity. It also meant taking part in and responding to wider trends in the scholarly intellectual cultures of the Islamic world. How Christian family law emerged as an “Islamicate” intellectual discipline – in terms of its engagement with the same concerns as well as the positive content of other religious legal traditions in the Islamic Middle East – will be another thematic area of analysis running throughout this dissertation.\(^\text{15}\)

Of the several major Christian sects of the Muslim-ruled Middle East, the effort to consolidate a tradition of communal family law was most prominent among the bishops of the Church of the East (whose adherents are commonly referred to as East Syrians or, somewhat erroneously, as “Nestorians”).\(^\text{16}\) With its heartlands in Mesopotamia and

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\(^{15}\) I use “Islamicate” here in the general sense defined by Marshall Hodgson as denoting “a culture, centered on a lettered tradition, which has been historically distinctive of Islamdom the society, and which has been naturally shared in by both Muslims and non-Muslims who participate at all fully in the society of Islamdom” (italics in the original). I would add, however, that we should construe the “lettered tradition” definitive of Islamicate societies and cultures as neither single nor monolithic. See Marshall G. S. Hodgson, *The Venture of Islam: Conscience and History in a World Civilization*, vol. 1: *The Classical Age of Islam* (Chicago: The University of Chicago Press, 1974), 58.

western Iran, the Church of the East traced its roots to the hierarchy of Christian bishops and the community of lay believers in the Sasanian Empire. Its chief bishop, who took the title of Catholicos and Patriarch of the East, resided in the Sasanian capital of Seleucia-Ctesiphon and, after 775, in Baghdad.\textsuperscript{17} For reasons that we will examine further in chapter one, East Syrian bishops in the late Sasanian period had already begun to compose jurisprudential works treating civil affairs. From the late eighth century through the Mongol invasions of the thirteenth, law became one of the standard intellectual disciplines cultivated by East Syrian scholar-bishops. In particular, the approximate half-century between 770 and 828 saw the production of three major legal works that would form the core of the developing East Syrian legal tradition. These law books – one each composed by Timothy I (r. 780-823) and Īšōʿbarnūn (r. 823-28), East Syrian patriarchs resident in Baghdad, and the third by Īšōʿbōkt (fl. second half of the seventh century), metropolitan bishop of the province of Fārs – were unprecedented in their length and the scope of their coverage of family law, treating detailed matters and specific cases of marriage, divorce, and inheritance.

As a concentrated textual record, the East Syrian law books constitute a rich corpus of source material through which to explore the articulation of Christian family law in the Muslim-ruled Middle East and its implications for social life and intellectual culture. Although we will look frequently to developments in other communities, especially the West Syrians, this East Syrian material will constitute the core material of

\footnotesize{\textsuperscript{17} For a general history of the Church of the East see Wilhelm Baum and Dietmar W. Winkler, \textit{The Church of the East: A Concise History} (London: Routledge, 2003). An older narrative is Aziz Suryal Atiya, \textit{A History of Eastern Christianity} (London: Methuen, 1968), 237-302. Overviews of East Syrian history may also be found in more popular surveys of eastern Christianity. In general, East Syrian history remains largely sequestered from the broader narratives of the Islamic world in scholarly literature.}
our study. In view of the broad aims outlined above, this dissertation will also maintain a
particular socio-historical or “anthropological” approach to these texts. As works of law,
the East Syrian books contain a body of positive legal doctrine envisioned by their
composers as either regionally or universally valid for the faithful. For our concerns,
however, the law books (and other legal texts as well) are also very much documents –
material products of specific historical moments intended to circulate and impact upon
contemporary social relations in particular ways. With this latter perspective in mind, we
will frequently read these normative, prescriptive sources for the historical contexts of
their production, and the insights these have to offer on contemporary intellectual
movements and patterns of social practice.

**Overview of Chapters**

The dissertation is divided into three parts. Part I addresses the history and
historiography of law among eastern Christians in late antiquity and the early Islamic
centuries. Chapter one gives an overview of East Syrian and other Middle Eastern
Christian legal traditions from the Sasanian to the ʿAbbāsid periods, as well as the socio-
political factors that spurred their development. Chapter two offers text-critical analyses
of the ʿAbbāsid-era East Syrian law books in order to situate their production in a
particular social and institutional context and determine exactly what kinds of texts these
“law books” are.

Part II uses the law books as base material with which to examine common
marital institutions and practices of the medieval Middle East and how the East Syrian
bishops sought to regulate each in distinctively Christian terms. Chapter three examines Syriac Christian theologies of marriage and how these related to the bishops’ understandings of standard Middle Eastern legal concepts like the betrothal contract. Chapter four considers prohibitions of close-kin marriage, and demonstrates that the bishops’ disagreement over the permissibility of cousin marriage represented a contestation over the authoritative sources of legal norms, a contestation broadly characteristic of legal discourse in the ʿAbbāsid Middle East. Chapter five takes up the bishops’ shifting efforts to restrict polygynous practices among laymen, and how lay people’s adherence to “un-Christian” social mores endorsed alternative conceptions of Christian community. Chapter six examines the bishops’ opposition to divorce and their efforts to regulate it in light of a common social problem in the medieval Middle East: the absent or missing husband.

Part III follows the theme of Christian law as an Islamicate discipline into later centuries to examine how the longer-term consolidation of Christian family law traditions entailed the alternate appropriation and eschewal of Islamic legal and ethical norms. Chapter seven changes focus from the East to the West Syrians to treat the thirteenth-century Nomocanon of Bar Hebraeus and its large-scale adoption of Shāfiʿī law. Chapter eight examines the legal works of Bar Hebraeus’ near contemporary ʿAbdīšōʿ bar Brīkā of Nisibis, an East Syrian bishop who made use of the East Syrians’ rich legal tradition to largely – though not wholly – avoid engaging with Islamic family law in his jurisprudential writings.

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If a ninth-century Iraqi Muslim like Jāḥiẓ could complain that Christians were numerous in spite of their strange marital practices, East Syrian bishops could complain that those marital practices too often veered into un-Christian territory – hence their efforts to articulate the legal traditions we will examine in the following chapters. There is a certain sense in which Jāḥiẓ and the bishops are talking past each other in their concerns. Collectively, however, they had to recognize and speak to an often uncomfortably indistinct religious divide to make their complaints. Let us now listen to some of the results of their conversations.
Chapter One

Legal Culture in the Sasanian and Early Islamic Empires and the Development of East Syrian Law

In the late eighth and early ninth centuries CE, the East Syrian patriarchs Timothy I and Īšōʿbūn and metropolitan Īšōʿbōkt of Fārs produced the jurisprudential works that form the basis of this study. Exhibiting a detailed focus on family law unseen in earlier East Syrian legal writings, these law books were part of a wider trend among Christian ecclesiastical elites in the ʿAbbāsid Caliphate of compiling comprehensive civil law traditions for their respective communities. In this chapter, we will tie together various strands of historiography on the relationship between Christians, law, and the state in the late antique and early Islamic Middle East in order to situate this development and the significance of the East Syrian law books in their particular socio-historical contexts.

18 By “civil law” I of course imply no relationship between medieval Middle Eastern Christian and modern civil law traditions. Rather, I use “civil law” in a loose sense throughout this dissertation to encompass prescriptions pertaining to legal relationships between persons (often, though not only, lay people). In a certain respect this usage is congruent to the notion of civil law found in modern civil law traditions of the European continent and elsewhere: “the law of persons (natural and legal), the family, inheritance, property, and obligations” (John Henry Merryman and Rogelio Pérez-Perdomo, The Civil Law Tradition, third edition [Stanford: Stanford University Press, 2007], 68). Where such traditions distinguish civil law from commercial and more broadly from public law, however, my usage is intended only to distinguish heuristically “civil law” prescriptions in pre-modern religious legal traditions from those pertaining to matters of ritual practice or to ecclesiastical organization. Additionally, my use of “civil law” does not necessarily imply a direct connection between Middle Eastern Christian traditions and Roman civil law, although both again often cover similar areas.
Modern scholarship has by and large situated the emergence of new East Syrian (and other Christian) legal writings in the ‘Abbāsid period against the backdrop of the caliphate’s particular social and political structures. Before taking up this perspective, however, we need to review the earlier development of East Syrian legal tradition from late antiquity into the Islamic period and the related historiography. The first preserved pieces of a legal tradition particular to the Church of the East, the Christian ecclesiastical hierarchy and body of lay believers in the Sasanian Empire, date from the early fifth century. In 410 Sasanian bishops convened the first synod of which we have record and issued canonical legislation; various catholicoi and bishops would continue to do so at fairly regular intervals throughout the following several centuries. Also starting from the synod of 410, the Church of the East received and recognized Syriac translations of the canons of the local and ecumenical synods of the Roman Empire, related ecclesiastical documents, and pseudo-apostolic canonical works known in the Greek East. The reception of eastern Roman Christian legal texts continued at least into the

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21 See Kaufhold, “Sources,” 297-301.
sixth century as part of the broader monastic movement of translation of Greek texts into Syriac (although Syriac Christians in the Roman Empire appear to have received and circulated a good deal more of these than their fellows in Sasanian lands).\textsuperscript{22}

The early East Syrian legal material that has come down to us deals mainly with the organization of the ecclesiastical hierarchy, clerical discipline, the resolution of various schisms between the Sasanian sees, and liturgical matters. In other words, outside of a few exceptions, it deals relatively little with the civil affairs of lay people.\textsuperscript{23} This began to change, however, with the efforts of the patriarch Mār Abā (r. 540-52). Known in East Syrian history as a reformer of both the ecclesiastical hierarchy and the social practices of lay people, one of his chief endeavors was to divest Sasanian Christians of various Iranian ritual and marital practices that he viewed as discordant with Christian teaching.\textsuperscript{24} To this end, one of Mār Abā’s letters recognized as canonical by the Church of the East details a host of marital unions – including especially close-kin and polygynous marriages – that Mār Abā declares forbidden to Christians.\textsuperscript{25} The patriarch

\textsuperscript{22} Compare Kaufhold, “Sources,” 246-48 and 297-301.

\textsuperscript{23} The relevant exceptions are two. One is the so-called Arabic canons of Nicaea, a set of 73 pseudepigraphal canons attributed to the 318 Fathers of the council of Nicaea but actually of a later date. A Syriac translation of these canons was received by the Church of the East at the synod of 410. §§32-35 deal with a variety of issues related to marriage law, including divorce, polygyny, and inter-confessional marriage. The other exception is a few canons on lay marriage from the synod of 484 convened in Bēt Lāppāṭ/Jundīsābūr, the seat of the East Syrian metropolitan bishop of ʿĒlām/Bēt Hūzāyē/Khūzistān. On the Arabic canons of Nicaea see Kaufhold, “Sources,” 299. For the texts of the relevant canons see Arthur Vööbus, ed. and tr., The Canons Ascribed to Mārūtā of Maipherqaṭ and Related Sources, CSCO 439-40 (Louvain: Peeters, 1982), vol. 1: 80-82. The canons of the synod of 484 do not survive in full; several, however, are cited in the fourteenth-century Order of Ecclesiastical Decisions (conventionally called the Ordo iudiciorum ecclesiasticorum) of ʿAbdīšōʿ bar Brikā and in a letter of the eleventh-century bishop Elias of Nisibis. These excerpts are published in Chabot, Synodicon, 621-25.

\textsuperscript{24} For a recent and comprehensive study, see Payne, “Christianity and Iranian Society,” 145-90.

\textsuperscript{25} Published in Chabot, Synodicon, 80-85.
also composed a treatise on the prohibited marital unions as delineated in Leviticus 18.\textsuperscript{26}

Though it is more properly exegetical, this treatise is often described as a legal work and is included in the manuscript traditions of East Syrian legal material.

Mār Abā’s works thus contain the first substantial body of ecclesiastical prescriptions related to family law, and represent the first concerted effort in the extant East Syrian sources to regulate the marital practices of East Syrian Christians. Further historiographical interpretation of Mār Abā’s work, however, has included two divergent trends. As mentioned in the introduction, much scholarship has tended to take these sources as evidence for a kind of communitarian social order in which discrete religious communities had their own judicial institutions and administered their own communal laws.\textsuperscript{27} This notion is one facet of the broader scholarly perspective that views religious communities as the most fundamental social groupings of most late antique and early Islamic societies, and religious affiliation as the primary mode of individuals’ social identification.\textsuperscript{28}

While continuing to recognize the significance of religious affiliation, recent studies have argued that previous scholarship too readily took the ideal picture of institutionally distinct religious communities offered by narrative and other textual sources as descriptive of social realities.\textsuperscript{29} Regarding communal judicial institutions in

\textsuperscript{26} Published as \textit{Eherecht des Patriarchen Mār Abhā}, SR 3: 255-85.
\textsuperscript{27} See for example Morony, \textit{Iraq}, especially 276-506.
\textsuperscript{28} On this notion, see Simonsohn, \textit{Common Justice}, 6-10. The idea that religious communities are basic building blocks of Islamic and some late antique societies is commonplace and seems almost natural, to judge by our mainly textual sources, but the precise conditions of its emergence are much more difficult to pin down. They likely relate to the rise of exclusivist monotheistic religions and patterns of sectarianization within and between late antique Jewish and Christian movements.
\textsuperscript{29} See again in general Simonsohn, \textit{Common Justice} and Payne, “Christianity and Iranian Society.”
the Sasanian Empire of Mār Abā’s time, the recent work of Uriel Simonsohn and Richard Payne points to evidence for a wide variety of judicial venues and figures available to lay people for conducting their legal affairs: imperial courts, village holy men, lay arbitrators, and others in addition to bishops and lower clerics. Most poignantly, Payne has argued that Mār Abā’s works betray no sense that the contemporary ecclesiastical hierarchy thought it possessed exclusive jurisdiction over lay legal affairs, or that Christians were bound to follow some fully formed Christian legal system. According to Payne, Mār Abā claims none of the coercive powers of the Sasanian judiciary, and offers only spiritual punishments (essentially, exclusion from the Eucharist) for transgressing his rules. He says nowhere that marriages have to be contracted under the purview of ecclesiastical officials, only that Christians should follow certain guidelines when they do contract them. In Payne’s reading, therefore, the sources offer no evidence for the existence of a hierarchical, systematic network of ecclesiastical courts, nor for the idea that ecclesiastical officials like Mār Abā were unequivocally opposed to Christians conducting legal business in non-Christian judicial venues (though they might have preferred that lay people stay out of them).

We might temper Payne’s emphasis on the near-non-existence of Christian judicial institutions; while there is little evidence for a strongly coordinated ecclesiastical court system, there is no reason to doubt that ecclesiastical officials played a variety of judicial roles in the lives of lay people. But Payne’s overall reading of the nature of Mār Abā’s legal writings remains compelling: their primary aim, rather than drawing lay

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32 Simonsohn is more accepting of the idea that the Church of the East had a hierarchically organized network of ecclesiastical courts in this period; see *Common Justice*, 50 and 102-104.
people into some discrete Christian legal sphere, was a kind of spiritual admonishment that not all the lawful institutions and instruments available to Sasanian subjects were appropriate for true believing Christians.

From this vantage point, East Syrian law in Sasanian times appears not entirely unlike ecclesiastical law in the Roman Empire (a setting from which the distinction between secular and ecclesiastical law is very familiar). Basil the Great’s (d. 379) canonical letters, for example, prescribed penitential punishments for divorce, sequential marriages, and other practices that could still be administered perfectly lawfully in view of imperial legislation. In a similar mode, Payne argues that East Syrian ecclesiastical elites like Mār Abā conceived of their legal tradition and their ecclesiastical jurisdiction as parallel and/or complementary to, not exclusive of, other legal orders in the Sasanian Empire; and that they understood Christian rules of conduct to apply only to some of the areas covered by those other regimes.

The Seventh Century Sources

Mār Abā’s legal writings remain fairly unique among Sasanian-period sources. Though we have canons from a number of later Sasanian synods, it is only after the Arab conquests of the seventh century that we begin to see a growing emphasis on lay civil affairs in East Syrian sources as well as new genres of legal writings. Among such sources are two seventh-century works very different from their predecessors, in that they were composed by individual jurist-bishops (rather than assemblies) and treat matters of

33 For an overview of Basil’s canonical letters and their contents, see Heinz Ohme, “Sources of the Greek Canon Law to the Quinisext Council (691/2): Councils and Church Fathers,” in The History of Byzantine and Eastern Canon Law, 97-103.
family law in a much more extensive manner than either Mār Abā or past synodal legislation. One of these works is a treatise on the law of succession by Simeon, bishop of Rēwardašīr in Fārs province (fl. second half of the seventh century).\footnote{Published as \textit{Erbrecht oder Canones des persischen Erzbischofs Simeon}, \textit{SR} 3: 203-253.} The other is a collection of the judicial decisions delivered in epistolary form of the patriarch Ḥnānīšōʿ I (r. 685/6-699/700).\footnote{Published as \textit{Richterliche Urteile des Patriarchen Chenānischō}, \textit{SR} 2: 1-51.} Though they cover a variety of topics, the bulk of these decisions are \textit{responsa} concerning inheritance disputes, many of which lay people or lower clergy brought directly to the patriarch.

Payne has interpreted these works as indicative of a broad shift in legal culture and notions of communal identity on the part of East Syrian ecclesiastical elites in the decades following the Arab conquests. If Christians had routinely availed themselves of Sasanian (in addition to other non-ecclesiastical) judicial institutions before the conquests, Payne argues that the defeat of the Sasanian dynasty and the concomitant loss of authority on the part of the empire’s judicial apparatus left a certain space for bishops to claim jurisdiction over a wider range of lay people’s civil affairs. In doing so, the bishops appropriated (and amended) much from Sasanian family and commercial law and administered it among their flocks. So, in Payne’s view, Simeon’s law book conceptualizes the intergenerational transfer of wealth as an area of social life newly subject to ecclesiastical pastoral care, and absorbs much from Iranian inheritance law into its Christian tradition. Similarly, Ḥnānīšōʿ’s decisions show how a high church official could take on a judicial role in regulating the disbursement of inheritances and, therefore,
the constitution of households and lineages, which had been one of the primary areas of activity of the Sasanian judiciary.\textsuperscript{36}

Payne points to further evidence for the expanding purview of ecclesiastical judicial authority in the canons of the synod convened by patriarch George I in 676. One of George’s canons makes the assertion, unprecedented in East Syrian tradition, that litigation between Christians has to be brought before ecclesiastical judges. Another decrees that only marriages contracted through the mediation and blessing of a priest may be recognized as lawful.\textsuperscript{37} How frequently these provisions were actually followed is another matter entirely, but their assertion of a Christian judicial authority exclusive of any others stands in marked contrast to the overlapping legal orders implicitly accepted by Mār Abā.

All told, Payne takes George’s claims to exclusive ecclesiastical jurisdiction in addition to Simeon and Ḥnānīšō’ s texts as evidence for a shift on the part of the ecclesiastical elite toward conceiving of the Christian community as one bounded by a confessional law and rendered discrete from others through the institutional administration of that law. In effect, it is in the seventh century that the bishops’ thinking begins to correspond more closely to the “historiographical model of institutionalized religious communities” commonly considered characteristic of Sasanian and, later, Islamic societies.\textsuperscript{38} Payne’s argument is important for our purposes because that very conception of the nature of religious communities continued to inform the legal

\textsuperscript{36} See Payne, “Christianity and Iranian Society,” 191-240. Simonsohn also charts greater ecclesiastical claims to exclusive jurisdiction after the Muslim conquests; see Common Justice, 147-73.
\textsuperscript{37} Payne, “Christianity and Iranian Society,” 199-200. The canons in question are §6 and §13, for which see Chabot, Synodicon, 219-20 and 223.
\textsuperscript{38} Payne, “Christianity and Iranian Society,” 200.
endeavors of East Syrians in the ‘Abbāsid period. In all, his argument is both provocative and largely compelling; however, I will here offer a few additions and emendations.

First of all, Payne notes that Simeon’s text represents our earliest example of the genre of “authoritative legal treatises” composed by individual bishop-jurists, and that its attention to detailed points of family law (like that in Ḥnānīšō’’s decisions) demonstrates the greater judicial ambitions of seventh-century bishops. In strictest terms, however, we cannot be sure that no earlier law books like Simeon’s had been composed and subsequently lost. In the case of Ḥnānīšō’ as well, we should not too hastily assume that the concern for regulating inheritance practices among lay petitioners evident in his decisions was something so new after the fall of the Sasanians. If lay people did indeed avail themselves of a wide variety of formal and informal judicial venues, as Simonsohn’s work suggests, it would be surprising if earlier patriarchs and bishops had not played judicial roles similar to Ḥnānīšō’s by receiving petitions and arbitrating inheritance disputes. In fact, we have a certain precedent in a response of patriarch Īšō’ yahb I (r. 581/2-95) to a bishop Ya’qōb of the island of Dīrēn in the Persian Gulf. Ya’qōb asks for instruction on how intestate succession should be administered, and Īšō’ yahb responds accordingly. Much like Ḥnānīšō a century later, Īšō’ yahb in this instance brings the intergenerational transfer of wealth under ecclesiastical purview and transmits rules for its administration to a local clerical agent. We should therefore be

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40 The island is called Dārē in the text of the letter; see Chabot, Synodicon, 165. For its identification as Dīrēn (the site of George’s synod of 676), see Jean Maurice Fiey, Pour un Oriens Christianus novus: répertoire des diocèses Syriques orientaux et occidentaux (Stuttgart: Franz Steiner Verlag, 1991), 74.
41 §14, Chabot, Synodicon, 181-82.
careful not to overemphasize Ḫnānīšōʾ and Simeon’s concern for inheritance law and practices as an unequivocally new development after the Arab conquests.⁴²

Yet even if we cannot be certain of the absolute unprecedentedness of Ḫnānīšōʾ and Simeon’s legal activities and writings, other factors support Payne’s assertion that they signify a new phase in East Syrian legal tradition. For one, George’s claims to exclusive ecclesiastical judicial authority are undoubtedly novel.⁴³ Moreover, whether or not the same can be said of Ḫnānīšōʾ and Simeon’s texts, the fact of their preservation remains particularly significant: we should interpret it to represent the beginnings of a more comprehensive East Syrian civil law tradition, one that developed as a complement to the notion of expanded ecclesiastical judicial authority as suggested by Payne. Ḫnānīšōʾ and Simeon’s works are collections of focused, case-specific rulings addressed to the details of lay conjugal life, and for that reason they are very different from the general laws typical of previous East Syrian synodal legislation. Similarly extensive collections of rulings by individual jurist-bishops continue to comprise the bulk of the East Syrian legal sources into the Islamic period. This trend in the preserved sources away from cursory synodal legislation and toward more comprehensive legal treatises on civil matters suggests that even if earlier works of similar genres might have existed, concern to preserve them began around the seventh century. And the fact of this preservation suggests further that it was in the seventh century that East Syrian bishops

⁴² A fact to which Payne alludes, but which he does not highlight, with reference to the canons of Īšōʾyahb I; see “Christianity and Iranian Society,” 203.
⁴³ In further support of this point, a canon from the synod of Bēt Lāppāt of 484 states that clerics and the consecrated should not bring their litigation before non-ecclesiastical tribunals because they may have to swear inappropriate oaths. It specifically excludes lay people from this formulation, which demonstrates a tacit acceptance of lay recourse to such courts as legitimate. As Payne points out, only with George’s synod is this prohibition on the use of non-ecclesiastical courts extended to the laity. See “Christianity and Iranian Society,” 199.
began to see the construction of a communal civil law tradition as a worthwhile and pressing endeavor. So whether or not earlier bishops had issued rulings and engaged in judicial activities like Simeon and Ḥnānīšōʿ, these bishops’ works mark the early stage of an ongoing process of formalizing ecclesiastical rulings as the body of a specifically Christian civil law tradition. Such a tradition of communal laws, in turn, was a necessary tool if bishops were to effectively serve in the expanded judicial roles that George’s canons show them to have claimed. From this perspective, it is the fact that the preservation of Simeon and Ḥnānīšōʿ’s works constitutes the beginnings of this tradition, rather than the absolute novelty of their activities (which remains difficult to fully prove), that supports Payne’s argument for the East Syrian bishops’ expanded conception of their own judicial authority in the century after the Arab conquests.⁴⁴

We should also clarify at this point that though bishops began to claim a more exclusive jurisdiction in the seventh century, this in no way means that their ambitions were realized. In point of fact, this is precisely the insight that Payne and Simonsohn have emphasized: even as communal elites thought more and more in terms of a social order of institutionally separate religious communities, that order remained more ideal than reality. George’s synod asserted the exclusivity of ecclesiastical jurisdictions and Ḥnānīšōʿ and Simeon sought to regulate inheritance, but Simonsohn has shown that lay people continued to avail themselves of a wide variety of venues and figures, including

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⁴⁴ In further support of this point, the first systematic East Syrian legal compendium (composed by Gabriel of Baṣra in the late ninth century) brings together extracts from Simeon as well as later law books but no earlier, otherwise unreserved texts. By citing these authorities, Gabriel in effect creates a “canon” of East Syrian legal works, of which Simeon is the earliest in the genre of the jurist-bishop’s law book. That Simeon’s type of work of civil law became important among the East Syrians in the seventh century is thus not merely a result of the haphazard nature of source preservation; his seventh-century law book was already the earliest foundation of its kind for East Syrian legal tradition in the ninth. For citations of Simeon in Gabriel of Baṣra’s compendium, see Kaufhold, Rechtssammlung, 142, 154, and 162.
local notables, monks, holy men, and Arab governors, to contract civil affairs and resolve disputes. Additionally, it remains likely that some Christians continued to seek these services from judges and administrators formerly employed and authorized by the Sasanian state. Payne posits that the loss of imperial support lessened these figures’ appeal for litigants, but we should temper this idea a bit given what we know of other post-conquest regions of the Middle East. In Egypt, for example, “the same officials who held authority under Roman rule were able to sustain their office, only now sanctioned to do so by the Muslims.” A major difference in the formerly Roman provinces was, of course, that the officials were Christian; and so it remains plausible that Christian litigants in Iraq and Iran, by contrast, were less interested in going to the Zoroastrian judges of a no longer Zoroastrian dynasty when they could turn to their own bishops and clerics instead. But even if a partial decline of the Sasanian judiciary facilitated the bishops’ expanded authority in the seventh century, we should not presume the complete obsolescence of formerly Sasanian administrators, arbitrators, and judges in offering legal services.

In all, then, the seventh century saw several important, interrelated developments in the realm of East Syrian law and legal culture. The ecclesiastical hierarchy began to produce (or at least preserve) legal works that treated the civil affairs of lay people in much greater depth than the Church of the East’s older body of synodal legislation. At the same time, bishops began to assert that these areas of social life – particularly marriage and the intergenerational transfer of property – belonged properly under the regulatory

purview of the law of the church and its ecclesiastical custodians. Let us now follow these trajectories into the ‘Abbāsid period.

**Christian Law under the ‘Abbāsids**

If the legal writings of seventh-century East Syrian bishops branched into new corners of family life never before formally regulated by ecclesiastical legal tradition, ‘Abbāsid-era bishops sought to expand that tradition to cover lay family and civil life more comprehensively. This is most evident in the law books composed between the late eighth and early ninth century by Īšōʾ bōkt, Timothy I, and Īšōʾ bārnūn, which expand beyond the seventh-century sources’ focus on succession to cover detailed cases of marriage, divorce, and commercial law. As with the seventh-century sources, we might ask again whether similar, now-lost legal works existed previously, but we have good reason to believe none did. In the introduction to his law book, Timothy cites claims by some Christians that they face a “lack of rulings and laws” (laytāyūtā da-psāqē d-dīnē wa-d-nāmōsē) useful for litigation as a motive for composing his law book; he also mentions requests for civil law regulations that he has received from various bishops. Īšōʾ bōkt asserts as one of his motives concern that “although the faith of Christianity

47 Simonsohn refers to their efforts as seeking to compile a “unified ecclesiastical legal code”; *Common Justice*, 173.
48 Published as Corpus juris des persischen Erzbischofs Jesubocht, SR 3: 1-201; Gesetzbuch des Patriarchen Timotheos, SR 2: 53-117; and Gesetzbuch des Patriarchen Jesubarnun, SR 2: 119-77. Part of the introduction and first four rulings were inadvertently left out of Sachau’s edition of Īšōʾ bārnūn; these have since been published in Joseph-Marie Sauget, “Décisions canoniques du Patriarche Išo’ barnūn encore inédites,” *Apollinaris* 35 (1962): 259-65.
49 SR 2: 56. Timothy’s specification that Christians lack both “rulings” (psāqē d-dīnē) and “laws” (nāmōsē) is interesting. The former may imply that access to Christian judicial figures who might decide on specific cases was limited, the latter that the Christians in question had no sense of a normative legal tradition particular to their community.
(haymānūtā da-kṛṣṭyānūtā) is one, civil law (dīnā) [among Christians] is not one and the same.” He also refers to accusations by Jews and “pagans” (ḥanpē, likely Muslims and possibly Zoroastrians) that Christians have no civil law with which to administer worldly life, and he does not deny these claims.⁵⁰ These assertions of a lack of any systematic East Syrian civil law tradition suggest that the ‘Abbāsid law books’ attention to a whole range of areas of civil law is something new (or at the very least that any earlier works of comparable content were marginal enough and so long gone that the bishops had no knowledge of them).⁵¹

The law books’ coverage of greater areas of family and civil law are the most striking indications of ‘Abbāsid-era East Syrian bishops’ growing interest in legal literature and their concern to further develop a communal legal tradition, but they are only a few of them. The eighth (or perhaps ninth) century also saw an early redaction of the East Syrian synodicon, an ordered compilation of all recognized local and ecumenical councils of the Roman Empire, related Greek works translated into Syriac, and the canons of the East Syrian synods.⁵² In the mid-ninth century, metropolitan ‘Abdīšō’ bar

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⁵¹ The testimony of later ninth-century East Syrian legal works further supports this point. ‘Abdīšō’ bar Bahrīz’s treatise on marriage and succession cites Timothy and Īšō bōkt but no unknown authorities. Similarly, Gabriel of Baṣra’s systematic compendium gives extracts from Timothy, Īšō barnūn, and Īšō bōkt on matters of inheritance law (Gabriel’s other family law sections are lost) but no earlier, otherwise unknown sources. Thus, already by the time of these works’ composition in the mid-late ninth century, the three ‘Abbāsid-era law books were the canonical foundation of the newly expanding East Syrian civil law tradition. For ‘Abdīšō’’s citations, see Ordnung der Ehe und der Erbschaften sowie Entscheidung von Rechtsfällen, ed. and tr. Walter Selb (Vienna: Hermann Böhlaus Nachf., 1970), 36-39 and 51. For Gabriel’s inheritance law section, see Kaufhold, Rechtssammlung, 134-63.
⁵² Several scholars have posited that Timothy I ordered or undertook a redaction of the synodicon, including the East Syrian synods from Isaac I in 410 to Ḥnānūsū II in 775. See Chabot, Synodicon, 12-15; Sachau in SR 2: xx; and Hubert Kaufhold, “Römisch-byzantinisches Recht in den kirchen syrischer Tradition,” in Raffaele Coppola, ed., The Meeting of Eastern and Western Canons: Proceedings of the International Congress (Bari: Cacucci, 1994), 155. Selb disagrees; see Kirchenrecht 1: 165-70. For an overview of the debate on the first redaction of the synodicon
Bahrīz of Mosul composed a treatise on the law of marriage and succession that synthesized the rulings of the earlier East Syrian law books. A few years later, Gabriel of Baṣra (d. 893) compiled excerpts of pseudo-apostolic works, East Syrian synodal canons, and rulings from the law books into the first systematic East Syrian legal compendium. Also around the end of the ninth century, metropolitan Elias of Damascus translated the contents of the synodicon into Arabic. Additionally, it is possible that the Syro-Roman Law Book, a collection of interpretations of fifth-century Roman imperial legislation translated from Greek into Syriac, was introduced into the East Syrian literary tradition by Timothy I.

All told, the profusion of East Syrian legal works from the second half of the eighth through the beginning of the tenth centuries is a striking indication of contemporary bishops’ interest in the expansion of their communal legal tradition. Furthermore, a comparable pattern is evident among the West Syrians and the Melkites (though their efforts lacked the scale and the extensive treatments of family law characteristic of the East Syrians, an issue we will address below). If, going back to the late seventh century, Ḥnānīšōʿ and Simeon represented the beginnings of a specifically East Syrian civil law, their contemporary Jacob of Edessa (d. 708) played a comparable

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53 ‘Abḏišōʿ is identified as an eleventh-century metropolitan of Ḥdayyāb and Ātōr in Selb’s edition of his work. However, Kaufhold subsequently demonstrated that Gabriel of Baṣra’s ninth-century compendium includes extracts from ‘Abḏišōʿ, and so the latter should be properly identified as a certain bishop of Mosul of the first half of the ninth century. See Rechtssammlung, 45-49 and “Sources,” 306-307. Selb acknowledges Kaufhold’s correction in Kirchenrecht 1: 179.

54 Gabriel’s work, published by Kaufhold in Rechtssammlung, 131-317, survives only in fragments and excerpts in later works.

55 Elias’ work remains unpublished. For information see Selb, Kirchenrecht 1: 72-73 and Kaufhold, “Sources,” 309. Its earliest, and possibly only, surviving manuscript copy is MS Vatican Arabic 157, folios 2b-81b.

role among the West Syrians. Jacob issued a wide body of canons and rulings that mainly cover issues of lay ritual practice, but also address certain aspects of marriage law.\(^57\)

Jacob also seems to have been responsible for compiling the West Syrians’ first comprehensive legal collections (preserved in a number of eighth and ninth-century manuscripts), which include pseudo-apostolic writings and ecumenical synods of the Roman Empire, Syriac translations of patristic works of legal bent, and sets of canons and decisions of various Syrian bishops.\(^58\) After Jacob, West Syrian legal production picked up steam in the later eighth century. We have from that period the first recorded canons of West Syrian synods. In a manner comparable to contemporary East Syrian legal writings, these include regulations for marriage and divorce (in addition to clerical discipline) unprecedented in earlier works. A single early thirteenth-century manuscript preserves in chronological order the canons of patriarchal synods convened in 785, 794, 812/3, 817/8, 846, 878, and 896.\(^59\) No other synods follow them in the manuscript, which suggests that this series represents a particular upsurge of legislation on the part of West

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\(^{57}\) For a helpful overview of Jacob’s legal writings, preserved in a number of different recensions and manuscripts, see Robert G. Hoyland, *Seeing Islam as Others Saw It: A Survey and Evaluation of Christian, Jewish and Zoroastrian Writings on Early Islam* (Princeton: The Darwin Press, 1997), 601-610. The most extensive historical study is Tannous, “Syria between Byzantium and Islam,” 213-42. For a variety of studies of Jacob’s life and work see the contributions to Bas ter Haar Romeny, ed., *Jacob of Edessa and the Syriac Culture of his Day* (Leiden: Brill, 2008).

\(^{58}\) See Kaufhold, “Sources,” 247-48; Arthur Vööbus, *Syrische Kanonessammlungen: Ein Beitrag zur Quellenkunde*, CSCO 307 and 317 (Louvain: Secrétariat du CorpusSCO, 1970), 2: 440-58; and Walter Selb, *Orientalisches Kirchenrecht*, vol. 2: *Die Geschichte des Kirchenrechts der Nestorianer (von den Anfängen bis zur Mongolenzeit)* (Vienna: Österreichische Akademie der Wissenschaften, 1989), 2: 92-132. Selb and Vööbus identify two manuscripts of legal works, British Library Additional 14,526 and 14,528, that date partly to the sixth century, but these include only some of the pseudo-apostolic works and Roman ecumenical synods known in essentially every eastern church tradition. It is only in the later seventh and eighth centuries that the compendia manuscripts, which Jacob may have been involved in compiling, begin to include the whole range of texts specific to the West Syrians.

Syrian bishops – during the same timespan in which the East Syrians produced so many new legal works themselves.

For their part, the Melkites began in the eighth century to translate Greek ecclesiastical legal texts into Arabic and compile them into comprehensive manuscript codices of their own. A great number of representative manuscripts survive today; they include Arabic versions of the Roman ecumenical councils and pseudo-apostolic and pseudo-patristic works, among other texts.60 Though the Melkites do not seem to have produced individual jurisprudential works like the East Syrians, it is worth mentioning an important Melkite theological treatise composed in Arabic and preserved in a manuscript of 877. The text, which Sidney Griffith interprets as defining a specifically Arabophone Melkite confessional identity, includes a final chapter made up of canons on lay marriage and relationships with non-Christians (as well as dietary issues).61 It is thus another example of ninth-century bishops’ concern for civil matters among their lay flocks.

In broad view, then, the early ‘Abbāsid centuries saw a great upswing in the composition and compilation of legal works by ecclesiastical elites, especially but not only East Syrians, in the interest of consolidating their respective communal legal traditions. A general historiographical consensus, including earlier scholarship and Simonsohn’s recent monograph, has placed this trend squarely in the context of the intellectual and institutional developments of the ‘Abbāsid Caliphate.62 Chief among this trend’s motivating factors were the general interest of religious elites throughout the caliphate in institutionalizing the autonomy of distinct religious communities, and the

60 See Kaufhold, “Sources,” 225-36.
62 Besides most recently Simonsohn, Common Justice, 99-119, see the works cited in note 7.
growth of Islamic legal traditions and judicial institutions from the late eighth through the
tenth century. We have already considered the articulation of the vision of a social order
made up of institutionally autonomous religious communities by seventh-century East
Syrians. The Muslim political and religious elite, for its part, came to assert the normative
principle that each non-Muslim “protected” (dhimmī) community should have a certain
degree of communal autonomy from state oversight in order to regulate its affairs, as long
as its adherents recognized the caliphate’s supreme authority (which generally meant
obeying its commands and paying taxes).63 The idea that Christian communities should
have their own legal traditions was therefore supported in theory by the Muslim ruling
elite’s understanding of proper social order.

Simonsohn has again diverged from previous scholarship by emphasizing that
stark communal autonomy was very much an ideal propagated by religious elites whose
authority rested on the recognition of the boundaries that separated religious groups from
one another, while individuals were in practice embedded in networks of common
interest and institutional affiliation not perfectly congruent with confessional
community.64 A major reason for this characteristic of the caliphate’s social environment,
and a major influence on the ecclesiastical interest in Christian law, was the increasing
vitality of Muslim legal traditions and judicial institutions in the ʿAbbāsid period and the
opportunities they offered to non-Muslim litigants. While the early history of Islamic law
remains contested, scholars generally agree that fairly informal judicial institutions

63 The classic work on dhimmī status in Islamic law remains Antoine Fattal, Le statut légal des
non-musulmans en pays d’Islam (Beirut: Impr. Catholique, 1958). For a recent study that charts
developments in the understanding of dhimmī status, see Milka Levy-Rubin, Non-Muslims in the
Early Islamic Empire: From Surrender to Coexistence (New York: Cambridge University Press,
2011).
64 Simonsohn, Common Justice, 6-10.
operated under the early caliphs and the Umayyads: arbitrators, regional judges, market
inspectors, and various other officials ruled on civil affairs and disputes based on a
combination of Quranic rules and principles, tribal and local custom, caliphal decrees,
and personal opinion. The early ʿAbbāsid period, however, witnessed the first attempts
to systematically lay out a more comprehensive Islamic law, one constituted of the
regulations for right practice revealed (or implied) by God in scripture. The later Sunnī
schools of law located their origins in the views and writings of the Muslim jurisprudents
of this era: Mālik ibn Anas (d. 795) in Medina, Abū Ḥanīfa (d. 767), Abū Yūsuf (d. 795),
and Muḥammad ibn al-‎Hāṣan al-Shaybānī (d. 805) in Iraq, and al-Shāfiʿī (d. 820) in the
‎Ḥijāz, Iraq, and finally Egypt.

Parallel to the emergence of Muslim fiqh, the second half of the eighth century
saw the ʿAbbāsid caliphs attempt to centralize and add a degree of systematization to the
diverse and diffuse judicial figures and institutions of the caliphate. Hārūn al-Rashīd (r.
786-809) is generally credited with formalizing the procedure of the appointment of
regional qādis by the caliphal center. And though Simonsohn has suggested that a host
of local and pre-Islamic arbitration practices persisted into the ʿAbbāsid period, Hārūn
and subsequent caliphs’ attempts at “legal reform” gave the initial shape to the network
of qādis’ courts that would become the model Islamic judicial institution. Moreover, the

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65 This is a very condensed synthesis of a contested question. For two well-recognized overviews see Schacht, Introduction, 15-27 and Hallaq, Origins and Evolution, 29-56. For Simonsohn’s discussion of further types of early Islamic judicial figures, see Common Justice, 71-87.

66 The attribution of works of fiqh to these early jurists has been questioned in Norman Calder, Studies in Early Muslim Jurisprudence (Oxford: Clarendon Press, 1993), a debate beyond the scope of this study. Scholarly consensus remains that the first century and a half of ʿAbbāsid rule was critical for the early development of Muslim fiqh.

67 Simonsohn, Common Justice, 67. Along similar lines, Hallaq sees the standard form of the judiciary, with qādis appointed either by the caliph or regional governors, developing in the period 740-800; see Origins and Evolution, 79-85.

68 See, again, Common Justice, 71-87.
emergence of this system of courts meant that the rules of developing *fiqh* could be disseminated and instantiated through judicial practice.

Unsurprisingly, Muslim judicial institutions and the services they provided appear to have appealed to Christians, Jews, and others as well as Muslims. As we have seen throughout this chapter, Christians had been frequenting non-ecclesiastical judicial authorities for several centuries; Islamic courts proved to be no exception, especially since legal affairs transacted and rulings reached there had the backing of state (or at least local police) power. But whereas in the seventh century the ecclesiastical judiciary had competed with a variegated array of notables and administrators, by the end of the ninth that competition was a formalizing, state-supported (if not necessarily closely overseen) system of courts that administered a specifically Muslim law. The fact of Christian recourse to Muslim courts thus posed a particular threat to Christian bishops, whose ideas of communal integrity rested on their communities’ recognition of elite authority and the boundaries that separated one religious group from another. For non-Muslims to seek recourse to Muslim judicial institutions was one of the bigger messy facts of daily life that undermined the elite vision of a self-sufficient orthodox community sealed off from those outside of it.

It is against this early ʿAbbāsid background that the increased ecclesiastical interest in developing more comprehensive bodies of Christian law emerges. On the one hand, Muslim rulers allowed, and even expected, non-Muslim religious communities to administer the affairs of their own members. On the other, an Islamic legal-intellectual culture was thriving and being put into practice in the courts of the *qādis*. In order to keep

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69 On Christian and Jewish recourse to Muslim courts, see Simonsohn, *Common Justice*, 147-204. On the coercive resources of Muslim judicial institutions, see pp. 147-48.
lay people out of those courts and elite authority in place, East Syrian and other ecclesiastics had to be able to provide the legal services that the laity required for managing civil affairs and settling disputes. They responded by producing the legal texts discussed above – the material of comprehensive, communal civil law traditions intended to be administered by ecclesiastical and clerical judges.

What's Different about the East Syrians?

Though the extant historiography offers a broadly compelling explanation for the expansion of Christian legal traditions in the early 'Abbāsid period, less attention has been given to why the East Syrians seem to have been so much more active in this trend than their West Syrian and Melkite contemporaries. We have, for example, no jurisprudential treatises from the latter two groups comparable to the East Syrian law books, which cover civil matters relevant to lay life much more extensively than West Syrian and Melkite legal collections and synodal legislation. What accounts for this particularity among the East Syrians? No single explanation is obvious, but we will here venture to suggest a few factors whose confluence offers a reasonable explanation.

Contextual Factors

First, we might note that the East Syrians had a bit of a “head start” in the realm of law insofar as they had already been living as the Christian subjects of a non-Christian empire before the Arab conquests. The stark differences between Sasanian-Zoroastrian
marital customs and biblical teachings provided the impetus for a clear definition of Christian marriage much more pressing than comparable factors in the Roman Empire. In general terms, though Mār Abā may not have thought that Christians had to adhere to Christian law to the exclusion of any contact with Sasanian state institutions, his writings provided a robust foundation for the East Syrians’ later tradition of communal marriage law. And though Roman synods and Church Fathers issued penitential canons against certain practices that imperial law permitted, from the fourth century until the Arab conquests Roman Christians lived under an avowedly Christian empire. State law was the law of the Christian emperors, and from 318 the authority of ecclesiastical courts was formally recognized by the state.⁷¹ There was therefore less sense of a need for fully discrete Christian civil law traditions, at least in comparison to the Sasanian context.

If the East Syrians had a head start in the Sasanian period, they continued on the same course in the seventh century. While Jacob of Edessa’s canons focused mainly on lay ritual practices, the composition, compilation, and preservation of Simeon’s treatise and Ḥnānīšōʾ’s decisions introduced a range of fairly detailed, case-specific rulings on succession into East Syrian law. Reasons for this greater East Syrian focus on family law relate again to the particular conditions of the Sasanian Empire. One possible factor is Payne’s suggestion, discussed above, that East Syrians were less inclined to go to Zoroastrian judges who had lost the backing of state power, a situation that allowed East Syrian bishops to bring areas of civil law like succession formally under their purview. In the West, by contrast, the old Roman ecclesiastical and lay figures who continued to serve in judicial and administrative functions were still Christian; they therefore may have more or less maintained their appeal for Christian litigants, thus continuing to

⁷¹ On the episcopalis audientia, see most recently Simonsohn, Common Justice, 30-32.
preclude the need for bishops to formally expand their civil law at that early date as the
East Syrians did. This explanation is largely speculative, but it remains plausible.

We should also consider here another of Payne’s points concerning the
particularities of succession in Iranian society. Though effectively all the societies of the
pre-modern Middle East and Mediterranean put a high value on the perpetuation of
patrilineages, certain imperatives of Zoroastrian doctrine gave it particular emphasis in
Sasanian society and led to the creation of an extremely complex system of inheritance
law meant to ensure that every male of a certain economic status had a male successor.
To the extent that some post-Sasanian Christians shared the same ethic and followed
Zoroastrian rules for determining successors, they needed judicial figures who could
administer those rules. The seventh-century East Syrians bishops’ greater activity in
inheritance law in comparison to post-Roman Christians thus also appears to be partly a
result of the particular exigencies of succession in Iranian society.

When we come to the ‘Abbāsid period, the expansion of the East Syrian civil law
tradition can be explained in part as a further development of the bishops’ focus on
family law in previous centuries. I would suggest, however, that the East Syrians’
geographical concentration in the heartlands of the ‘Abbāsid Caliphate and their
patriarchs’ residence in the caliphal capital were also likely important factors. If the
increasing formalization of ‘Abbāsid judicial institutions and lay use of their services was
a driving impetus of the broader Christian interest in compiling communal legal
traditions, the East Syrian patriarchs sat squarely in the city from which this institutional
reform was promulgated and in which the caliph’s chief qāḍī resided. The garrison cities
of lower Iraq, furthermore, were centers of formative Muslim jurisprudence; the Ḥanafī

\[72\] See Payne, “Christianity and Iranian Society,” 210-25.
school of *fiqh* emerged from Kūfan study circles, and proto-Ḥanafī figures like Abū Yūsuf were much favored by the early ‘Abbāsid caliphs. We might imagine, therefore,
that the strength and pull of emergent Islamic law and judicial institutions looked
particularly formidable from the vantage point of the East Syrian bishops and lay people
in the ‘Abbāsid heartlands of Iraq and Iran.

We might also speculate that the ‘Abbāsid push for more central control of
judicial institutions was most successful in regions closest to the ‘Abbāsid seat of power.
In this respect, it is worth noting that Timothy specifies in the introduction to his law
book that he received requests to issue civil regulations from the metropolitans of Baṣra
and Rayy.\footnote{SR 2: 56. In the text Baṣra is Syriac Prät d-Mayšān, Rayy is the land of the Rāzīqāyē. Sachau
identifies the latter as Rayy in his introduction to Timothy’s text: see SR 2: xx.} This may be an indication of the particular strength of Islamic judicial
venues as alternatives to ecclesiastical ones in Iraqi and Iranian cities, though such a
notion must remain largely speculative. In any case, those bishops as well as patriarchs
like Timothy and Īšōʿbarnūn certainly saw a need for a more comprehensive East Syrian
civil law; and it is a reasonable inference that that need appeared greater than that of their
West Syrian and Melkite counterparts because of the East Syrians’ concentration in the
central ‘Abbāsid lands from which caliphal judicial reform and so much Islamic law
emerged.

*Law and East Syrian Exegetical Tradition*

The factors that we have identified so far as spurring the increased legal activity
of East Syrian bishops have been largely contextual. That is, we have pointed mainly to
features of the socio-political environment – the fall of the Sasanians, the emergence of Islamic law, caliphal judicial reform – of late antique and early medieval Iraq and Iran. There is, however, another potential factor in the development of East Syrian law that is more “indigenous” to the intellectual traditions cultivated by East Syrian scholars, monks, and bishops: the “positive notion of law” characteristic of the Antiochene exegetical teachings of Theodore of Mopsuestia (d. 428).  

In the sixth century and certainly by the beginning of the seventh, Theodore’s exegesis and theology achieved a central position in the scholastic culture of the Church of the East. Recognition of “the Interpreter’s” authority and orthodoxy was a (perhaps the) definitive element of East Syrian doctrinal identity. Theodore had been condemned in Constantinople in 553 and was reviled by Miaphysites for his Diophysite Christology, and so dedication to Theodoran traditions set learned East Syrians most starkly apart from their West Syrian, Coptic, Armenian, Melkite, and other counterparts in the sectarian Christian environment of the pre-modern Middle East.

The history of and scholarly debates on the Antiochene exegetical and theological traditions of which Theodore is the most famous exponent are extensive. Important for our purposes is the fact that East Syrian ecclesiastical elites received Theodoran teachings that imputed a positive value to law in the present world. Furthermore, the influence of this conception is evident at points in the law books in

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75 The importance and influence of Theodoran thought on the Church of the East is a much-covered topic. On the East Syrian school movement generally see Becker, Fear of God; on Theodoran thought see pp. 113-25.
which the bishops appropriate and reconfigure these teachings in order to explain and justify their own efforts at compiling a Christian civil law.

Though this is not the place to undertake anything approaching a complete exposition of Theodore’s understanding of law, secondary literature and a few sections of his surviving writings can give us a sense of the general Theodoran perspective. First, the broad picture of “the basic course of history and the human being’s place within the world” according to Theodore’s thought can be summarized conveniently as follows:

[T]here are two worlds, the present and the future one. We have been set in this world, bounded by mortality, so that we may be trained in the virtues. God has endowed us with free will so that we can choose either good or bad. The training of the virtues comes about through the use of our reasoning faculty, which negotiates the desires and needs associated with mortality on the one hand and the commandments of the law on the other.

In other words, God has established the law in the present world to guide humans in choosing the good and to set standards according to which they must seek to cultivate the virtues.

If we turn to Theodore’s commentary on Galatians, we can identify a few further, more precise aspects of his conception of the role of law in human life. Theodore follows a traditional Christian reading of Paul (as we would expect) in asserting that Christians are not bound by the prescriptions of Mosaic law, and that no one can achieve

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78 Only some of Theodore’s works survive today, mainly in Latin and Syriac translations (he wrote originally in Greek). Theodore’s commentaries on the Pauline epistles, in which discussions of law figure prominently, are preserved in Latin only; I have relied on the translation in Theodore of Mopsuestia, *The Commentaries on the Minor Epistles of Paul*, ed. and tr. Rowan A. Greer (Atlanta: Society of Biblical Literature, 2010). Syriac versions of a full range of Theodore’s works, including the Pauline commentaries, were known to the East Syrians; see the list given by ʿAbdīšōʿ Bar Briķā in *BO* 3.1: 30-35. For an overview of Theodore’s preserved works, see Marco Conti’s introduction to Theodore of Mopsuestia, *Commentary on the Gospel of John*, ed. Joel C. Elowsky and tr. Conti (Downers Grove, Illinois: IVP Academic, 2010), xviii-xxii.
renewed, immortal life in the future world simply by observing them – “after Christ’s coming it was not at all right to be slaves by keeping the law,”79 and “righteousness based on the works of the law… is impossible for anyone to acquire.” Even if Christians do not keep the law of Moses, however, they are yet “under a law” in the present world.80 This law, in fact, predates Mosaic law in that “there were certain legal prescriptions among humans that were implanted in us according to the wisdom given by God.” These constitute a guide to action necessary for humans who, by virtue of their mortal nature, have a propensity to sin: “in this life, because we can sin, the law is necessary for us. By it we are kept apart from those actions unfitting for us.”81 In the future age, there will be no need for this law because we will be immortal and “kept free from all sin by the grace of the holy spirit.”82 But in the here and now, “we are mortal by nature and are subject to the vicissitudes that come upon us,” and therefore need divinely established law “and the teaching that instruct us in what we should do and what we should avoid.”83

These basic notions – that Mosaic law does not apply to Christians, that mortal and sinful humans have need of a divinely instituted law in this world, that that law is unnecessary in the future perfect one – recur throughout Theodore’s preserved exegetical works on the Pauline epistles (though their exposition is most prominent in the commentary on Galatians). Theodore’s body of exegesis, as we have noted, was one of the main traditional authorities studied in the East Syrian school movement (to use Becker’s terminology), and so we would expect these ideas to have been familiar to East Syrian bishops who received their intellectual formation in the schools. This is not to say

79 Theodore, Commentaries, 5.
80 Theodore, Commentaries, 39.
81 Theodore, Commentaries, 11.
82 Theodore, Commentaries, 13.
83 Theodore, Commentaries, 47.
that East Syrian ecclesiastics decided to compile a comprehensive legal tradition in direct response to learning from their chief traditional authority that law is good and necessary. But we should not discount the possibility that insofar as learned East Syrians studied and were exposed to this conception of the necessity of law, embedded as it was in their received traditions, the idea of a comprehensive communal law was that much more thinkable, and the effort to create one that much more legitimated, alongside other motivating factors in post-conquest Iraq and Iran.

In fact, several of the East Syrian law books show the bishops appropriating and reconfiguring certain Theodoran conceptions and themes in order to explain and justify their endeavors. These are especially evident in the introductory sections of the law books of Simeon, Īšōʿbōkt, and Timothy, in which the bishops describe why they have undertaken to compose legal texts and what the nature of Christian law might be.

Consider the following passage from Īšōʿbōkt:

If men wanted to recognize the truth, keeping away from impiety and sinful action (rušʿā w-pulhân nâ da-ḥṣṭā), they would not be in need of written law (nâmōsā kîbā), because the power of discernment of our nature (pârōšūtā da-kyânān) would be sufficient to instruct us (ṭhakkman) of divine knowledge and keep us away from impiety and sin… But because men scorn knowledge of the love of propriety through their inclination (meṣṭalyânûthān) toward impiety and sin, they are in need of written law.\(^\text{84}\)

Theodoran thought is much in evidence here: humans have rational capabilities through which they can discern the good, but they require law to guide them because of their mortal propensity to sin.\(^\text{85}\) Similarly, we read in Simeon’s text:

\(^{84}\) §II.vii, SR 3: 44.

\(^{85}\) Īšōʿbōkt does not use explicitly the terminology of “rationality,” from the Syriac root \(m-l-l\), in this passage, but the “power of discernment” (pârōšūtā) that he mentions is closely associated with the rational faculties in philosophically influenced East Syrian literature. One passage in the sixth-century \textit{Cause of the Foundation of the Schools}, for example, links the mind’s “eye of discernment” (ṭaynā d-pârōšūtā) to its “understanding of rationality” (buuyyânû da-mlîltā). See
Because… [the Lord] knew that it would not be possible that the way of our life on earth would be without stumbling, difficulty, and frequent enticements, inasmuch as we are mortal (māyōē) and carry on in a human manner, He laid down and designated through His gospel amazing laws (nāmōsē ṭmīhē) to correct and order our way of life here, and a teaching (mallpānūtā) that is appropriate and does not hinder us from heavenly ways of conduct, but aids and enriches us. \(^86\)

Here, again, we see the Theodoran notion of a law granted by God to aid humans in the administration of mortal life. \(^87\)

The notion that law is unnecessary in the sinless future world also crops up in the law books. According to Timothy:

In the kingdom of heaven there is not a single dispute or strife. Where there is no dispute or strife, and also no judging seen between Christians, worldly rulings (dīnē 'ālmānāyē) are superfluous and useless (yatīrē enōn wa-d-lā ḥāshū). For rulings and prescriptions are useful to the men of this world. \(^88\)

The East Syrian bishops also play on a tension related to this point in Theodore’s thought: law will be unnecessary in the future world, but it is actually already so for (some) believers who have achieved a kind of moral perfection in this one. \(^89\) So, Timothy asks,

What sort of ruling or prescription does he who turns and offers his left when he is struck on his right cheek require? And what kind does he who bestows his cloak on a tyrant along with his shirt seek (Matthew 5:39-40, Luke 6:29)? Or to what sort of court or tribunal does he make haste, he who gives everything he has


\(^87\) Theodoran influence is further evident here in the idea of God’s “teaching” or “instruction,” Syriac mallpānūtā, a frequent theme in Thedore’s writing and Church of the East literature that draws on it. See Becker, *Fear of God*, 119.


\(^89\) See Theodore’s commentary on 1 Timothy 1:9-10: “But once they have been justified and made superior to all sin, the law is useless for those who in a special way possess the guidance of the law. This is how it is with us, who await the resurrection and the incorruption with which we shall also continue to stand in perpetual changelessness. We shall by no means any longer have the power to sin, and for this reason shall have no need of the law. And so for us who have believed and by the type of baptism have *already* come to exist in those things, the ruling of the law is useless” (emphasis mine). Theodore, *Commentaries*, 537-39.
to the poor, bears his cross on his shoulder, and dies to the world and everything in it, according to the command of the heavenly King and His prescription (Matthew 19:21, Mark 10:21, Luke 14:27, 18:22)?

Or, according to Īšōʿ bōkt:

He who is in completeness of virtue and confirmed in the fear of God does not need civil law (dīnā), according to the word of the blessed apostle: “The spiritual one judges everything, and is judged by no man” (1 Corinthians 2:15). We know that law (nāmōsē) has not been set down for the just (kēnē, 1 Timothy 1:9); it is for those who are yet carnal (pagrānē) and, like children, desire the sustenance of milk (1 Corinthians 3:2) and possession of the riches of this world, and thus endeavor to plunder from others that which is completely unbeneﬁcial to them.  

In these passages, Timothy and Īšōʿ bōkt further afﬁrm the Theodoran notion that law is necessary for sinful mortals in this world, though some – the truly just – might perfect their disposition toward God so as to obviate any need for it.

If the bishops deploy many of these Theodoran ideas, they also reshape them to suit their own purposes. Theodore’s exegesis presents the divine law necessary for human life as a kind of sublime system of general moral imperatives. The East Syrian bishops profess a similar notion (see, for example, Simeon’s nāmōsē tmihē mentioned above), but they extend it to encompass a need for more mundane and speciﬁc civil law regulations as well (Timothy’s dīnē ʿalmānāyē). In spite of such regulations’ necessity for human life, the bishops assert that God has not seen ﬁt to deﬁne them because His plan for humanity transcends such matters. So, Īšōʿ bōkt afﬁrms,

It was in no way right for our Lord, He who will judge the dead and living through the revelation of His Kingdom and has power to enact the judgment of everything, to set down laws concerning insigniﬁcant, human litigations (nāmōsē ʿal dīnē daqdaqē w-nāsāyē). 

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90 SR 2: 54-56.
91 §II.xii, SR 3: 18.
Instead, these matters have been entrusted to ecclesiastical leaders. In Simeon’s words, such matters “were not suited to the common people (quṭnā), but to the leaders of the church (mdabbrānē d-[ē][d]tā), and to them has been entrusted their administration (mag’al purnāshēn).”93 Similarly, Īsōʾbōkt states that Christ and the apostles gave no “human judgments” (dīnē nāšāyē) because “leaders were appointed for the church (mdabbrānē b-[ē][d]tā), those who were glorified in the spirit of wisdom and were able to reprove iniquity.”94 Here, we see the East Syrian bishops appropriating Theodoran conceptions to justify and authorize ecclesiastical law and their own judicial authority. Following Theodoran teachings, they assert that a moral law is necessary to guide humans in the present mortal world according to God’s plan. However, because prescribing specific rules for mundane civil affairs would have been contrary to God’s exaltedness, the necessity of this project has passed to the church’s shepherds. The bishops thus use Theodoran teachings to argue for their own authority to decide the rulings of a Christian civil law.

In sum, we should consider the authoritativeness of Theodore of Mopsuestia’s thought among East Syrians as an additional explanatory factor of their generally greater efforts to produce a communal legal tradition in comparison to other Christian groups. Theodore’s exegesis is notable for its “surprisingly positive statements about law,” in Becker’s words, and its emphasis on the necessity of law in the present world. “This positive usage of ‘law’ appears in the East-Syrian tradition in general”,95 ecclesiastical elites were no doubt exposed to these teachings through study in the East Syrian schools. Such teachings thus likely constituted another source of encouragement beyond the

exigencies of life in the caliphate for compiling a communal legal tradition. The influence of Theodoran thought is further evident in the texts of the law books themselves. Several of the East Syrian bishops articulate Theodoran conceptions of the necessity of law in their writings, and rework those conceptions so as to argue for ecclesiastical authority to determine rules for Christian social life.

Conclusions

The East Syrian law books of the early ʿAbbāsid period did not emerge out of a vacuum. Rather, they were a further development of earlier trends in East Syrian legal literature, represented a reaction to the socio-political conditions of the caliphate, and drew inspiration from the teachings of East Syrian scholastic culture. An East Syrian tradition of synodal legislation dates to the beginnings of the formal organization of the ecclesiastical hierarchy in the Sasanian Empire in the early fifth century. Though this legislation dealt mainly with matters of ecclesiastical order, by the mid-sixth century the patriarch Mār Abā had put forward a set of regulations for lay marital practice intended to set the rhythms of Christian family life apart from those of Sasanian Zoroastrians. This concern for matters of family law increased among East Syrian bishops in the century after the Arab conquests, when fluid political conditions allowed them to claim a more exclusive judicial authority over the civil affairs of lay people. The preservation of ecclesiastical legal treatises and judicial decisions from the same period demonstrates the bishops’ newly keen interest in compiling a communal civil law tradition. In the early ʿAbbāsid period, the emergence of Islamic law and the reform and consolidation of the
caliphal judiciary presented new challenges to East Syrian (and other) ecclesiastical elites. As lay people took recourse to Muslim judicial institutions (as well as other non-ecclesiastical ones) in spite of the elite’s concern for communal boundaries, the bishops sought to develop their formative legal tradition into a more comprehensive one that would fulfill lay people’s legal needs and keep them under ecclesiastical purview. The law books of Timothy, Īšō‘barnūn, and Īšō‘bōkt are the primary examples of this effort. In undertaking this project, the ecclesiastics drew on earlier East Syrian law as well as conceptions of the necessity of law transmitted in the thought of Theodore of Mopsuestia.
Chapter Two

The East Syrian Law Books and Early ʿAbbāsid Legal Culture

In the previous chapter, we examined the development of the East Syrian legal tradition and established that the law books of Timothy, Īšōʿ barmūn, and Īšōʿ bōkt were produced in response to an environment in which lay recourse to caliphal and other non-ecclesiastical judicial institutions threatened the East Syrian ecclesiastical elite’s vision of communal boundaries and sense of its own authority. Before we take up our broader concern of how the East Syrian bishops used law to carve out a realm of distinct Christian marital practice in the Islamic world, however, we need to address some very basic issues related to the law books as sources for historical analysis. Since the law books’ publication, structural and text-critical matters related to the texts have received very little scholarly attention. We need to consider these, however, in order to discern the specific circumstances of the texts’ composition and how they might have been used to regulate social practice at their particular historical moment. Are the law books unified legal treatises meant to present a systematic doctrine? Have they been compiled out of previously rendered judicial decisions? To what degree do they deal with theoretical cases and to what with real social problems and phenomena? Working answers to these questions are necessary if we are to read the law books as historical documents.

After addressing these matters, we will use our solutions to offer some final thoughts on the legal culture of the ʿAbbāsid Caliphate and the East Syrians’ (and other Christians’) place in it. All the contemporary Abrahamic faiths, as well as the Zoroastrians, cultivated legal traditions and rules that introduced the distinctiveness of their own teachings into the social practices of their adherents. The insights provided by
our analyses of the law books will allow us to situate the activities of Christian bishop-jurists comparatively in the broader intellectual world of the ʿAbbāsid Caliphate.

**Structural and Text-Critical Issues of the East Syrian Law Books**

*Manuscript, Transmission, and Publication History*

Almost all of the known East Syrian legal texts, including the ʿAbbāsid-era law books, have come down to us ultimately from a single thirteenth or fourteenth-century manuscript, Baghdad Chaldean Monastery 509.\(^96\) This very large collection contains roughly 80 distinct works that date from the fifth century to the eleventh, including the Roman ecumenical synods and related writings, canons of the East Syrian synods, letters of various bishops, East Syrian monastic canons, law books by individual jurist-bishops, and a few other texts.\(^97\) Walter Selb and Hubert Kaufhold, who have carried out the fundamental and most important text-critical work on Baghdad 509, disagree on the dating of the final redaction of its contents; Selb argues for the eleventh century and Kaufhold for a bit later.\(^98\)

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\(^{97}\) Essentially the only East Syrian legal works not found in Baghdad 509 and the manuscript tradition that derives from it are the systematic compendia of Gabriel of Baṣra, Ibn al-Ṭayyib, and ʿAbdīšōʿ bar Brikā, as well as Elias of Damascus’ Arabic translation of the syodicon. For a summary of the manuscript’s contents, see Selb, *Kirchenrecht* 1: 59-63.

\(^{98}\) For a summary of their respective opinions with references, see Thazhath, *Juridical Sources*, 75-76, note 38.
The manuscript tradition that derives from Baghdad 509 consists of copies dating from the late nineteenth and early twentieth centuries. Many of these reproduce only sections or certain texts of the original, but a few (Vatican Library Borgiano Syriac 81 and 82, Vatican Syriac 598 and 599, and Birmingham Mingana Syriac 586 and 587) are copies of its entire contents. In the 1910’s, Eduard Sachau published the texts of the law books of Īšōʾbōkt, Timothy, and Īšōʾbarnūn from Borgiano Syriac 82 (late nineteenth century), along with his suggested corrections and readings for lacunae, in his *Syrische Rechtsbücher* series. The texts of the eighth and ninth-century ʿAbbāsid law books as we have them, therefore, come from a single manuscript tradition and were published on the basis of a nineteenth-century copy of a surviving thirteenth/fourteenth-century witness.

Critical editions, of course, would be preferable, but Sachau’s edition of the texts is readily available and will be employed throughout this dissertation. We have, however, an important additional factor to consider with respect to the law books of Timothy and Īšōʾbarnūn. Large sections of both are found outside the Baghdad 509 tradition in two West Syrian manuscripts, Cambridge Additional 2023 and Mount Sinai St. Catherine’s Syriac 82. On the basis of paleography, the former has been dated to the thirteenth century. Essentially no critical work has been done on the latter, but based on my

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99 For the manuscript history of the collection of East Syrian legal texts, see Selb, *Kirchenrecht* 1: 63-66.
100 See the brief account in Kaufhold, “Sources,” 252.
102 See the brief note in Agnes Smith Lewis, *Catalogue of the Syriac MSS. in the convent of S. Catharine on Mount Sinai* (London: C.J. Clay and Sons, 1894), 57. I was able to access a microfilm copy of MS Mount Sinai Syriac 82 in the holdings of the Library of Congress, Washington, D.C., on which see Kenneth W. Clark, *Checklist of Manuscripts in St. Catherine’s Monastery, Mount Sinai Microfilmed for the Library of Congress, 1950* (Washington, D.C.: Library of Congress, 1952). The manuscript is made up of two halves in different scribal hands; Smith Lewis assigns the first to the twelfth century but says nothing of the second, which contains the sections from the East Syrian law books.
initial review we can be sure that the sections of the East Syrian law books found in the Cambridge manuscript were copied from the Mount Sinai one (or an intermediary). My preliminary comparison shows considerable textual variations between the Sachau edition and the West Syrian version of Timothy’s law book (though less in the case of Īšōʿbarnūn), which suggests that the West Syrian manuscripts represent a tradition independent of Baghdad 509. Though unfortunately a complete critical edition of the texts is beyond the scope of this project, I will make reference to the West Syrian manuscripts where they aid or amend the interpretation of Sachau’s edition. Particularly important in this respect is the fact that Sachau’s edition does not include most of rulings §20 and §28 and all of §§21-27 from Timothy’s law book, which is apparently a result of a folio or two having gone missing from Baghdad 509 (or a predecessor). All of these canons, however, are preserved in the West Syrian manuscripts.

Additionally, one other text will aid us in the interpretation of the East Syrian law books: *Fiqh al-naṣrāniyya* of Abū ʿI-l-Farajʿ Abd Allāh Ibn al-Ṭayyib (d. 1043), an East Syrian physician and secretary to several patriarchs in Baghdad. The first volume of Ibn al-Ṭayyib’s *Fiqh* is a collection of abbreviated Arabic translations of essentially every legal text in the East Syrian canon, including the law books of the early ’Abbāsid

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103 The texts of Timothy and Īšōʿbarnūn’s law books in the two manuscripts have the same order and contents. At the bottom of folio 75a of the Sinai manuscript, following Īšōʿbarnūn’s ruling §45 (according to the numbering in Sachau’s edition), half of each of the final two lines have been scratched out or covered over by a thick application of ink. The scribe of the Cambridge manuscript left that exact amount of space blank at the same point of the text (the final two lines of folio 37b). This shows the Sinai manuscript to be the basis of the Cambridge one; the scribe of Cambridge Additional 2023 faithfully reproduced the deletion of text originally applied to Mount Sinai Syriac 82.

period. It can thus help to fill in lacunae; it includes, for example, the canons of Timothy absent from Sachau’s edition.

A Note on the Law Books’ Sources

Throughout this dissertation, an abiding concern will be to consider how the East Syrian bishops drew on earlier sources and materials to fashion their legal tradition in their early ‘Abbāsid context. We will consider this issue for each of the ‘Abbāsid-era law books individually in the following sections of this chapter, and it will arise again throughout later chapters. As a preliminary statement, however, we need to briefly address an argument of Sachau’s that East Syrian law as represented in the law books of the ‘Abbāsid period derives from Roman legal traditions.

Besides his editions of the East Syrian law books, Sachau produced some of the earliest editions of various versions of the Syro-Roman Law Book. This work, a Syriac translation of Greek interpretations of Roman imperial law, has both fascinated and vexed scholars of late Roman law since the nineteenth century. Due to the great variety of recensions in existence, it is extremely difficult to interpret the text or to pinpoint its origins. But because the work by all accounts represents a derivative tradition of Roman law in a non-imperial language, it was extremely important to scholarly debates

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105 Ibn al-Ṭayyib’s Fiqh has been published as Fiqh an-naṣrānīya: “Das Recht der Christenheit”, ed. and tr. W. Hoenerbach and O. Spies, CSCO 161-62 (Louvain: Imprimerie Orientaliste, 1956). The work’s second volume is an Arabic rendering of Gabriel of Baṣra’s systematic legal compendium, on which see note 54 above.

106 See Karl Georg Bruns and Eduard Sachau, Syrisch-römisches Rechtsbuch aus dem fünften Jahrhundert (Leipzig: Brockhaus, 1880); and the three versions published by Sachau alone as Leges Constantini Theodosii Leonis, SR 1: 1-183

107 The most comprehensive studies and edition of the text can all be found now in Kaufhold and Selb, SRRB.
in the early twentieth century about the nature of legal traditions and practice in the eastern provinces of the Roman Empire (so-called “provincial law”) and their deviations from the imperial standard.\footnote{For a brief take on the study of Roman provincial law, see Patricia Crone, \textit{Roman, Provincial and Islamic Law: The Origins of the Islamic Patronate} (Cambridge: Cambridge University Press, 1987), 4.} Riding the wave of interest in provincial law, Sachau pointed out several supposed similarities between Roman law, the Syro-Roman Law Book, and the East Syrian law books, and suggested that “further legal-historical study will demonstrate… the \textit{Leges} [\textit{Constantini Theodosii Leonis}, i.e. the Syro-Roman Law Book] as the oldest layer of civil law literature of the Christians of the East.”\footnote{\textit{SR} 3: xi. In support of Sachau’s argument, see also Josef Partsch, “Neue Rechtsquellen der nestorianischen Kirche,” \textit{Zeitschrift der Savigny-Stiftung für Rechtsgeschichte}, Romanistische Abteilung 30 (1909): 355-98.}

Sachau’s argument, however, appears now to have been largely speculative and unfounded. Kaufhold has shown that the one link between Īšōʾ bōkt and Roman law that Sachau adduced is tenuous and not indicative of a Roman background to Īšōʾ bōkt’s law in general.\footnote{See “Römisch-byzantinisches Recht,” 156.} Nor is any influence from the Syro-Roman Law Book evident in Timothy’s law book, though we know he was familiar with that text.\footnote{See Kaufhold, “Römisch-byzantinisches Recht,” 155. Among other points, Sachau suggested that the Syro-Roman law of marriage gifts formed the “basis” of the same in Timothy’s law book, though the latter had developed further in another direction. See \textit{SR} 2: xxi. Little more than terminological and superficial similarities are in evidence between the two, however. For a discussion of the important differences between the Syro-Roman law of dowry and succession and that of Timothy and Īšōʾ bārmūn, see note 266 in chapter three.} In fact, later scholarship (of Payne as discussed in chapter one and Pigulevskaja as discussed in the section on Īšōʾ bōkt below) suggests that Sasanian traditions lie behind a good deal of East Syrian law, especially in the realm of succession – a notion that is fairly unsurprising when we consider that the East Syrian heartlands, outside the frontier areas of northern Mesopotamia, never fell under Roman rule in the first place.
Ultimately, neither Sachau nor any later scholar has investigated his claim of a fundamental Roman “layer” to East Syrian law comprehensively. When pertinent, I will offer comments on Sachau’s contentions that Roman institutions underlie East Syrian law in footnotes. For our purposes, however, the main point to take away is that the East Syrian law of the ’Abbāsid period is not simply a thoroughgoing adaptation of Roman law. It is certainly conceivable that particular institutions of Roman provenance might have made their way to Iraq and been appropriated in some form in local praxis and traditions. But the notion of a singular, unified Roman “origin” of East Syrian law now appears both factually incorrect and conceptually problematic. Moreover, questions of origins are ultimately less relevant for our purposes than how and to what ends the materials that made up the East Syrian legal tradition were consolidated and deployed in the particular social and intellectual contexts of the ’Abbāsid Middle East.

With these considerations in mind, let us now move to consider each of the early ’Abbāsid-period East Syrian law books individually.

_Patriarch Timothy I_

Though not the first chronologically, it is instructive to begin with the law book of Patriarch Timothy I (r. 780-823). Long-reigning and prominent in East Syrian history for the geographical expansion of the church under his leadership, his relations with the ’Abbāsid caliphs of Baghdad, and his participation in the contemporary culture of

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112 In this vein see the recent argument of Yifat Monnickendam that particular Roman practices, including the betrothal-effecting kiss and a particular form of earnest payment for betrothal, were known to Ephrem: “The Kiss and the Earnest: Early Roman Influences on Syriac Matrimonial Law,” _Le Muséon_ 125 (3-4): 307-334. This, of course, does not mean that these institutions were known anywhere else in Sasanian territory.
theological disputation and the Greek-to-Arabic translation movement, Timothy is a convenient entry to the legal activities of the ‘Abbāsid-era bishops.\footnote{For biographical information and studies devoted to Timothy, see Raphaël J. Bidawid, \textit{Les Lettres du patriarche nestorien Timothée I} (Vatican City: Biblioteca Apostolica Vaticana, 1956), 1-87; Hans Putman, \textit{L’église et l’islam sous Timothée I} (780-823) (Beirut: Dar el-Machreq Éditeurs, 1975), 1-150; and Thomas R. Hurst, \textit{“The Syriac Letters of Timothy I (727-823): A Study in Christian-Muslim Controversy”} (PhD dissertation, Catholic University of America, 1986).}

Timothy is probably best known for his theological disputation with the caliph al-Mahdī and his reported translation of Aristotle’s \textit{Topics} into Arabic carried out at the behest of the same, facts that underscore his involvement in the broader intellectual culture of ‘Abbāsid Iraq.\footnote{See Griffith, \textit{Church in the Shadow}, 45-48.} However, Timothy’s contribution to the developing legal culture of the East Syrians (and by extension that of the caliphate as a whole) looms large as well. His law book is his most prominent legal work, but he also deals with legal matters in several of his epistles;\footnote{See Bidawid, \textit{Lettres}, 17-50 for a list of Timothy’s 59 extant letters and their contents; numbers 4, 9, and 12 deal with marriage. A single edition is lacking, though all of the letters have now been published. For comprehensive publication information, see Martin Heimgartner’s introduction to Timothy I, \textit{Die Briefe 42-58 des ostsyrischen Patriarchen Timotheos I}, ed. and tr. Heimgartner, CSCO 644-45 (Louvain: Peeters, 2012), vol. 2: ix-xvi. The largest published collections include the first 39 letters in Timothy I, \textit{Timothei Patriarchae I Epistulae I}, ed. and tr. Oscar Braun, \textit{CSCO Scryptores Syri} 2.67 (Paris and Leipzig: Peeters, 1914-15); and Heimgartner’s edition of \textit{Briefe 42-58}.} he had Īšō’bōkt’s law book translated from Middle Persian into Syriac;\footnote{Several scholars have posited that Timothy I ordered or undertook a redaction of the synodicon, including the East Syrian synods from Isaac I in 410 to Ḥnānīšō’II in 775. See Chabot, \textit{Synodicon}, 12-15; Sachau in \textit{SR} 2: xx; and Kaufhold, “Römisch-byzantinisches Recht,” 155, which also suggests that Timothy introduced the Syro-Roman Law Book into the East Syrian tradition. Selb disagrees with the idea that Timothy carried out a redaction of the synodicon; see \textit{Kirchenrecht} 1: 165-70.} he may have commissioned or carried out some redaction of the East Syrian synods and collected versions of the Syro-Roman Law Book;\footnote{As stated in the law book’s introduction; see \textit{SR} 3: 2.} and he may
have commissioned the translation of Simeon of Rēwardašīr’s legal treatise from Middle Persian to Syriac.\footnote{Selb, *Kirchenrecht* 1: 176–77.} The text of Timothy’s law book begins with a scribal note that calls the work an “order of ecclesiastical and succession-related rulings (takksesē d-dīnē ʾē[d]tānāyē wa-d-yārtwātā)” and states that it was written in the 26\textsuperscript{th} year of Timothy’s patriarchate, 1116 of the Seleucid calendar, corresponding to 805 CE.\footnote{SR 2: 54.} Following are an introduction written by Timothy and 99 judicial decisions in question-and-answer form.

The basic outline of the text is clear enough, but it deserves further scrutiny. As noted above, the primary question that the law book begs is whether it is a treatise in the sense of a unified composition that gives a coherent statement of legal doctrine or a more variegated compilation of related prescriptions. This question need not have a definitive answer one way or the other, of course, but we must have a working notion in order to situate the text historically and read it as a historical document. In what follows, I will argue that Timothy’s law book is likely less a unified composition than a collection of prescriptions, some responding to particular cases or broader social phenomena, redacted into a larger text.\footnote{Partsch also noted that Timothy’s law book appears to be made up largely of case rulings; see “Rechstquellen,” 359–60.}

To note first is that Timothy’s text is, as its title indicates, a series of rulings, most of them case-specific to one degree or another. While more general rules are stated or alluded to throughout (i.e., a woman’s share in inheritance is one tenth, sons are primary heirs, fornicators may marry after repenting), they are less often the principal subjects of presentation. Rather, most of the rulings are addressed to specific sets of stated
circumstances. The text as a whole does not, then, read like a collection of abstracted principles; it offers instead a set of solutions to particular, specified problems.

The work’s casuistic nature raises the possibility that at least parts of it were actual judicial decisions delivered by Timothy and later compiled into the law book. This possibility is further underscored by several factors. One is the text’s question-and-answer format, which may indicate that the prescriptions were originally responsa to individual questions sent to the patriarch. 121 To this point, Timothy states in the work’s introduction that one of his primary reasons for composing his legal rulings was the requests for them he received from many bishops and metropolitans, two of whom he mentions by name: Ya’qôb of Baṣra and Ḥabbîbā of Rayy. 122 This suggests the possibility that these bishops might have sent Timothy some of the questions for which he issues rulings in the law book (though it is also possible that the petitioners made simply a general request for regulations). Furthermore, the texts of four of the law book’s questions are introduced by lam, the Syriac particle that marks direct speech. 123 This indicates specifically that these four, at least, are quoted from elsewhere; it is distinctly

121 The assembly of rescripts and responses to petitions into larger legal compendia is, of course, well known in other legal systems, most obviously that of the Roman Empire; see Caroline Humfress, “Law and Legal Practice in the Age of Justinian,” in Michael Mass, ed., The Cambridge Companion to the Age of Justinian (Cambridge: Cambridge University Press, 2005), 161-84. The collected letters of Ḥnānîšô’ are a comparable precedent among the East Syrians.
122 SR 2: 56. Rayy is Syriac Bêt Rāžîqâyê; see SR 2: xx for its Arabic identification. Timothy mentions Ḥabbîbā as bishop of the newly constituted eparchy of Rayy in one of his letters to Sergius, Metropolitan of Khûzistân (Syriac ‘Ēlâm/Bêt Hûzâyê); see Bidawid, Lettres, 25 and Timothy, Epistulae 1: 131-33 for the text of the letter.
123 See §§29, 32, 44, and 48, SR 2: 74, 80, 88, and 90. §44 and §48 are found also in the West Syrian transmission, where they do not include the particle of direct speech. This, however, could simply have resulted from a scribal decision to omit the particle; it does not necessarily negate the likelihood that these rulings were copied to the law book from an earlier source, as suggested by the text of Sachau’s edition. See Pussûq dînê d-Mîr(y) Tîmata’os pâtîryarkâ d-madnhâ, MS Mount Sinai Syriac 82, folios 70b-71a.
possible that Timothy had received these questions from petitioners and recopied them as part of his law book.

Whether or not the law book’s prescriptions are transcriptions of previously issued *responsa*, we find a number of other indications in the texts of the rulings themselves that they were at least compiled together from preexisting collections. One such indication is the topical organization of the text’s material. Decisions §§1-17 concern the organization, prerogatives, and duties of the ecclesiastical hierarchy; §§18-45 deal with betrothal, marriage, and divorce; §§46-73 concern inheritance and property; and §§74-80 address a variety of other topics, including relations with Muslims, slaves, ecclesiastical property, and oath-taking. To this point, the text exhibits a fairly clear pattern of thematic organization. However, rulings §§81-99 begin a new series of questions on inheritance (repeating a number of points made in the previous set, to be addressed below). The inclusion of this second, partially redundant set of rulings weighs against the notion that the text is a unified composition, and makes it look more like an assemblage of different sets of problems and solutions.

The composite nature of the text is indicated further by points of repetition in the questions and contradictions between their answers, textual inconsistencies that would likely have been smoothed out had the work been composed as a single systematic statement. These are evident mainly in Timothy’s rulings on inheritance.\(^1\) One case concerns whether a wife inherits from her dead husband in the case of intestate succession and no living sons or daughters (who, according to Timothy, would otherwise

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\(^1\) This should not come as much of a surprise, as the East Syrian sources themselves note the multiplicity of inheritance practices current among Christians in Iraq and Iran; see Payne’s discussion of Simeon of Rēwardašīr, Ḥnānīšō’, and Īšō’bōkt in “Christianity and Iranian Society,” 191-240
Timothy’s system of inheritance exhibits a general principle that if a man dies without sons, the women of his household (his wife, daughters, and mother if his father has died) inherit his patrimony to the exclusion of his wider male agnatic kin group (paternal brothers, uncles, and cousins) as long as those women do not marry into other households; if they do so, they turn over the dead man’s estate to his male relatives. Thus, a man’s wife inherits his estate to the exclusion of his male paternal cousins (§46), paternal uncles (§84), and brothers (§86). Decision §69, however, stands in glaring contradiction to this principle; it states that in case of intestate succession and no living sons or daughters, a dead man’s wife receives half of his estate, while his brothers and paternal uncles divide the other half.

Another situation involves a woman who dies intestate with no sons or daughters as primary heirs. Timothy’s decisions §§47, 53, and 54 are generally consistent in dividing her property among her husband’s household, her father’s household, and the local poor. Decision §96, however, leaves out the poor entirely, dividing a dead woman’s property equally (šawyā ʿāt) among her husband, mother and sister. These contradictions in Timothy’s decisions on inheritance further militate against the

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125 The rule that living sons exclude all others from any share in a man’s estate is repeatedly emphasized in Timothy’s law book; see §§49-51, 55, 63, 67, 79, 81, 94, and 99, SR 2: 90-94, 100-4, 108, and 112-16. That a man’s (unmarried) daughters should inherit to the exclusion of his wider male agnatic kin group is emphasized in §55 and §63; see pp. 94 and 100.
126 SR 2: 104. §69 does not specify whether the wife under consideration remains unmarried (as I have assumed) or remarries, but even in the latter case it contradicts the other decisions; §46 and §86 stipulate that a remarried wife receives a tenth, not half, of a dead man’s estate when it reverts to his male agnates.
127 SR 2: 90 and 94. Thus, for a woman survived by a husband, mother, and brothers, §47 stipulates that her property be divided into quarters, one for each of the relatives and a fourth for “God, the poor, and atonement for sins.” §53 states that a deceased woman’s property should be divided into thirds, one portion each going to her father’s household (bēt abīh), husband’s household (bēt ba’lāh), and the poor (meskēnē); §54 reaffirms this division.
128 SR 2: 114.
possibility that the law book was composed as a single integrated text (in which such textual inconsistencies would likely have been erased), and point to the prescriptions having been gathered from different collections of rulings in which the patriarch expressed different opinions. This is especially so in the latter case of the childless wife, as the consistent rulings are included in the first series on inheritance (§§46-73) and the contradictory one in the second (§§81-99), which suggests that these may have originally been different sets of rulings later redacted into the same law book.

In addition to these inconsistencies, the law book’s composite nature is further underscored by various textual redundancies that occur when largely the same questions are asked multiple times. For example, question §36 asks, “For how many reasons may a wife be loosed (teštreē) from [the bond of marriage with her] husband or a husband be loosed from a wife?” §42 poses substantially the same question with a slight difference in emphasis: “May a man ever divorce (nešboq) his wife?” In neither case does the answer exhibit any acknowledgement that the issue is addressed elsewhere in the text. As further examples, both §34 and §72 ask whether a woman may leave a marriage if her husband is impotent. §49 deals with how a man’s patrimony is divided among his sons and daughters when some of the latter are married and some widowed. In the second series of questions on inheritance, §81 repeats the same concern over how to divide a patrimony among daughters of different marital status. Questions §57 and §90 exhibit another redundancy between the first and second series on inheritance: they both ask for a

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130 SR 2: 84-86.
131 SR 2: 88.
132 SR 2: 82-84 and 104-6.
133 SR 2: 90-92.
134 SR 2: 108. §81 adds daughters who have never been married to the mix of heirs; §49 includes the man’s wife.
ruling in the case that a deceased person has no heirs whatsoever. All told, these redundancies support the likelihood that the law book was compiled from distinct, preexisting sets of rulings; were it a systematic, point by point statement of doctrine, we would not expect multiple questions to elicit the same prescription and legal principles in response.

One final point, noted by Sachau, also underscores the composite nature of the text. After §17, the last decision concerning the order of the ecclesiastical hierarchy, Timothy includes a transitional note before the section on marriage and divorce:

> ...a few things have been said, oh God’s holy ones, our brothers Mār Ya’qūb and Mār Ḥabbībā, metropolitan bishops, concerning ecclesiastical orders and matters, because you have beseeched us. Now, we shall speak of the matter of marriage in a few words, and after on succession...  

Notably, Timothy here addresses the requesting bishops in the second person; in the introduction, he speaks about them in the third. The direct address of this transitional statement leads Sachau to surmise that the preceding set of questions was originally part of a letter to the metropolitans that Timothy later included as part of the law book.

The points noted above – indications that some rulings had previous lives as *responsa*, thematic organization, contradictions, redundancies, and shifts in address to the audience – all indicate that Timothy’s law book was not composed as an integrated, unified work, but is rather some kind of compilation of sets of rulings. There are, however, other features of the text – internal consistencies, we might call them – that give the work a sense of being somewhat more unified. First of all, a statement at the end of

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135 *SR* 2: 96 and 112.
136 More literally “your (pl.) righteousness,” ḫasyūtkōn.
137 *SR* 2: 70.
138 *SR* 2: xx-xxi.
the introduction calls into question the idea that the law book’s question-and-answer format is indicative of its rulings having previously been responsa:

The kind of discourse (ādšā dēn d-melltā) [used in this treatise] shall be question and answer, not difficult but easy, in order that it might be considered and understood by every man; not only by those who are instructed in and examine the scriptures, but by those who are neither instructed nor studious in any way.\textsuperscript{139}

This would appear to indicate that the text’s question-and-answer format is no more than a literary device that Timothy used to organize and convey his prescriptions.\textsuperscript{140}

Other examples of internal consistencies are references that different rulings make to each other. In such cases, Timothy states something like “as we have said above,” and then gives a ruling that appears earlier in the law book. For example, the answer to §35 mentions the previous decision, which concerns divorce when one’s spouse is ill.\textsuperscript{141} In §41, Timothy refers to decision §36 on grounds for divorce.\textsuperscript{142} §54 refers to §53 on the disposition of a wife’s marital gifts upon her death.\textsuperscript{143} §67 refers to §66 to the effect that only male children are heirs to their fathers.\textsuperscript{144} §69 refers back to two issues dealt with earlier: a wife’s inheritance from her husband, addressed in §46, §49, and §50, and the wife’s marital gifts in §§53-54.\textsuperscript{145} Finally, §99 makes reference to several previous

\textsuperscript{139} SR 2: 60.
\textsuperscript{140} This would be hardly surprising, as the question and answer literary form has a long history in philosophical and other literatures in the eastern Mediterranean. For a brief overview and relevant literature, see Yannis Papadoyannakis, “Instruction by Question and Answer: The Case of Late Antique and Byzantine Erotapokriseis,” in Johnson, Greek Literature in Late Antiquity, 91-105. On the adoption of the form in East Syrian and other Syriac literature, see Bas ter Haar Romeny, “Question-and-Answer Collections in Syriac Literature,” in Annelie Volgers and Claudio Zamagni, eds., Erotapokriseis: Early Christian Question-and-Answer Literature in Context (Louvain: Peeters, 2004), 145-63.
\textsuperscript{141} “The question is answered by the one before it.” SR 2: 82-84.
\textsuperscript{142} “As we said a bit before…” SR 2: 88. §36 is on pp. 84-86.
\textsuperscript{143} “…as we said above.” SR 2: 94.
\textsuperscript{144} “It has already been stated above concerning these issues.” SR 2: 102.
\textsuperscript{145} See SR 2: 104 for §69. Concerning the wife’s inheritance, Timothy states that “she inherits a tenth, as we have said.” §§46, 49, and 50 can be found at pp. 90-92. Concerning the wife’s marital gifts, Timothy gives his decision “as we have stated above.” See p. 94 for §§53-54.
decisions concerning how a daughter, though not an actual heir, should be provided for from her father’s patrimony. Important in this last example is the fact that we have a reference in the second series of questions on inheritance to decisions in the first.

Bringing these points to bear on the question of whether Timothy’s law book is a composite collection of judicial decisions or a more systematic, unified treatise, I would suggest that it falls somewhere between the two. We can be sure from the introduction that lower ecclesiastics, and likely lay believers as well, sought help from Timothy in adjudicating civil disputes, and that at least the four questions with the lam particle were included in the law book from another source. Textual contradictions and redundancies and the change of address, as well as the generally case-specific nature of the questions, further indicate that the text is not a systematically composed statement of doctrine conveyed in a question-and-answer literary guise. At the same time, the intra-textual references add a degree of consistency and lessen the possibility that Timothy simply threw a slew of disparate, unrelated decisions into a manuscript codex and called it a law book. Overall, the interpretation that best accounts for the evidence is that the law book was compiled from several different sets of rulings or questions and answers articulating particular legal points, some number of which were originally sent in response to the metropolitans of Baṣra and Rayy (whether the metropolitans raised the specific questions themselves, and whether there were other original recipients of the decisions, we cannot say). These sets were redacted into a single text, edited lightly, and given a short exposition of Christian law as an introduction.

146 “…as we have said.” SR 2: 112. This refers to §§50, 66, and 67 (pp. 92 and 102-104), in each of which Timothy specifies that male heirs should provide for their sisters from their father’s patrimony. Noteworthy is that in each decision Timothy uses the same term, “provisions” (zwādā or zwādē), for the support that the sisters are to receive, giving the text a good degree of consistency across the rulings.
With a working idea of the text’s assembly, a note on the sources on which Timothy drew to issue his rulings is in order. As mentioned above, Roman law is nowhere in evidence. Many of Timothy’s most case-specific prescriptions appear to be novel, while other more general rules have precedents in earlier East Syrian legal writings (for example, prohibitions on kin marriages in Mār Abā’s works). In general, explicit acknowledgments of any sources on which the law book might draw are few and far between. Timothy often gives scriptural citations to support his points, and certain common Christian teachings on marriage – that spouses become one flesh, an aversion to divorce, that widows should not remarry – are evident throughout the text. However, only twice does he note non-scriptural texts from which he draws his rulings. Both of these pertain to the ecclesiastical hierarchy, not family law (which is not overly surprising, given that the canonical traditions of both the Roman and Sasanian Empires tend to be more concerned with the duties and behavior of the clergy than the laity).\footnote{Both citations are found in decision §11, in which Timothy deals with church dues and the collection of tithes (\textit{SR} 2: 66). The rules that these citations support are that every local church should give dues to the patriarch according to its ability; and that tithes should be distributed among the ecclesiastical hierarchy proportionately, with bishops receiving 40\%, presbyters 30\%, deacons 20\%, and other lower clergy 10\%. Timothy attributes the former rule to “the 318,” or the bishops who attended the Council of Nicaea in 325; it is found in canon §7 of the Arabic canons of Nicaea. See Vööbus, \textit{Canons Ascribed to Mārūtā} 1: 63-64. Timothy attributes the latter rule on the proportional distribution of tithes to the apostles; he has taken it from a set of canons found as book six of a West Syrian compilation of pseudo-apostolic works conventionally called the \textit{Ocitateuchus Clementinus} (on which see Kaufhold, “Sources,” 242-43 and 300). This particular set of pseudo-apostolic canons circulated among the East Syrians as well but survives in full only in the Arabic translations of Elias of Damascus and Ibn al-Ṭayyib (some excerpts crop up in ‘Abdīšō’ bar Brikā’s systematic compendia of the thirteenth and fourteenth centuries, on which see Selb, \textit{Kirchenrecht} 1: 59 and 108). For the canon in question, see Elias of Damascus, \textit{Sunhawdu}, MS Vatican Arabic 157, folio 14b. For a much terser (and less clear) version, see §11 in Ibn al-Ṭayyib, \textit{Fiqh} 1 (text): 9-10.}

In sum, Timothy’s text is more variegated and diverse than the descriptor “law book” first suggests. It is likely a redaction of various sets of questions and prescriptions, and not a unified composition or a purely theoretical attempt to spin out a systematic...
legal doctrine. Some, though not all, of its rulings were likely *responsa* addressed to specific local cases, and possibly to ecclesiastical or lay petitioners. Precedents and earlier sources for the majority of the rulings are not mentioned and are often not immediately apparent.

**Patriarch Ḫūn**

Ḫūn (r. 823-28) is less prominent in the East Syrian chronicles than his predecessor Timothy. He hailed from northern Mesopotamia, spent decades as a monk before his elevation to the patriarchate, and is said to have harbored some enmity toward Timothy; we know little else of his career. As patriarch he contributed several works to East Syrian legal literature, of which his law book is the most significant. The text’s structure is generally similar to that of Timothy’s. Its Syriac title is “canons, laws, and rulings (*qānōnē nāmōsē wa-ṣāq dīnē*) of Mār Ḫūn.” We have no date for its composition, but it was most likely composed during Ḫūn’s patriarchate. The work’s introduction is a short treatise on the hierarchy of God’s creation; 130 rulings on marriage, inheritance, the ecclesiastical hierarchy, property, and various other topics follow. Unlike Timothy’s law book, Ḫūn’s is composed only of prescriptions and not in question and answer format. In spite of this difference, however, the same issues

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148 Compared to Timothy, the sources offer much less biographical information on Ḫūn. For a few further details, see L. Van Rompay, “Isho’ bar Nun,” *GEDSH*, 215.
149 Selb contends that the law book was likely written before Ḫūn was ordained patriarch, as it evinces none of the antipathy toward his predecessor Timothy for which he is somewhat infamous as an older man in the chronicles; see *Kirchenrecht* 1: 194. However, as I show later in this chapter, the law book contains rulings drawn from several of Ḫūn’s patriarchal letters to lower ecclesiastics (including one that explicitly displays the patriarch’s dislike of his predecessor). We should therefore conclude that the law book was, in fact, written during his time as patriarch.
confront us. Does the work represent a unified composition, a systematic legal treatise delivered as discrete points, or is it more an ordered collection of previous rulings redacted into a whole?

Īšōʾbarnūn gives no hint in the text, as Timothy does in his introduction, as to the specific motives that spurred him to compose it. However, in this case we have other contemporary texts with which to compare the law book in tackling this question. Among Īšōʾbarnūn’s extant works are two letters in which the patriarch answers questions addressed to him by local East Syrian clergy. These include a set of 74 questions and answers to Makarios, deacon of Ḥīra (an important, historically Christian Arab town adjacent to Kūfa), and 13 to Isaac, periodeutes of Qaṭar (Syriac Bēt Qaṭrayē, roughly the Arabian coastline of the Persian Gulf and nearby islands).\(^\text{150}\) With Īšōʾbarnūn, we thus have some direct evidence for the kinds of issues that were of concern to the East Syrian ecclesiastical hierarchy and in solving which they sought the patriarch’s help. By comparing these questions posed to him with the rulings in the law book, we will be able to venture some thoughts on the latter’s manner of composition.

The majority of the questions addressed to Īšōʾbarnūn in these letters concern the proper administration of the Eucharist, clerical responsibilities, and related ritual matters, topics that the law book, geared mainly toward the regulation of lay affairs outside the specific ritual setting of the church, does not take up directly. However, the law book

\(^{150}\) Both letters are found in the Baghdad 509 manuscript family and remain unpublished. For a brief overview of the letters and Īšōʾbarnūn’s other writings see Ernest G. Clarke’s introduction to *The Selected Questions of Ishō bar Nūn on the Pentateuch*, ed. and tr. Clarke (Leiden: Brill, 1962), 2-4. Clarke also mentions an ostensible third letter of Īšōʾbarnūn’s contained in MS Vatican Syriac 88; this, however, is simply a number of questions and answers on prayer excerpted from the letter to Makarios. A *periodeutes*, Syriac *ṣāʾūrā*, was a traveling priest not tied to a specific parish who presumably mainly served rural areas. See John Madey, “Chorepiscopi and Periodiastes in the Light of the Canonical Sources of the Syro-Antiochene Church,” *Christian Orient* 5 (1984): 167-83.
does treat issues of ecclesiastical conduct, and the letters ask some questions that bear on lay practice and family life. Close examination of these points indicates that at least some of Īšō’barnūn’s rulings in the law book are in fact redacted versions of the *responsa* contained in his letters.

The most apparent is Īšō’barnūn’s ruling §126 in the law book, which combines the answers to two of Makarios’ questions. The first reads as follows: “If a Christian happens to be in the lands of the unbelievers where there are no Christians and no church, and he does not know when to begin the [Lenten] fast or finish, what should he do?”¹⁵¹ The second asks, “If a Nestorian (*nestoryānā*) is somewhere where there is no [East Syrian] church, may [he] receive communion in a church of the Melkites (*malkāyē*) or Severians (*sēwryānē*, i.e. West Syrians) to end [his] fast?”¹⁵² To the former, Īšō’barnūn replies that any such East Syrian should fast throughout the months of Šbāṭ, Ādār, and Nīsān, covering the season in which Lent may fall, so as to be sure (s)he has fasted the appropriate days; any extra days go toward making up for the fact that (s)he has been unable to receive communion in that time. To the latter question, the patriarch gives a firm “no” and a brief description of the Christological differences that prevent an East Syrian from joining the body of believers of another church.

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¹⁵¹ §44 of *Šuʾʿālē d-neštlē Mār(y) Īšō’barnūn men ba(r)t qālā d-Maqariyos mšāmmšānā w-ʿānwāyā* (*Questions Mār Īšō’barnūn Was Asked by Makarios, Deacon and Ascetic*), MS Mingana Syriac 586, folio 438b. I have used microfilms of the Mingana manuscript copies of Baghdad 509 held in the collection of Firestone Library, Princeton University. “Unbelievers” in the text is *ḥanpē*; more literally “pagans,” it is often used by Syriac writers of the Islamic period to refer to Muslims. Here, however, nothing suggests either usage specifically, and a more broad translation as non-Christians is most appropriate to the context.

¹⁵² §47, MS Mingana Syriac 586, folio 439a. The descriptor *sēwryānē*, “Severians,” for the West Syrians is a reference to Severus, sixth-century patriarch of Antioch and a chief Miaphysite Christological authority.
In comparison to his answers to Makarios, ruling §126 of İšōʾ barnūn’s law book reads as follows:

If someone is in a land of the unbelievers where there are no Christians whatsoever and is confused (metbalbal) about the reckoning of the [Lenten] fast, he shall fast 50 days fully in Ādār and Nīsān and afterwards end [his fast]. And if there is a heretical church there, he shall not pray in it, nor receive communion there, but shall end his fast with prayer that he offers to Christ in his home.\textsuperscript{153}

In this prescription, İšōʾ barnūn combines his answers to Makarios’ questions and touches on each point they raised: how a lone believer might reckon the fast of Lent, and whether East Syrians can receive communion in other churches for the specific purpose of ending it. An editorial method is evident between the texts: the patriarch identified a commonality (the absence of East Syrian institutions) in the questions addressed to him and synthesized the answers as a single ruling for the law book.

Other prescriptions in the law book show traces of the same method of synthesizing and streamlining past responsa. Ruling §78 appears to be a reworked version of one of İšōʾ barnūn’s answers to Isaac of Qaṭar. The decision, dealing with adultery in a particular set of circumstances, reads, “If a man takes a wife in the place where he is, and then goes somewhere else and takes another wife, and his affair is revealed, he shall be anathematized (nettaḥram) from the church and banned (netkēlē) from receiving the holy mysteries”; the judgment of anathema applies also to a wife who leaves her husband for another man.\textsuperscript{154} Isaac’s question §12 asks about the same circumstance: a man traveling to another place and beginning a second family there.\textsuperscript{155}

\textsuperscript{153} SR 2: 174.
\textsuperscript{154} SR 2: 152.
\textsuperscript{155} İšōʾ barnūn, Eggartā d-Mār(y) İšōʾ barnūn qatoliqā paṭriyarkā d-madnḥā lwāt İšḥāq sāʾ ʿorā d-Bēṭ Qatrayēʾ am zuhhārē d-quḍāsā (Letter of Mār İšōʾ barnūn, Catholicos Patriarch of the East, to Isaac, Periodiotes of Qaṭar, with Admonitions Concerning Holiness), MS Mingana Syriac 587, folios 367a-b. The text of the question in the manuscript is corrupt, but between what remains and
While the language of Īšōʿbarnūn’s response to Isaac is different and more expansive than the prescription in the law book, its answer is the same, and it exhibits the same concern to emphasize that such a ruling applies to the transgressions of both men and women. We have, then, another likely example of the patriarch condensing for inclusion in the law book a ruling he had given previously.

As a final example, the law book’s decisions §23 and §26 also appear to have been drawn from an answer to one of Īšōʿbarnūn’s petitioners. Makarios’s question §4 asks, “What fault is there for a man to marry a woman of close relation (qarrībat besrēh), whether [the two are] the children of brothers or sisters [i.e. cousins], or of more distant relation?” The patriarch’s answer is that there is none, citing God’s command to Moses that the daughters of Zelophehad should marry their cousins in Numbers 36. Īšōʿbarnūn repeats this ruling as §26 of the law book (adding as further support an East Syrian exegetical tradition that Abraham and Sarah were cousins). The prescription in the law book, then, looks to be a redaction of Īšōʿbarnūn’s responsum to Makarios. Additionally, Īšōʿbarnūn addresses a second issue in his answer to Makarios on marriage between close relations (though the question does not raise the issue directly): whether a man can marry

156 MS Mingana Syriac 586, folio 433b.
157 SR 2: 126. For Īšōʿbarnūn’s exegesis of the relevant biblical passages, see Selected Questions, 30 (translation), 130-35 (analysis), and facsimile folios 12v-13v (Syriac text), as well as Corrie Molenberg, “Īšoʿ bar Nun and Ḣoʿdad of Merv on the Book of Genesis: A Study of Their Interrelationship,” in Judith Frishman and Lucas van Rompay, eds., The Book of Genesis in Jewish and Oriental Christian Interpretation (Louvain: Peeters, 1997), 214-20.
the sister of his wife who has died. The patriarch mentions the views on this issue of Basil the Great (no) and the East Syrian teachers Mār Narsay and Yōḥannān of Bēt Rabban (yes), but does not give an answer of his own.158 However, the issue again becomes the subject of one of his decisions in the law book, where prescription §23 gives a definitive “no,” even if the couple had only been betrothed, and mentions the conflicting view of Yōḥannān.159 Thus, in this case Īšōʾbarnûn appears to have edited his responsum §4 to Makarios into two distinct rulings for inclusion in the law book.

The examples above serve to indicate that at least some of the prescriptions in Išōʾbarnûn’s law book were redacted from his responsa to lower clergymen, undermining the possibility that the text was composed as a wholly new, unified work. Certain structural characteristics, much like those of Timothy’s law book, are further indications that the text was compiled from preexisting sets of rulings. Again, we have the example of thematic organization. Roughly the first half of Īšōʾbarnûn’s law book is divided in two: the first component (§§1-40) deals with marriage and divorce, and the second (§§41-63) with inheritance. The rest of the text consists of small groups of thematically related rulings, around three each, that treat a variety of topics: slavery, ascetic and monastic life, the ecclesiastical hierarchy, debts and loans, theft, relations with other religious

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158 Mār Narsay is well known among the East Syrians as the first head of the school of Nisibis in the fifth century and a major theological and exegetical authority; see Baum and Winkler, Church of the East, 26-28 for a brief overview of his career. Yōḥannān was an instructor in the School of Nisibis in the sixth century; see Anton Baumstark, Geschichte der syrischen Literatur (Bonn: A. Marcus und E. Webers Verlage, 1922), 115-16. The issue of marrying a deceased wife’s sister would seem to relate to the prohibition of marrying two sisters in Levitics 18:18; it is conceivable that Išōʾbarnûn might have been familiar with Narsay and Yōḥannān’s teachings on the topic from their commentaries on Leviticus, for mention of which see BO 3.1: 65 and 72. Basil the Great addresses the issue in a letter to Diodore, priest of Antioch and later bishop of Tarsus (and teacher of Theodore of Mopsuestia). The letter was known in Syriac, though it seems to have survived only in West Syrian transmissions like the rest of Basil’s epistles of legal import. For an edition see SWST 1 (text): 189-94.

159 SR 2: 126.
communities, and ritual matters. Notably, many small groups of decisions return to
marriage and divorce (§§78-80, 99-101, 119-120, 127) and inheritance (§§69-70, 84-86,
102, 111-113). The fact that these are not included in the large “marriage” and
“inheritance” sections in the beginning of the law book gives the impression that the
different thematic sets may have been added to the text after the first half was assembled.

Points of redundancy among the decisions further mark the text as more
compilation of prescriptions than systematic treatise. Both §95 and §116, for example,
prescribe penalties for ecclesiastics who accept bribes or otherwise judge unfairly in
ecclesiastical courts. §95 reads:

If litigation (dīnā) is brought before a catholicos, metropolitan, bishop,
archdeacon, or deacon, and he, while understanding [the case] justly, succumbs to
a bribe given to him, or [does not rule justly] by taking sides (massab b-appē) on
account of friendship [with one litigant], or for aggrandizement of [his] person, or
out of fear of the pride (rāmūtā) of the guilty one, he shall not serve the rank of
his priesthood.\footnote{SR 2: 158-60.}

Repeating the same notion, §116 states that anyone serving as a judge or arbiter who
takes bribes or otherwise alters the fairness of his rulings shall lose his position and be
suspended from serving his ecclesiastical rank.\footnote{SR 2: 170.}

Similarly, decisions §10 and §119 repeat a punishment for Christian fathers who
marry their daughters to non-Christians. As was the case in Timothy’s decisions on
inheritance, these appear to belong to two separate, thematically organized groups of
prescriptions. Decision §10 is part of the first section of the law book on marriage, and
more specifically fits into a group of prohibitions and punishments that make up the first
14 decisions of the law book. Each is fairly concise and has the same general literary
structure: a conditional statement positing the transgression of a prohibition followed by
the appropriate punishment. Ruling §10 reads, “If a Christian gives his daughter to be among the wives of a pagan, a Jew, or someone from other religions, this man shall be suspended (netklē) from entry to the holy church and from the holy mysteries.” §119, coming much later in the text, repeats the same basic prohibition: “If a Christian gives his daughter [to be] among the wives of a Jew, a Zoroastrian, or one from other religions, he shall be estranged from the church.” This time it goes on to posit a situation in which a Christian girl absconds with a non-Christian man, in which case her father and the rest of her family should establish a pact to have no contact with her whatsoever.\footnote{SR 2: 162. “Religions” in the text is dehlātā, more literally “fears.” For this usage of the term (and the inappropriateness of its translation as “religion”) in East Syrian literature, see Adam H. Becker, “Martyrdom, Religious Difference, and ‘Fear’ as a Category of Piety in the Sasanian Empire: The Case of the Martyrdom of Gregory and the Martyrdom of Yazdpahen,” Journal of Late Antiquity 2.2 (2009): 300-36.} In spite of this additional prescription, the repetition of the same underlying concern points again to the possibility that the two decisions belonged originally to separate groups of prescriptions that were assembled to create the law book.

Regarding the matter of the law book’s sources, Īšā’barnūn’s text is similar to Timothy’s in making exceedingly few references to earlier authorities. In fact, it makes only two non-biblical references: one to Yōḥannān of Bēt Rabban, mentioned above, and another to the 37\textsuperscript{th} Oration of Gregory of Nazianzen in support of the opinion that a wife may divorce a husband who commits adultery.\footnote{SR 2: 170. \footnote{SR 2: 160-62. On Gregory’s Orations in Syriac translation (there are two different translations of most of them), see Albert Van Roey and Herman Moors, “Les discours de saint Grégoire de Nazianze dans la littérature syriaque,” Orientalia Lovaniensia Periodica 4 (1973): 121-33 and 5 (1974): 79-126. The 37\textsuperscript{th} Oration remains in manuscript.}

Taken together, the redundancies, thematic grouping of decisions, and especially derivations from \textit{responsa} outlined above all indicate that Īšā’barnūn’s law book, like
Timothy’s, was less a systematic composition delivered point by point than a compilation of different sets of rulings composed at different times; and in this case, we can be certain that at least some of them were issued in direct response to the concerns of local East Syrian clergy. At the same time, the prescriptions drawn from responsa show that this collection was not simply a cut and paste job, but that Īšō’barnūn synthesized and redacted decisions from previous sources when including them in the particular literary format of the law book. Finally, Īšō’barnūn, like Timothy, includes very few citations of earlier authorities.

Īšō’bōkt, Metropolitan of Fārs

We know considerably less about Īšō’bōkt than Timothy and Īšō’barnūn; essentially all of the direct information available on him comes from a short scribal introduction to his law book. However, Īšō’bōkt’s work has received somewhat more attention from scholars than that of the other two jurist-bishops, as much of it appears to be based on older Sasanian law for which source material is notoriously scarce. In what follows, I will draw on this scholarship to situate Īšō’bōkt’s work in its early Abbāsid Iranian context and consider its relationship to the work of the two patriarchs.

According to the law book’s introduction, Īšō’bōkt was metropolitan of the province of Fārs and had been ordained by a patriarch Ḥnānīšō’; secondary literature has taken the Ḥnānīšō’ in question to be the second of that name, who reigned from 773-79/80.165 Īšō’bōkt wrote his text originally in Middle Persian. It was translated into Syriac

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165 The introduction does not specify whether it denotes Ḥnānīšō’ I (685/6-699/700) or Ḥnānīšō’ II (773-779/80). Sachau concludes that the latter is the more likely option; he was Timothy’s
at Timothy’s request during his time as patriarch. The unnamed translator added the short introduction, and the translation is the only version of the work extant today.

Even from this meager information, it is immediately apparent that we are dealing with a law book considerably different from those of Timothy and Īšō’barnūn. Rather than stemming from the East Syrian patriarchate in central Iraq, this work was written by a provincial bishop in Fārs in a regional language. It was intended to be locally applicable, and only entered into the wider East Syrian literary tradition when Timothy had it translated into Syriac.

Indeed, the local character of Īšō’bōkt’s law book is what has attracted the most attention from scholars. This local character shows itself in two interrelated aspects of the work. First, Īšō’bōkt notes at various points that he aims to compile (and, when necessary, correct) the customary laws of the Christians of Fārs, or at least its metropolitan capital, Rēwardašīr, and environs. This stems from a basic recognition that among Christians, civil law (dinē) is different in the land of the Romans from [what it is in] the land of the Persians, and that again is different from the land of the Aramaeans, Bēt Hūzāyē, and Mayšān; and the same [situation obtains] in

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166 For this bare biographical information, see SR 3: 2-4.
167 The singular dinā is one of three technical terms that the metropolitan defines in the law book’s first treatise on legal theory. In general, dinā denotes a prescription or judicial ruling pertaining to a specific case, hence “civil law” as the sum total of such rules. It can also mean litigation brought before a judge or arbiter. Nāmōsē, “laws,” denotes more general, abstract principles; we might think of dinē as individual applications of nāmōsē in practice. Finally, trīṣūṭāt denotes the abstract condition of correctness or moral righteousness, which depending on context may or may not be manifest in individual dinē. For Īšō’bōkt’s text see §§I.ii-iii and vii, SR 3: 10-14; for Sachau’s discussion pp. xii-xiii. Despite Īšō’bōkt’s concern to distinguish between these concepts, slippage often occurs in their usage, especially between dinē and nāmōsē.
other places; such that also [civil law is different from] district to district and city to city.\footnote{SR 3: 8. Of the eparchies that Īšōʾ bōkt names here, “the land of the Aramaeans (ārāmēyē)” is the patriarchal province of central Iraq; Bēt Hūzāyē, also often ʿĒlām in Syriac sources, is Khūzistān; and Mayšān is the lower Iraqi district around Baṣra.}

In light of this multiplicity of laws and customary practices, the bishops of Fārs have requested that their metropolitan compose a law book so that “the same civil law should be in our entire diocese, even if [it] cannot be the same in the entire church under heaven.” Īšōʾ bōkt, then, recognizes that civil law differs among Christians in different regions, and so seeks to compose a standardized law for the East Syrians in his own diocese. He will do so by committing to writing the laws “adhered to through the tradition of [our] ancestors in our area,” as well as laws consonant with local practice drawn from church communities of “orthodox confession” in other regions.\footnote{§I.i, SR 3: 10. What I have translated as “orthodox confession” is ḫuššābā trīṣā w-tawdīṭā d-gawwā.}

Evidence for Īšōʾ bōkt’s adoption of local practice comes through several direct statements in the law book. In the introduction to his treatise on inheritance, for example, Īšōʾ bōkt writes:

…”as for those things that we establish from this point, Christians in every place are not the same… We here establish things according to the custom (ʿyādā) of the church of our city and other churches, and also such as we have seen to be more appropriate than these laws according to the sense (sukkālā) of the holy scriptures and correct conscience, the friend of what is right, in agreement with our holy brother bishops.\footnote{§IV.i.1, SR 3: 94. Later in the same treatise, a series of eight rulings are entitled, “Judicial decisions and laws to which we adhere through custom (ba-ʿyādā)”; SR 3: 120.}"

In spite of Īšōʾ bōkt’s additional note that he may alter laws if scriptural teachings call for it, this is a very clear statement that this section of the law book is based on the local practices of Fārs, which the metropolitan puts in contrast to the methods of inter-
generational wealth transfer current among Christians elsewhere.\textsuperscript{171} Īšōʾ bōkt makes similar identifications of the customs of Fārs at various other points in the law book, such as when he refers to regional differences in the relationship between a freed slave and his former master, and cites the practices and customs of merchants as a source for fixing prices.\textsuperscript{172}

In chapter one, we saw bits of Īšōʾ bōkt’s theory of law and society that had been influenced by the teachings of Theodore of Mopsuestia. The bishop elaborates on this matter further with regard to law and custom in Fārs. In his view, every region is characterized by a civil law (dīnē), a body of particular rules that its inhabitants follow to order social transactions (marriage, inheritance, commerce, etc.); practice in accordance with these rules constitutes the custom (ʿyādā) of that land and its people. In light of this understanding, one aspect of the “local character” of Īšōʾ bōkt’s law book emerges as the author’s acknowledgment of the custom of Fārs as (at least partially) authoritative, and his commitment of its corresponding dīnē to writing.

The second, related aspect is that much of Īšōʾ bōkt’s law book appears to be based on the laws that had been applied in Sasanian judicial institutions, and which some local inhabitants of Fārs – including Christians – continued to follow after the Muslim conquest.\textsuperscript{173} Several characteristics of the text lead to this conclusion. First, a number of technical Sasanian legal terms and concepts – some translated but many simply

\begin{footnotesize}
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\item \textsuperscript{171} On Īšōʾ bōkt’s connection to the Zoroastrian legal traditions of Fārs see Payne, “Christianity and Iranian Society,” 192-94.
\item \textsuperscript{172} Nina V. Pigulevskaja, Les villes de l’État iranien aux époques parthe et sassanide: contribution à l’histoire sociale de la Basse Antiquité (Paris: Mouton, 1963), 110.
\item \textsuperscript{173} For the general statement of this position, see Pigulevskaja, Villes, 106-11 and eadem, “Die Sammlung der syrischen Rechtsurkunden des Ischbocht und des Matikan,” in Herbert Franke, ed., Akten des vierundzwanzigsten Internationalen Orientalisten-Kongresses (Wiesbaden: Deutsche Morgenländische Gesellschaft, 1959), 219-221. Payne’s study of Īšōʾ bōkt in “Christianity and Iranian Society” is based on the same insight.
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transliterated from Middle Persian into Syriac – feature prominently in the text.  

Second, comparison between Īšō’bōkt’s law book and the *Book of One Thousand Judgments*, a late Sasanian legal digest, has led to the conclusion that large sections of each draw from the same older Sasanian sources.  

This is especially true of Īšō’bōkt’s treatises on property, obligations, and judicial procedure.  

All in all, then, Īšō’bōkt’s law book is very much a product of the particular milieu of Christian Fārs: it is a compilation, with modifications, of the laws and customary practices of that particular region, much of which in fact represents the law of the Sasanian state.

This background to the composition of Īšō’bōkt’s law book gives rise to several evident structural differences from Timothy and Īšō’barnūn’s texts. For one, the subject matter is significantly different in parts; Īšō’bōkt has no regulations for the ecclesiastical hierarchy, and deals much more extensively with property, loans and debts, damages, and judicial procedure. The metropolitan’s work is also much longer than the other two; while Sachau’s edition of Timothy’s law book reaches 32 pages of Syriac text and Īšō’barnūn’s only 27, Īšō’bōkt’s covers 100 (this despite the fact that part of the law book’s final treatise is lost).

More significantly, however, the metropolitan’s work is in certain respects more like the kind of “unified composition” that I have argued the law books of Timothy and Īšō’barnūn are not. While Īšō’bōkt’s law book is also largely a collection of case-specific rulings, it is not a single, semi-organized body of decisions. Rather, it is divided explicitly into six treatises: the first on legal theory, the second on marriage hindrances and divorce,

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174 See a list and discussion in *SR 3*: xii-xiii and Pigulevskaja, *Villes*, 108.
175 See Pigulevskaja, *Villes* 106-11 and “Sammlung.”
the third on marriage, the fourth on intestate succession and family hierarchy, the fifth on testate succession and contractual obligations, and the sixth on judicial procedure and obligations. On examination, a higher degree of organization in comparison to the law books of Timothy and Īsōʿbarnūn is immediately apparent. The treatises are organized as follows. Treatise one is divided into 16 short essays in which Īsōʿbōkt addresses the nature of law by defining its constituent elements, explaining several important Sasanian legal concepts, and tackling the issue of the multiplicity of legal systems among Christians. In treatise two, the metropolitan addresses some of the broader principles of “Christian” marriage: kinship prohibitions (as a polemic against Zoroastrian and Jewish practices) and other marriage hindrances, and the theological and social dimensions of divorce. As in the first treatise, these teachings are delivered as short essays, nineteen in number, rather than as concise prescriptions, and feature passages of biblical exegesis. With treatise three, the work begins to look more like a typical law book, as it comprises series of case-specific rulings pertaining to particular topics: the betrothal ritual, the marriage contract, various problems with consummating a marriage, and others. Treatise four follows a similar pattern in its prescriptions on intestate succession (although it includes among them one “extended essay,” a polemic against Zoroastrian inheritance practices). The author begins by defining all family members who fall within a single degree of relationship to a man, and then takes up cases to explain the differences in the amounts that they inherit. He then does the same for second-degree relations and addresses a few other questions of family hierarchy. Treatise five too is structured as short, case-specific prescriptions, this time on bequests, gifts, joint ownership, deposits, loans, and other issues to do with property and obligations. Finally, treatise six follows a
similar structure in addressing judicial procedure (such as witnessing and oaths) and obligations (pay for hire, damages, etc.).

In sum, though Īšōʾbōkt’s work is as much a “law book” as those of the two patriarchs, it was assembled and is structured in a different way. To whatever degree the prescriptions in Timothy and Īšōʾbarnūn’s works represent original judicial decisions or real responsa, the texts’ structure and style (loosely organized, unsystematic, and casuistic) impart a sense that they are ad hoc collections of variegated rulings redacted into single texts. Īšōʾbōkt’s text reveals a different working method in its composition. While it is entirely possible that some of the metropolitan’s prescriptions were drawn from his own responsa or rulings, the text’s higher degree of organization and the fact that much of it is based on Sasanian textual sources make it a much more systematic work, intended as a guide to judicial practice in the Sasanian tradition for the clergy of Fārs.  

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The Law Books and the Caliphate’s Legal Cultures

Jurist-Bishops in the East Syrian Milieu

Thus far, we have looked critically at the law books of the East Syrian patriarchs Timothy I and Īšōʾbarnūn and metropolitan Īšōʾbōkt in the interest of determining how these texts might best be approached as historical documents. I have argued that both of the patriarchal works are, to one degree or another, redacted collections of the patriarchs’ rulings. Īšōʾbōkt’s is also a collection of judicial decisions, but a longer, more systematic, and more provincially specific one based on the practices of Fārs and Sasanian legal

177 For an eloquent statement of this point, see Payne, “Christianity and Iranian Society,” 191-94.
traditions. Having drawn these general conclusions, we can now say a few more words about the broader social context in and for which these texts were produced, and how this literary activity relates to the wider legal culture of the early ʿAbbāsid Caliphate.

First of all, the redaction history of the law books shows us that the bishops, and the patriarchs Timothy and Īsōʿbarnūn in particular, continued an older tradition of acting as arbitrators, high judicial authorities, and guides for judicial practice for lay people and lower clergy. As we have seen, the law books of both patriarchs are composed at least in part of rulings previously delivered in response to questions on legal matters that they received from lower clergy – the metropolitans of Baṣra and Rayy in the case of Timothy, the clergymen Makarios of Ḥīra and Isaac of Qaṭar in that of Īsōʿbarnūn. This practice of patriarchs acting as referees of a sort for the administration of local communities’ legal affairs is apparent also in the letters of Ḥnānīšōʿ, and even in the sixth-century patriarch Īsōʿyahb I’s responses to Yaʿqūb of Dīrēn. The composite nature of the law books thus offers some evidence that the early ʿAbbāsid patriarchs continued to act in a certain kind of judicial capacity whereby they offered guidance and instruction to local clergy and communities through epistolary correspondence, a capacity that had long been a feature of “episcopal justice.”

Unlike (most of) their predecessors, however, the early ʿAbbāsid bishops brought together some of their variegated rulings into single texts in the interest of crafting more comprehensive models of Christian civil law. How were their law books subsequently used by East Syrian communities? For this, unfortunately, we have very little extra evidence, as we have no contemporary court records or other comparable sources. It is probable that the law books would have been circulated among bishops and lower clergy,

insofar as higher ecclesiastics expected them to act as judges for local communities, to provide both specific rulings and guidelines for adjudication. Īšōʾbōkṣ points to this likelihood when he states that the bishops of Fārs sought such a legal text from him.

Additionally, we can tell from Makarios’ questions to Īšōʾbarnūn that the deacon was familiar with Timothy’s laws: his question on the lawfulness of marriage between cousins (discussed above) is a response to Timothy’s ruling §23 that bans the practice.\(^{179}\) We can thus surmise that copies of the law books were likely circulated among at least some provincial bishops and clergy.

Whether there were channels other than ecclesiastical adjudication and arbitration through which lay East Syrians might have had direct contact with these texts and their teachings is difficult to say. We should note that the assembly of local communities for rituals of communion, feasts, and other holidays was presumably an important venue in which the clergy imparted the church’s authoritative teachings and exercised its mechanisms of social control. For example, priests would have read out anathemas before assembled communities against those who had been judged to transgress their strictures, both as an admonitory attempt to bring the transgressor back within the fold and to emphasize communal rules.\(^{180}\) It is thus conceivable that some of the law books’

\(^{179}\) For the Syriac text of the ruling, see MS Mount Sinai Syriac 82, folios 67b-68a. For the Arabic Translation, Ibn al-Ṭayyib, Fiqh 1 (text): 185. We will discuss this ruling in great detail in chapter four.

\(^{180}\) We catch glimpses of this practice in Īšōʾbarnūn’s law book. According to decision §86, for example, anyone who withholding a dead man’s property from his rightful heirs will have “anathema and curses recited against [him] in church” (ḥermā w-lāwṭātā netqrōn b-ʾē[d]tāʾ al kul man…); SR 2: 156. While the patriarch refers many times to transgressors as being “anathematized” (ettahram) or “under anathema” (ṭēt ḫermā), this reference to the recitation of anathema is an important indication of exactly how the clergy’s prerogative of the ban could be employed to social effect. Other references to oral recitation or proclamation of anathemas are found in decisions §§81, 82, 83, and 87; see SR 2: 152-56. Though dealing with the very different milieu of Copts in early Ottoman Egypt, Tamer el-Leithy provides an instructive analysis of public anathema as a strategic practice that “pressured the sinner to rectify his error, while
prohibitions would have been imparted to lay East Syrians in such a manner, or even that parts of the law books themselves would have been read out before congregations.

A final important point to emphasize is that in addition to any broader circulation or social role these texts enjoyed among East Syrian communities, they were part of the ongoing construction of an East Syrian canon of legal literature. They contributed to building an authoritative textual corpus by restating or citing specific texts (such as the Arabic canons of Nicaea in Timothy or Gregory Nazianzen in Īšō‘barnūn) and contradicting others (such as Īšō‘barnūn’s rejection of an opinion of Yōḥannān of Bēt Rabban). We see this process in the law books’ own manuscript tradition: as we have noted, almost all the legal works that East Syrian clergy and scribes preserved have been transmitted together. The eighth-ninth century law books (as well as their authors’ other legal writings) contributed to the process of defining this authoritative corpus.

*Jurist-Bishops in the Broader ‘Abbāsid Milieu*

Having considered the law books’ significance for East Syrian communities, let us now venture a few thoughts on the place of the patriarchs’ intellectual work in the broader context of the developing legal cultures of the caliphate, especially in Iraq. We have noted that the early ‘Abbāsid centuries saw a new interest on the part of Christian elites in developing bodies of communal law, especially with regard to the civil life of the laity, that paralleled the early emergence of Muslim *fiqh* and judicial institutions. In essentially the same timeframe and geographical area, a rabbinic Jewish scholastic instructing and regulating on-lookers”; it also lost all effectiveness if the object of the ban had the social capital to disregard clerical authority and carry on sinning as he had been. See “Coptic Culture,” 386-87 and 401-404.
culture and legal tradition were thriving in the geonic academies of Sura and Pumbedita. Later in this dissertation, we will see the bishops engage in debates and take up issues prevalent in legal discourse throughout the lands of the caliphate. But on a basic level, how did the bishops’ work of producing legal texts compare to that of the *fuqahāʾ* and the geonim? Were the bishops engaged in projects substantially similar to those of their non-Muslim contemporaries?

On the one hand, there are important similarities between the Muslim and East Syrian legal traditions that reveal much about the development of the latter. The geonim, for their part, cultivated a well-established tradition of law and legal disputation focused around the Babylonian Talmud; indeed, historians of the geonic period often assert that the geonim created exceedingly few pieces of new legislation and instead mainly elaborated on Talmudic rulings.\(^{181}\) Abbāsid-era Muslim and Christian jurists, on the other hand, were both engaged in developing newer, emerging traditions.

A further similarity is the fact that both groups’ work was the product of specialist jurists. We have seen that before the Muslim conquests, the greater part of Christian legislation in Iraq and Iran was issued through ecclesiastical synods. Even in cases where those synods served to uphold the work of a single writer, such as Mār Abā, authority to issue Christian law was vested in the collective will of the bishops of the Sasanian Empire.\(^{182}\) In the Islamic period, by contrast, the new range and detail required for communal judicial practice in the caliphate meant that defining the law had become a more specialized task for learned individuals likeĪsāʾbōkt, Timothy, and Īsāʾbarnūn,


\(^{182}\) This was an ideal picture, of course, and East Syrian history saw a number of synods convened by one faction of bishops against others. But the principle of the authoritative assembly of bishops remained. For an overview of East Syrian factionalism, see Morony, *Iraq*, 346-54.
much as it was among the early Muslim jurists.\footnote{Selb notes this trend away from synods and toward individual jurisprudential works; see Kirchenrecht 1: 176-79.} This new pattern of works by individuals does not mean that notions of collective ecclesiastical authority no longer carried weight; later East Syrian chronicles would claim that the law books of Timothy and Īšōʿ būn were given normative status at ecclesiastical synods, which underscores the continuity of the idea of the authoritative will of assembled bishops.\footnote{See the accounts in the fourteenth-century Arabic chronicle of Ṣalībū ibn Yūḥannā: Enrico Gismondi, ed., Akhbār faṭārikat kursī ʿl-mashriq min kitāb al-majdal (Rome: C. de Luigi, 1896-99), vol. 2: 66-67. Selb doubts the historicity of the synod that recognized Timothy’s book; see Kirchentrecht 1: 174-75. For the correct dating and attribution of the two East Syrian Arabic chronicles published by Gismondi, see Bo Holmberg, “A Reconsideration of the Kitāb al-Mağdal,” Parole de l’Orient 18 (1993): 255-73.} However, a few synodal rules covering whatever was immediately relevant every few decades were no longer sufficient for the needs of the East Syrian ecclesiastics in regulating the community in a caliphate with dynamic, developing judicial institutions. To articulate a more comprehensive and detailed communal law was becoming the task of a smaller number of learned specialists, much as it was among the Muslim \textit{fuqahāʾ} (as well as the geonim).

Those Christian specialists, however, differed in the extent of their legal endeavors from their Muslim and Jewish counterparts. These differences were rooted in the particularities of their scriptural traditions and scholastic cultures. Regarding the former, the ʿAbbāsid-era East Syrians did not claim a received legal tradition nearly as comprehensive as that of the geonim, nor one rooted thoroughly in revelation like that of the \textit{fuqahāʾ}. The geonim already had a wide-ranging communal law that had been canonized by earlier generations in the Babylonian Talmud. The \textit{fuqahāʾ}, for their part, had the Quran. Though Quranic law is not nearly as extensive as Talmudic law, the text
does contain a relatively larger amount of legal material, at least for regulating family
life, than Christian scripture. ¹⁸⁵ This meant that Muslim fiqahāʾ were able to take a set of
divinely revealed rules as a starting point for the construction of Islamic law. ¹⁸⁶ And
though East Syrians could draw on the general teachings on marriage and sexuality of the
Gospels and Pauline epistles, as well as some standards from earlier synodal legislation,
patristic writings, and the seventh-century law books, they did not claim a basic corpus of
divinely revealed laws on the family comparable to those in the Quran. We might recall
here Īšōʾ bōktʾ’s statement, quoted in the previous chapter, that “It was in no way right for
our Lord… to set down laws concerning insignificant, human litigations.”¹⁸⁷

To briefly illustrate this difference, we can compare the law of marriage gifts in
the East Syrian and foundational Iraqi fiqh sources. In Islamic tradition, the guidelines for
the groom’s provision of a marriage portion (Arabic ṣadāq or mahr) for the bride,
construed by the jurists as an obligation entailed by the conclusion of a valid marriage
contract, are fairly well delineated in the Quran. ¹⁸⁸ If we take up the short section on

¹⁸⁵ Discounting most of the Mosaic law of the Old Testament, of course, which the East Syrians—
like most Christians by the Islamic period—drew on only selectively. See, for example,
Īšōʾ bōktʾ’s treatment of the question, “Why do we observe some of the things that are written in
the Law of Moses (nāmōsā d-Mōšē) and not others?” in §II.vii, SR 3: 44-50.
¹⁸⁶ We should note the caveat that there has been a strong current in scholarship seeing early fiqh
as arising out of Umayyad administrative practice and having only a secondary relationship to the
Quran; and whether or not one accepts this view, there is no doubt that the authoritative Islamic
oral/textual corpus was in a great amount of flux in the early ‘Abbāsid period. The classic
statement of this position is Joseph Schacht, The Origins of Muhammadan Jurisprudence
predominated in early fiqh, in the area of family law the Quranic guidelines—on marital
property, divorce proceedings, prohibited unions, the division of inheritances, etc.—remained the
basis on which jurisprudents built. See David S. Powers, Studies in Qurʾan and Ḥadīth: The
209.
¹⁸⁷ §I.x, SR 3: 16.
¹⁸⁸ Those guidelines are established in a number of verses as follows: men should give marriage
portions to the women they marry (Q 4:4, 24, 5:5); these become their property to keep even in
case of divorce (4:20). If a couple divorces before consummation, brides are due half of the
marriage portions in *al-Jāmiʿ al-ṣaghīr*, a foundational work of Ḥanafī jurisprudence attributed to Muḥammad ibn al-Ḥasan al-Shaybānī (d. 805),

we find no concern to reiterate the Quran’s basic points. Rather, Shaybānī’s text takes up a series of largely hypothetical problems related to the marriage gift in order to spin a wider body of legal doctrine out of the Quranic fundamentals. These problems include, for example, the stipulation of a service instead of cash or moveable goods; the stipulation of legally non-transferable goods (like wine or a slave who is actually free); and, pushing the logic of the last point even further, the stipulation of two marriage portions, one legally transferable and the other not.

If we turn to East Syrian laws on marriage gifts, the contrasts with the *fiqh* example are evident. First of all, neither Christian scripture nor the canonical legislation of the Roman Empire offers any rules on marriage portions or dowries comparable to the basics outlined by the Quran.

Rather, the laws pertaining to this subject emerge somewhat haphazardly in the East Syrian sources as bishop-jurists acknowledge and attempt to regulate practices that had been governed more typically by custom, imperial law, or other legal orders. As far as I have been able to see, the first ruling on marriage gifts in East Syrian tradition comes from the synod of Īšōʿyab I in 585, in which canon stipulated *mahr* or, if nothing was specified, some other amount (Q 2:236-37). See Susan A. Spectorsky, *Women in Classical Islamic Law: A Survey of the Sources* (Leiden: Brill, 2010), 30-31.

While certainly containing Shaybānī’s opinions, *al-Jāmiʿ al-ṣaghīr* was likely compiled and adapted by his disciples over a period of time; Shaybānī is not the work’s “author” in the modern sense of the word. See E. Chaumont, “al-Shaybānī, AbūʾAbd Allāh Muḥammad b. al-Ḥasan b. Farḳad,” *EI* 2: 392.


I leave aside here the Syro-Roman Law Book, which offers various interpretations of the Roman laws of marital gifts, but which the East Syrian ecclesiastics did not draw on for their law books and almost certainly did not consider normative or authoritative in practice. See again Kaufhold, “Römisch-byzantinisches Recht,” 155-56 and 163.
§24 deals with the question of whether a man or his heirs have any rights to his wife’s *pernīṯā*, the dowry given to the bride by her father.  

Marriage gifts given by groom to bride are first addressed in Ḥnānīšōʾ’s letters, and there the main concern is their disposition after the wife’s death. Timothy’s law book includes the most extensive treatment of the topic, but his rulings serve to lay out a basic law of marriage gifts, comparable to what his Muslim contemporaries could already find in the Quran, rather than to explore a series of increasingly hypothetical propositions as we find in Shaybānī.

As this brief comparison demonstrates, the East Syrian bishops had no received communal law comparable in breadth to that of the geonim; and their project was less the systematic development of a core body of scriptural rules, as it largely was for the *fuqahāʾ*, than the creation of a new set of norms based on Christian teachings and the institutions that the bishops, by virtue of their ecclesiastical authority, recognized and labeled legitimate. In addition to these distinctions in scriptural tradition, the scholastic and educational cultures of the geonim, *fuqahāʾ*, and East Syrian bishops differed markedly, and resulted in further differences in the character of the legal texts that they produced.

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192 Chabot, *Synodicon*, 157-58. There is one passing reference to *pernīṯā* in Mār Abāʾ’s earlier sixth-century treatise on kinship prohibitions, but in context it appears to mean little more than a marriage contract, and the text gives no rules on the institution; see *Eherecht*, SR 3: 280.
193 Ḥnānīšōʾ addresses marriage gifts given by grooms to brides in letters §§XI, XIII, XIV, XIX, XX, and XXIV; see SR 2: 20-28, 34-38, and 44-48. Interestingly, he does not use *mahrāʾ*, the standard term for such marriage gifts in the ‘Abbāsid-era law books and a cognate of Arabic *mahr* and Hebrew *mohar*; instead he uses *pernīṯā*, which is more typically used to denote the dowry given by father to daughter, or *rumyānā* (the latter only in §XXIV).
194 The law of the marriage portion that emerges from Timothy’s rulings is as follows: a bride’s *mahrāʾ* should be equal in value to her dowry, about 400 *dirham* (§62); it is her property (§61), and remains so if she remarries after her husband’s death (§§49, 50, 65, 86, 95); being her property, her heirs receive it at her death in case of intestate succession (§53), or she may will it to whomever she chooses (§§54, 69); she forfeits it to her husband if she commits adultery (§44); and if the marriage is dissolved before consummation because of one spouse’s death, the bride or her heirs receive none of it from the groom or his household (§73). See SR 2: 88-94, 98-106, 110, and 114.
produced. Regarding the East Syrian bishops, law does not appear to have been a core aspect of communal study in the network of East Syrian schools, which were prominent in ʿAbbāsid Iraq and Iran and had been instrumental in defining East Syrian doctrine and producing clerical elites schooled therein since Sasanian times. 195 Timothy and ʿĪsābānūn, exemplary ecclesiastics in this respect, both studied at East Syrian schools in northern Mesopotamia, where the curriculum likely covered the Psalms, the Old and New Testaments, the exegesis of Theodore of Mopsuestia, other patristic writings by the likes of John Chrysostom and the Cappadocian Fathers, and some amount of Aristotelian philosophy with its Syriac commentarial tradition. 196 But the study of law was, as far as we know, not a significant component of the East Syrian school movement.

This stands in contrast to the other scholastic cultures of ʿAbbāsid Iraq, in which law was much more of a “prestige” subject. The core of study in the geonic academies was Talmudic law. Early Muslim *fiqh*, for its part, was very much the product of an intellectual culture focused on the study of law as embedded in Quranic scripture, local Muslim customs, practices of the Prophet, caliphal administration, and the capacity of human reasoning. This culture emerged in the early eighth century in the form of study circles centered around individual teachers recognized for their piety and legal expertise. 197 The East Syrian law books, on the other hand, do not appear to have emerged from a culture of communal legal study; they are rather the products of a few jurist-bishops who worked independently in the field of law while keeping up the other intellectual pursuits – like exegesis and theology – more central to East Syrian scholastic culture.

195 The definitive study of East Syrian school culture is Becker, *Fear of God.*
As a result of this difference, the East Syrian law books are more “univocal” than the legal works of their non-Christian contemporaries. While the East Syrian works emerged partly out of a process of dialogue between high ecclesiastics and lower clergymen and lay people, they tend to offer only the definitive perspectives of the bishops who put their names to the texts. They certainly exhibit nothing like the disputational practices and multiplicity of opinions enshrined in the text of the Talmud.\footnote{\textsuperscript{198} For a helpful overview of Talmudic dialectics, see Jacob Neusner and Tamara Sonn, \textit{Comparing Religions through Law} (London: Routledge, 1999), 92-100.} Largely the same holds true in comparison to formative Iraqi \textit{fiqh}. The hypothetical problems surrounding the marriage portion in Shaybānī’s \textit{al-Jāmi’ al-ṣaghīr}, for example, constitute a similar inscription in text of the mode of communal, disputational legal study characteristic of Iraqi \textit{fiqh}, which one scholar has recently called the style of \textit{“raʾy debate.”} \textit{Raʾy} (which generally means “personal opinion”) denoted in the context of the Iraqi study circles the progressive exchange of propositions (theses) and counter-propositions (antitheses) that did not outline a comprehensive argument but rather probed the details of particular hypothetical situations through questions and assertions that were implicitly juxtaposed with the statements uttered by the opponent.\footnote{\textsuperscript{199} See the section on “The nature of Iraqi \textit{raʾy}” in Ahmed El Shamsy, “From Tradition to Law: The Origins and Early Development of the Shāfiʿī School of Law in Ninth-Century Egypt” (PhD dissertation, Harvard University, 2009), 14-24. Quotation on pp. 15-16.} For the Muslim jurists of early ʿAbbāsid Iraq, this dialogic, collective mode of legal study produced the many cases and opinions that make up the substance of the earliest \textit{fiqh} texts.\footnote{\textsuperscript{200} The stipulation of legally non-transferable goods as marriage portion in \textit{al-Jāmi’ al-ṣaghīr}, mentioned above, is a particularly apt illustration of the \textit{raʾy} method described by El Shamsy, and attests to the largely theoretical character of the enterprise. In the first iteration of the issue, the text poses the case of a man who stipulates as a marriage portion a purported slave who is in fact free, and whom the groom therefore cannot legally possess or transfer, and then gives the opinions of three major Ḥanafī authorities. Then, pushing back against their logic, the text offers}
largely case-specific rulings, they are much more the product of the singular voices of authoritative jurist-bishops – not of cultures of disputational study like those of Muslims and Rabbanite Jews.

In sum, the early ʿAbbāsid-period East Syrian law books indicate certain similarities between the bishops’ endeavors and those of contemporary Muslim and Jewish jurists, particularly in the fact that the law books represent the work of jurisprudential specialists (rather than general synods). They differ, however, in light of the fact that those Christian jurist-specialists did not produce their works out of a scholastic culture of communal legal study, law being a generally more marginal field in East Syrian tradition. And though early ʿAbbāsid-era East Syrian bishops, like their Muslim contemporaries, were engaged in developing a largely new, formative legal tradition, they did not have the same kind of core revealed law to use as its foundation. East Syrian law emerged more out of an amalgamation of Christian teachings, a few earlier legal sources, and the regulation of common social practices and institutions.

**Conclusions**

In this chapter, we have examined the East Syrian law books of the early ʿAbbāsid period with a view to elucidating the specific circumstances of their production and their relationship to the wider contexts of the caliphate’s legal cultures. If the bishops

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a second problem: a partially valid stipulation of two people as a marriage portion, one of whom is in fact free and the other a slave. The stipulation of a person who is not actually a slave as a marriage gift is possible, if unlikely, in the context of real social relations. But continuing that line of thought – “Fine, how about two people, one of them not actually a slave?” – reveals the dialogic, theoretical nature of the exercise, and its utility for expanding a body of legal doctrine and testing its coherence through new cases. See Shaybānī, al-Jāmiʿ al-ṣaghīr, 180-81.
were motivated to compose their law books by the need for a tradition of communal civil law that might keep lay people away from non-ecclesiastical judicial institutions, they did so through several different methods. The law books of Timothy and Ïšō’barnūn look to have been compiled from earlier sets of rulings decided by the patriarchs, at least some of which had been sent in response to the petitions of lower bishops and clergymen, as well as rules of a more general character. While many of those general rules have precedents in Christian tradition, the law books’ more case-specific rulings are most likely novel; and in any case the patriarchs almost never cite earlier authorities. Ïšō’bōkt’s law book is similar in certain respects, especially in that it is composed of series of individual rulings. In other ways, however, it is quite different from the law books of the patriarchs. It is much longer, deals much more extensively with commercial and procedural law, and is based in many areas on the practices of Fārs and older traditions of Sasanian jurisprudence. Ïšō’bōkt also composed his work for use by the bishops and clergy of his diocese of Fārs, while the patriarchal law books were theoretically applicable to the entire Church of the East.

How the law books were used in practice is another matter entirely. The texts themselves give us some indications that they were circulated among provincial bishops and clergy, and the ecclesiastics no doubt envisioned that their strictures should be applied in ecclesiastical courts. Exactly how the texts might have been used in adjudication, or how their rulings might have otherwise been disseminated, however, remains unclear. We will consider this issue further with regard to particular cases in the chapters that follow.
Finally, our structural analysis of the law books has allowed us to draw a few more conclusions concerning the place of East Syrian law in the emerging and thriving legal cultures of the caliphate. The legal works of the early ‘Abbāsid period were increasingly the product of specialist bishop-jurists; in a similar manner, individual, learned fiqhāʾ were the foci of Islamic legal-intellectual culture. In other respects, however, the East Syrians differed from their non-Christian contemporaries. Both the geonim and the fiqhāʾ’s scholarly traditions centered on the disputational study of law; in the East Syrian school movement, by contrast, legal study seems to have been fairly marginal. Because the East Syrian bishops were motivated more by a general need to assemble a communal law than a well-established tradition of legal study, their law books’ rulings are also often of a more basic, less explicitly hypothetical character than the discussions of family law we find in formative Iraqi fiqh texts.
Conclusions to Part I

In Part I, we examined the development of Middle Eastern Christian legal traditions from Roman and Sasanian times into the early ʿAbbāsid period. We also considered the socio-political context, scholarly culture, and pastoral activities that informed the production of the Syriac law books of Īšōʿbōkt, Timothy, and Īšōʿbarnūn in the late eighth and early ninth centuries. In Part II, we will take up the law books themselves in some detail in order to examine how the bishops sought to construct a distinctively East Syrian tradition of family law and to regulate the marital practices of lay people in accordance with Christian teachings and concerns. Throughout, we will also be concerned to take account of how the bishops’ efforts in this respect were spurred and informed by the social environments and intellectual disciplines of the Islamic world in which they worked. Defining Christian marriage meant reacting against, but also taking part in, major developments in the variegated world of the ʿAbbāsid Caliphate.
Chapter Three

Getting Hitched: The Theology and Practice of Creating the Marriage Bond

[Betrothal shall be enacted] through the mediation of a priest and deacon, or a bishop or metropolitan, [and] about three lay witnesses, as well as the gifting of the cross of our savior. Any betrothal of Christians that does not occur in such a way shall in no way be considered a betrothal. For in this manner our betrothal is distinguished from that of the pagans.

- The law book of Patriarch Timothy I²⁰¹

At its most basic level, marriage – as a social institution by which sexual contact between a woman and man is recognized as licit and their offspring as legitimate – was essentially common to all the legal cultures and religious communities of the ʿAbbāsid Middle East. This observation may appear facile, but it in fact leads to the central problematic that will animate us throughout this chapter. If the early ʿAbbāsid East Syrian bishops sought to inculcate Christian distinctiveness in lay marital practice, how were they to do so when the institution itself was hardly one limited to any particular religious community? This chapter will investigate this problem in two broad areas. The first is the theology and conception of marriage as articulated in East Syrian legal and other intellectual traditions. The second concerns the social practices, rituals, and mechanisms that brought the legal state of marriage into effect – and how they served to mediate the high clergy’s notions of Christian difference to lay people.

²⁰¹ §28, MS Mount Sinai Syriac 82, folio 68b.
Theologies and Conceptions

The law books of Īšō’ bōkt, Timothy, and Īšō’ barnūn that form the basis of this study are in general starkly legal in language and presentation. That is, excluding the discursive style of their introductions, the bishops’ judicial decisions are very much that in form: judicial decisions. Rarely do they give theological or other traditional explanations for their rulings or, as we have seen, cite proof texts from authoritative Christian scripture; rather, they tend to spell out a ruling and move on. For this reason, the ideal conceptions of a properly ordered marriage – not to mention any broader theological implications of the fact that believers structure their social lives through that institution – are highlighted much less frequently in the texts. Such idealized understandings constitute instead the implicit context against which the bishops make their explicit, regulatory statements.

In this section, we will be concerned with outlining this context by examining both the East Syrians’ received theological traditions and relevant passages in the law books themselves. Only an outline will be our goal, both because the subject is vast and because other works have already provided overarching surveys of the major sources and specific topics in this area. These works, however, tend to be less concerned with developments in doctrine at particular historical moments, and so it remains worthwhile here to outline the main themes as presented by the ‘Abbāsid-era bishops in relation to the views of their predecessors. By the end of this section, we will have a working idea

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202 The exception is the longer “essays” of Īšo’ bokt’s second treatise.
203 See in this regard especially Louis Edakalathur, *The Theology of Marriage in the East Syrian Tradition* (Rome: Mar Thoma Yogan, 1994), which gives a broad overview of the topic but does not consider the question of when or how particular doctrines emerged historically. See also
of how the East Syrian ecclesiastical elites of the early ʿAbbāsid Caliphate conceived of marriage as an institution in the social life of believing communities, and what its relationship to right belief was.

*The Ascetic Heritage*

It is important to note first that the ʿAbbāsid-era bishops were the heirs of a tradition that, like essentially all Christian ones but unlike the major strands of Islam, Judaism, and Zoroastrianism current in the ʿAbbāsid Middle East, exhibited ambivalent views toward human sexuality and its practice in the institution of marriage, and valued celibacy and sexual asceticism as more pious modes of living. Much ink has been spilled on the origins and development of what were to become these widespread Christian attitudes toward the relationship between sexuality, human beings, and God. For our purposes it is enough to note that by the ʿAbbāsid period ascetic piety was a firmly entrenched tradition of Syriac Christianities. A host of institutions and traditions contributed to and exemplify this trend: Paul’s teachings in 1 Corinthians 7, broadly construed as valuing celibacy and virginity over married life; later interpretations thereof by the Greek and Syriac Church Fathers and monastic writers; the early Syriac Christian institution of consecrated lay celibates, the *bnay* and *bnāt qwāmā* or “sons and daughters


of the covenant”; and cenobitic monasticism, generally thriving among the East and West Syrians in the ‘Abbāsid period.205

The converse of the important place allotted to sexual asceticism is that extensive discussions of the theological, moral, and ecclesiological significance of sexually active lay marriage figure less prominently in Syriac Christian literatures. The earliest Syriac fathers, for example, tended to devote attention to worldly marriage mainly in the context of defending it against the more radically ascetic Christian movements of late antiquity that rejected human sexuality altogether. Both Ephrem and Aphrahat, for example, affirm the lawfulness of marriage, but routinely assert that continence is a fundamentally superior way of life. Beyond this basic defense, they say relatively little about the topic given the volume of their writings.206

**Biblical Injunctions and the Language of Marriage**

Nonetheless, the Syriac Christian traditions of which the ‘Abbāsid-era bishops were custodians recognized and upheld a variety of biblical and patristic teachings on the place of human marriage, sexuality, and reproduction in the order of God’s creation. Here, let us consider a few of the more important teachings and how they shape and permeate the language of the Syriac legal sources.

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Among the most fundamental Old Testament verses concerning marriage are God’s command to “be fruitful and multiply” (Genesis 1:28), the creation of Eve as a “helper” for Adam (2:18), and the affirmation that “Because of this, man shall leave his father and mother and cleave to his wife, and the two of them shall be one flesh” (2:24). These verses are significant, of course, in that they present the activity of sexual reproduction as a divine command and marriage as a divinely established institution. In this respect, Genesis 2:24 becomes especially fundamental to the bishops’ conception of marriage and resonates in the background of much Syriac Christian marriage law. First of all, words derived from the Syriac root *n-q-p* of the verb “cleave” (*neqqep*) are used often, in the law books and elsewhere in Syriac literature, with the general sense of “to marry.” So, for example, Timothy’s ruling §74 asks whether a Christian woman abandoned by her non-Christian husband “may cleave (*tetnqep*) to another man or not,” and Īšō’barnūn’s ruling §4 asserts that if two unmarried persons fornicate, “thereafter they should cleave (*netneqpôn*) to each other lawfully.” These usages evoke the language of the biblical text; for an audience aware of the referent, the bishops’ very terminology alludes to the enjoinment of marriage by scripture and, therefore, the legitimacy of the institution.

Second, the notion expressed in Genesis 2:24 that man and wife become in some sense “one flesh” (Syriac *ḥad bsar*) is foundational to East and West Syrian (and other Christian) thinking on the nature of the marriage bond, particularly as that notion is presented in the Gospels and Pauline epistles. The key Gospel verses that concern Jesus’

207 On this notion see Edakalathur, *Theology*, 167.
208 *SR* 2: 106 and 120. Other examples include but are not limited to Timothy §35 and §72. Īšō’bōkt §II.ix quotes Genesis 2:24 in its entirety as a proof text enjoining monogamy. See *SR* 2: 84 and 104-106 and 3: 52-54.
teachings against divorce take the “one flesh” principle as their cue: “So they are no
longer two, but one body/flesh (Matthew ḫad ḫad pgar/Mark ḫad ḫad bsar). Therefore what God
has joined together, let no one separate” (Matthew 19:6 and Mark 10:8-9). There is of
course a long history of exegesis and interpretation between the Gospels and the East
Syrian law books, but suffice it to say that this tradition structures the East Syrian
bishops’ understanding of marriage in a fundamental way: through marriage (and/or
sexual intercourse) a man and woman become one flesh in some literal sense, as stated by
God and Christ, and therefore the marriage bond can be dissolved only in very limited
and specific circumstances. 209 In the law books, this conception is manifested in the
bishops’ general prohibition of divorce (treated in detail in chapter six) as well as in a
variety of allusions to two spouses as “one flesh” (ḥad besrā) or “one body” (ḥad
pgar). 210

The conception of the marriage bond as fundamentally indissoluble is also
apparent in the biblically inflected terminology for divorce that the bishops employ. This
terminology derives from three main Syriac roots, š-r-y, š-b-q, and p-r-š, 211 and is found
in the New Testament context of Jesus’ teachings against divorce. The root š-r-y connotes
“dissolving” the marriage bond or “unbinding” a spouse from marriage. The Peshiṭta of
Deuteronomy 24:1, which lays out the Old Testament procedure for divorce, reads: “If a
man marries a woman and lies with her: if he finds no love for her because he finds in her
some reprehensible thing, he shall write her a deed of divorce, give it to her, and loose

209 On the indissolubility of the marriage bond generally see Edakalathur, Theology, 192-97. See
chapter six for an extended examination of the treatment of divorce in East Syrian tradition.
210 See, e.g., Timothy §46 and §61, Īšō’ barnūn §17 and §43, and Īšō’ bōkt §II.ix and §IV.i.2. SR 2:
90, 98-100, 122-24, and 134 and 3: 52-54 and 94.
211 For a few representative examples, see the use of š-r-y and p-r-š in Timothy §36 and š-b-q in
§41 (SR 2: 84-88).
her (*nešrēy̱h*).” When this root occurs in the Gospels, however, it has acquired the negative valence that would come to be associated with divorce in Christian tradition: “anyone who lets loose (*šārē*) his wife other than for the cause of adultery causes her to commit adultery” (Matthew 5:32) and “anyone who looses (*nešrē*) his wife and takes another commits adultery” (Mark 10:11). *Š*-b-*q*, the second root used by the bishops, carries associations of “leaving aside.” It features also in the Deutoronomical “deed of divorce” (*ktābā d-šubqānā*), but in the Gospels it is again associated with the fundamental immorality of dissolving a marriage bond: “Whoever leaves (*šābeq*) his wife without [the cause of] adultery and takes another commits adultery” (Matthew 19:9). Finally, *p*-r-*š* connotes “separating” or “rending apart,” and occurs in Jesus’ affirmation, “what God has joined together, let no one separate (*nparreš*).” All told, then, the very terminology that the bishops employ in the law books to speak about divorce alludes to the scriptural text and the negative moral and theological value attached to that act. By virtue of these terms’ intertextual relationship to scripture, the language of the law books’ rulings evokes the negative associations of divorce in Christian tradition even when they do not elaborate those concepts further.

**Ecclesiology and the Language of Marriage**

The East Syrian bishops’ conception of the nature of the marriage bond was thus rooted in part in biblical teachings (as well as long traditions of interpretation thereof); and even though the legal sources do not always make these notions explicit, they have left their mark in the bishops’ biblically inflected legal language. The language of
marriage, however, also involves an entire realm of theological valences arising from the array of images, ancient and deeply rooted in Syriac Christian tradition, that depict Christ in a marital relationship with the body of Christian believers.\textsuperscript{212} From a range of key Gospel verses in which Jesus speaks of himself as a bridegroom,\textsuperscript{213} as well as the analogies of Christ and Church to husband and wife drawn by Ephesians 5:22-33,\textsuperscript{214} Syriac and other Christian traditions constructed evocative ecclesiological understandings of the Church or body of believers, imagined as bride, as looking forward to union with Christ, the groom, in the next world. Given their roots in the New Testament text, it is not surprising to find theological conceptions and language of this kind already in the works of Aphrahat and Ephrem, as well as other early Christian Syriac texts like the \textit{Odes of Solomon} and the \textit{Acts of Judas Thomas}.\textsuperscript{215}

A broad theological and ecclesiological dimension had thus been associated with the institution of marriage in Syriac Christian tradition since well before the ʿAbbāsid period. Especially notable in light of this fact, however, is how few theological implications for the practice of lay marriage the Syriac writers of late antiquity and early Islam tend to draw from the grander ecclesiological vision. Robert Murray has noted that we find in the early Syriac fathers Aphrahat and Ephrem no clear sacramental understanding of marriage, nor one that ties the institution to ecclesiology;\textsuperscript{216} where Aphrahat and Ephrem do discuss worldly marriage (as opposed to union with Christ),

\begin{footnotesize}
\begin{enumerate}
\item For the seminal study of these images in early Syriac Christian tradition see Murray, \textit{Symbols}, 131-42. See also Edakalathur, \textit{Theology}, 176-82.
\item 2 Corinthians 11:2 similarly compares Christ and the community of Corinth to groom and bride.
\item See again Murray, \textit{Symbols}, 131-42. See also Koltun-Fromm, \textit{Hermeneutics}, 108.
\item Murray, \textit{Symbols}, 154-55.
\end{enumerate}
\end{footnotesize}
they generally affirm the superiority of virginity and sexual asceticism and leave it at
that. As far as I have been able to determine, a similar lack of emphasis obtains as well
for the early ʿAbbāsid-period East Syrian bishops and their received textual tradition.
When the legal sources, as well as exhortative works like Mār Abāʾs treatise on
prohibited unions, address worldly marriage in conceptual terms they simply do not relate
it to the union of Christ and Church. Nor do they refer to it as a rāzā, a typological
“mystery” of divine union like baptism and the Eucharist which in Syriac usage becomes
analogous in many respects to the sacraments of Latin and Byzantine Christianity.

If such sacramental notions of marriage do not figure prominently in the East
Syrian legal sources, we should still note one aspect in which their language points
implicitly to the ecclesiological dimension of marriage (in much the same manner that it
evokes the biblical text) despite the absence of explicit invocations. This is most
singularly apparent in one of the bishops’ most frequently employed terms for “marital
union,” šawtāpūtā, which in another standard usage denotes receiving the Eucharist;
šawtāpūtā, in other words, connotes both marital union between man and woman and
communion of the believer with Christ. Additionally, the bishops often use meštūtā

217 See for example one of Aphrahat’s exceedingly few discussions of worldly marriage in his
eighteenth Demonstration: The Demonstrations of Aphrahat, the Persian Sage, tr. Adam Lehto
(Piscataway, New Jersey: Gorgias Press, 2010), 404. For Ephrem see his dispute hymns between
marriage and virginity (preserved in Armenian): Edward G. Mathews, Jr., “Armenian Hymn IX,
On Marriage by Saint Ephrem the Syrian,” Journal of the Society for Armenian Studies 9 (1996-
97): 55-63; and idem, “Saint Ephrem the Syrian Armenian Dispute Hymns between Virginity and
218 The lone and partial exception I have identified is found in canon §13 of the synod of Īšōʾ yahb
I (585), which evokes the comparison of Christ to Church as husband to wife in Ephesians 5:23.
This occurs, however, in the context of a defense of monogamy (Christ and husband are the
“head” of Church and wife, respectively, and a head can have only one body); otherwise, the text
explicates no direct typological connection between worldly marriage and ecclesiological union.
219 On the close connections between baptism and marriage, especially insofar as baptism enacts a
kind of union of the believer with Christ, see Murray, Symbols, 140-41 and 342-43.
and ḥlūlā, which occur frequently in theological writings as “the heavenly wedding banquet” between Christ and the faithful, for the banquet that seals worldly marriage.\footnote{Īšōʿbarnūn’s law book uses mešūṭā frequently. See, e.g., §§21, 46, 59, and 102, SR 2: 124, 136, 142, and 162. Timothy employs ḥlūlā in §30, SR 2: 76-78.} In other respects, however, the languages of ecclesiological and worldly marriage are more distinct. The terms for “bride” and “bridegroom,” kalltā and ḥatnā, that are used frequently in theological writings with reference to Christ and his bride occur barely at all in the legal texts, which employ mkērā and mkērtā almost exclusively to refer to the male and female betrothed.\footnote{On the distinction between these terms see Murray, Symbols, 132.} Additionally, an extremely frequent and evocative image in Syriac theology and liturgy is the gnōnā or “bridal chamber” in which Christ the bridegroom will receive his beloved;\footnote{See Sebastian P. Brock, “The Bridal Chamber of Light: A Distinctive Feature of the Syriac Liturgical Tradition,” The Harp 18 (2005): 179-91.} like kalltā and ḥatnā this term makes almost no appearance in the legal sources in reference to worldly marriage. In sum, there are a few respects in which Syriac terminology for worldly marriage might evoke ecclesiological interpretations for the attuned audience; in others, however, the fact that the bishops tend not to emphasize interpretive connections between worldly and ecclesiological marriage is evident in the fact that they also tend to employ distinct sets of terms for the two concepts.

Outside of the legal sources, it remains possible that the ecclesiological import of marriage was formulated much more explicitly in the ‘Abbāsid-era bishops’ contemporary liturgical tradition. The East Syrian liturgy for betrothal and wedding ceremonies in its later form is full of Church-as-bride imagery.\footnote{Syriac liturgies remain largely understudied, but the few studies of the East Syrian betrothal and marriage liturgies demonstrate the prominence of ecclesiological marriage imagery. See}
earlier liturgies, however, is hugely limited by a lack of manuscript witnesses, and we
cannot assume the antiquity of the later tradition’s content. The earliest evidence we do
have is an anonymous liturgical commentary dated to the seventh to ninth century. Its
section on the betrothal ritual “give[s] an allegorical typological account” (nrazzez) of
each stage in an individual man’s life in relation to an episode of the biblical narrative
(the beginnings of school study, for example, are equated to Abraham’s venturing out to
the Promised Land); and in this scheme, the commentator “allegorize[s] betrothal to a
woman [as] the coming of our Lord to the world” (mkuryā d-a[n]ttā mētīēh d-māran da-
l-ʿālmā mrazzīnan). He goes on to say that humanity receives salvation from Christ
“through betrothal” (ba-mkuryā) and entry into the kingdom of heaven “as a pledge to
marry” (rahbōnāʾīt), and compares humanity awaiting the fulfillment of this pledge to a

groom and bride waiting to consummate their marriage until after the banquet. The
commentary thus clearly analogizes worldly marriage to the salvation narrative of the
encounter of humanity with Christ. But the date of its composition remains indeterminate
(the commentary on the marriage liturgy also appears to be an addendum to the original
text, though possibly by the same author), and its conceptual emphases remain
noticeably absent from other East Syrian writings on worldly marriage.

Jeanne-Ghislaine Van Overstraeten, “Les liturgies nuptiales des églises de langue syriaque et le
224 Thomas Carlson (to whom I am indebted for this point) has assembled a working list of extant
East Syrian liturgical manuscripts; the earliest appear to date from only the thirteenth or
fourteenth centuries. Kaufhold points out that the earliest attestations of liturgical formulas for
betrothal and marriage ceremonies date from later than any of the major East Syrian legal
sources; see Rechtssammlung, 79.
225 See R. H. Connolly, ed. and tr., Anonymi auctoris expositio officiorum ecclesiae Georgio
Arbelensi vulgo adscripta, CSCO Scriptores Syri 2.91 and 92 (Rome: Karolus de Luigi, 1911-15),
vol. 2 (text): 157. For a brief introduction to the work see Sebastian P. Brock, “The Baptismal
From the perspective of western Christian traditions, it may seem surprising that Syriac Christian texts up to the ʿAbbāsid period dwell relatively little on the theological implications of worldly marriage, given that images of “ecclesiological marriage” are so firmly rooted in that tradition. But lest we presume that this should have been a “natural” development, we might remember that Latin Christian thinkers, for their part, did not develop a systematic sacramental theology of marriage until the High Middle Ages.²²⁷ And by a similar token, East Syrian tradition in later centuries would come to put much more emphasis on the relationship of worldly marriage to theological and ecclesiological conceptions. We have already noted that the betrothal and marriage liturgies, perhaps by a relatively early date, included much Church-as-bride imagery. By the late thirteenth century, ʿAbdīšō bar Brīkā’s legal texts explicitly invoked the union of Christ with Church in his discussion of worldly marriage, while the early fourteenth-century catholicos Timothy II included betrothal in his list of the seven “mysteries” (rāzē).²²⁸ East Syrian thinkers thus came eventually to conceive of worldly lay marriage with a greater emphasis on its ecclesiological dimensions. In earlier periods these notions were no doubt part of the thought-world of Syriac ecclesiasts; but as far as the sources allow us to see,

²²⁷ On the emergence of a systematic doctrine of sacramental marriage in the first half of the twelfth century, see Georges Duby, The Knight, the Lady, and the Priest: The Making of Modern Marriage in Medieval France, tr. Barbara Bray (New York: Pantheon Books, 1983), 177-85. In the words of another scholar, “Theological writers in the period between 600 and 900 were in the process of elaborating, slowly and haltingly, a sacramental theology. But none of the authorities of the age was prepared to see in marital activities any visible signs of operative sacramental grace.” James A. Brundage, Law, Sex, and Christian Society in Medieval Europe (Chicago: The University of Chicago Press, 1987), 140.
²²⁸ See §2 in ʿAbdīšō bar Brīkā’s Nomocanon, published as Collectio canonum synodorum, ed. A. Mai, Scriptorum Veterum Nova Collectio 10 (Rome: Typis Collegii Urbani, 1838), 210-11. Timothy II’s work on the mysteries remains unpublished; for discussion of his inclusion of betrothal see Kaufhold, Rechtssammlung, 79. See de Vries, Sakramententheologie, 253-54 for a general treatment of church-as-bride imagery in East Syrian sources in relation to worldly marriage. De Vries tends to assume that some kind of sacramental theology of worldly marriage had been present throughout the tradition.
the ʿAbbāsid-era East Syrian bishops tended not to present the ecclesiological connection as a central rationale for marriage as a social institution.

Marriage as Rationalization of Procreation

To this point, we have discussed principally what the East Syrian sources either imply or do not mention about the bishops’ conception of marriage. What, then, do the sources actually say on the topic, especially since they underplay the ecclesiological dimension? Although theologies of marriage do not figure centrally in the East Syrian law books, we do find a concisely stated imagining of the institution in ʿĪšōʾbarnūn’s introduction. As we will see, this passage represents a fairly common tradition in Syriac Christianity on the place of marriage in God’s plan for humanity, and it constitutes the basic conception of the institution that East Syrian bishops espoused most explicitly.

ʿĪšōʾbarnūn’s passage begins with a brief overview of the order given by God to created beings, from the ranks of the angels to humans to non-rational animals. The fundamental difference between the higher rational beings and humans, according to ʿĪšōʾbarnūn, is that God created the former while freeing them from [the necessity of] generational procreation (yubbālā da-b-ʿidā b-ʿidā) and from other sexual things (ḥrēnāyātā naqqīpātā). He made the composite beings (mrakkbē),229 the human race, however, in need of procreation through [physical] activity (yubbālā da-b-tešmeštā). And He willed that this would be ordered purely, practiced in a holy way, and done rationally (netṭakkas dakyāʾīt w-nešmeš qaddišāʾīt wa-d-nestʾar mīlāʾīt), and that it would not

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229 The notion of human beings as “composite” entities made up of different parts (as opposed to the simple and indivisible substance of God) has its origins in the Neoplatonic-Aristotelian heritage; for a discussion see Becker, *Fear of God*, 134-36. We should note that this passage, however, appears to be contrasting composite humans with presumably more simple angelic beings rather than with God.
resemble [the procreation] of the beast[s] and non-rational animals (ḥayywātā lā milītātā), because we are discerning and rational (pārōšē wa-mīlē).230

In other words, Īšō’barnūn tells us in this passage that human nature is distinguished from that of higher creatures, like angels, because we reproduce and perpetuate our species through sex. This characteristic we share with animals; but we are distinguished from them in that we possess the faculty of rational thought (a trait we share with the higher beings). Because we are rational beings, God intended that we engage in procreation in an ordered manner distinct from the unthinking and random mating of animals. And though Īšō’barnūn does not name marriage specifically, it is clear that he considers it the institution through which this ordering is accomplished. Marriage, in sum, is the institutionalized, rational ordering of sexuality for procreative purposes that distinguishes humans from non-rational animals.

This fairly pithy formulation of the purposes of marriage as an institution of human social life is, unsurprisingly, no new invention of Īšō’barnūn’s in the ninth century. Rather, the constituent elements of this conception look to have been transmitted in many areas of late antique Christian literature, and its genealogy involves the kind of mix of Neoplatonic-Aristotelian, Stoic, and biblical thought so characteristic of late antique Christian intellectual traditions. The notion that sexual desire is among the “animal appetites” that the rational faculty of the human soul must rein in was something of a commonplace of the Aristotelian heritage of late antique intellectual culture.231 The Stoics – whom Will Deming has shown to have exerted great influence on Paul and later Christian thinkers – maintained that procreation, and not pleasure or anything else, was

230 See SR 2: 120 and Sauget, “Décisions canoniques,” facsimile folio 1 for the text.
the divinely and naturally prescribed purpose of marriage and human sexuality.\textsuperscript{232}

Though I am no expert on patristic literature, Clement of Alexandria’s (d. 215) text the Paedagogus appears to have been one of the earliest Christian works to draw on these strands and outline a conception of marriage of which Īšō’barnūn’s text represents a later iteration. The Paedagogus is a treatise addressed to Christians on the proper methods of regulating the body.\textsuperscript{233} In its discussion of sex and marriage, Clement acknowledges, with reference to the biblical command to “be fruitful and multiply,” that human sexuality and procreation have been instituted by God. However, he adapts this injunction to Stoic thought and the Pauline teachings of 1 Corinthians 7 in affirming that the only “purpose of intercourse is to produce children… For mere pleasure, even when pursued in marriage, is illicit, improper, and irrational.”\textsuperscript{234} Marriage is the institution in which sexuality is properly and rationally put to use: “marriage is the desire for procreation, but it is not the random, illicit, or irrational scattering of seed.”\textsuperscript{235} Elsewhere, he affirms that humans who engage in non-procreative sex “show less restraint than the irrational beasts.”\textsuperscript{236} For Clement, “a well-ordered sexuality was not, in itself, a ‘bestial’ act”;\textsuperscript{237} but extra-marital and non-procreative sex was irrational and therefore animal-like.

\begin{footnotesize}
\begin{enumerate}
\item See Deming, \textit{Paul on Marriage and Celibacy}, 48-57 for an overview of the Stoic understanding of marriage and pp. 96-102 on Stoic trends in early Christian writers. Deming’s work as a whole argues for a strongly Stoic background to Paul’s influential discussion of marriage in 1 Corinthians 7.
\item For an overview and interpretation of Clement on sexuality, see Brown, \textit{Body and Society}, 122-39.
\item Miller, \textit{Women in Early Christianity}, 260.
\item Miller, \textit{Women in Early Christianity}, 262. This quotation comes from Clement’s \textit{Stromata} (Miscellanies).
\item Brown, \textit{Body and Society}, 133.
\end{enumerate}
\end{footnotesize}
Elements of this conceptual outline of sexuality and marriage – that they are divinely instituted but must be rationally controlled for the express purpose of procreation, in distinction to animals – continue to take a prominent place throughout late antique Christian literatures after Clement. The emphasis on intercourse only for procreation is perhaps best known to a wider audience from Augustine and other Latin writers,\(^238\) but we can adduce a variety of examples from both West and East Syrian literatures as well. In the second half of the fifth century, a dispute within the Church of the East over clerical celibacy was resolved by an agreement that Christians should either remain celibate or take part in “lawful union ornamented with the chasteness of child-bearing (nakpūtā d-mawlādā da-bnayā); marriage, in other words, was permissible but should be practiced in proper fashion expressly for reproduction.\(^239\) In one of Jacob of Serugh’s (d. 521) verse homilies, entitled On Virginity, Fornication, and the Marriage of the Righteous (ʿal btūltū w-zānyūtā w-zuwwāgā d-kēnē), we find the characteristic association of sexuality outside the framework of procreative marriage with subhuman, non-rational animals:

Anyone who remains in virginity is of the spiritual ones,
and anyone who walks the path of the righteous [i.e., the married] is of the holy ones;
but anyone who descends to fornication is of the animals.

Of the one [human] race there are three classes of humans.
Among them are those who walk in virginity with the spiritual ones,
in the path higher than worldly ways.
Others take the path of the righteous with marriage,


\(^{239}\) Chabot, *Synodicon*, 58. This passage comes from canon §3 of the catholicos Aqāq’s synod of 485. This synod was convened in an effort by the East Syrian hierarchy to achieve a degree of institutional regulation over ascetic practice by enjoining either reproductive marriage or full celibacy for all clergymen. Scholarship remains divided over whether the “anti-ascetic” accommodation of clerical marriage was the result of Zoroastrian influence. See Payne, “Christianity and Iranian Society,” 156, note 400.
the path pure of blame and censure. Others descend to fornication, the wicked life, and resemble beasts and animals.\textsuperscript{240}

We also find examples of concise prose formulations like Īšō’barnūn’s in several earlier works. The earliest attestation in East Syrian literature of which I am aware is from the third synodal letter of Mār Abā. In it, the catholicos tells us that

God established [marriage] (sāmēh) for the admirable administration of the condition of our nature and the procreation of our generations (yubbālā d-šarbātan), not in the likeness of beast[s] lacking discernment (law ba-dmūt b ’īrā d-lā puršānā), but in an order that suits rational beings (b-ṭakksā d- ’āhen la-mlīlē) and the bond of love of the pure and lawful union of man with his wife...\textsuperscript{241}

Here we find the core elements – marriage as the ordered facilitator of the procreation of rational humans, as opposed to non-rational animals – of the understanding of marriage laid out by Clement of Alexandria and espoused later by Īšō’barnūn (and one wonders if there is some significance to the fact that Mār Abā, who knew Greek and traveled in the Roman Empire, is the first East Syrian writer to give us this complete formulation).\textsuperscript{242} As a final example of this tradition’s broad diffusion in ecclesiastical circles, let us take a passage from a letter of a mid-seventh century West Syrian bishop named Yōnān:

God, our Creator, He who brought all of nature into being, both ordered it (ṭakksēh) and gave it power for the reproduction of the race (yubbālā d-gensā) and the procreation of children (mapryānūtā da-bnāyā), but not for foul pleasure or shameless madness (ḥanya ’ūtā škīrtā w-paqrūtā da-ṣrīḥūtā).\textsuperscript{243}

Though Yōnān does not mention the contrast with non-rational animals, this passage again promotes the theme of sexuality ordered through marriage for the purpose of procreation.

\textsuperscript{241} Chabot, \textit{Synodicon}, 82.
\textsuperscript{242} On Mār Abā’s studies and travels see Becker, \textit{Fear of God}, 36-38.
\textsuperscript{243} Eggartā d-hasyā Mār(y) Yōnān epispqā lwāt Tε’odorā sā ḍrā (Letter of the Reverend Bishop Mār Yōnān to the Periodeutes Theodore), MS Cambridge Additional 2023, folio 254b.
In sum, though the early ‘Abbāsid-period Syriac legal works tend not to speak at
great or explicit length of the theological significance of marriage, when they do they
offer a tradition common to many corners of the late antique Christian heritage.

According to this conception, marriage is an institution established by God so as to order
human sexuality toward the end of procreation, in a manner befitting rational beings and
antithetical to the unthinking exercise of sexuality by animals. The various iterations of
this conception adduced from Syriac literature show it to have been diffused widely in
ecclesiastical circles. It thus appears to have been a commonly accepted explanation of
the importance of marriage, active sexuality, and reproduction in Syriac Christian
intellectual and institutional cultures that otherwise placed a higher value on celibacy and
sexual asceticism.

**Summary**

In this section we have been concerned with outlining the basic conceptions of the
purposes and significance of worldly marriage that the East Syrian bishops of the
‘Abbāsid period espoused. In general, Syriac Christian tradition valued celibacy and
sexual asceticism as higher modes of living than married life. Marriage and sex, however,
were still certainly permissible, established as they were by God for the propagation of
the human species. This was an interpretation that drew from various strands of
philosophical thought and was passed on by a variety of Christian thinkers of antiquity.
Additionally, East Syrian bishops emphasized, in light of Old Testament, Gospel, and
Pauline teachings, that the marriage bond entailed the union of spouses in a single flesh
and was therefore fundamentally indissoluble for all but a few select reasons. Finally, marriage in Syriac Christian thought included as well an entire theological dimension that conceived the union of Christ and Church in the next world in terms of marriage. Though East Syrians in the ʿAbbāsid period no doubt made these connections and thought of worldly marriage as symbolic of ecclesiological union in some sense, it is not until later centuries that the sources emphasize the theological effects of and rationales for human marriage.

Institutions and Practices

In the foregoing we examined how East Syrian bishops understood marriage as an institution in the larger scheme of God’s order for the world. In this section, we will examine the basic legal mechanisms that bring the bond of marriage into effect according to the Syriac law books. To take away will be two main points. First, many of the legal instruments that the bishops present as part of their Christian tradition represent iterations of common regional practices and institutions that the bishops have adopted as part of East Syrian communal law. Second, it is by virtue of including and regulating these practices in self-consciously Christian terms that the bishops seek to carve a notion of “Christian marriage” out of this broader field of regional legal cultures.
If marriage is invested with both implicit and explicit theological import in the Syriac law books of the early ʿAbbāsid period, the bishops also had to consider the institution’s more mundane, practical workings. Evident first of all in this regard is that the bishops hold a general idea about the formation of marriage bonds akin to what legal historians have called the principle of “inchoate” marriage. In systems of inchoate marriage (which as we will see were common to many of the other legal cultures of the Middle East), bringing the marriage bond into effect involves two stages. The first is the contracting of a betrothal. Rather than a mere promise to marry at some future time, however, this betrothal initiates a legal union in which most of the rights and duties of husband and wife obtain. The marriage is then finalized at some later point by the beginning of cohabitation and consummation, which in fact might not occur until a substantial period after the conclusion of the original betrothal agreement.  

The East Syrian law books offer a schema exemplary of the idea of inchoate marriage with the two stages of mkīrūtā or mkūrē, “betrothal,” and šawtāpūtā (or sometimes zuwwāgā), “full union.” As we would expect, mkīrūtā does not denote simply a pledge, but rather the

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245 See for examples Timothy §§29-31, 34, and 41 andĪsōʾbōkt §§III.i.1, III.ii.1, and III.ix. *SR* 2: 74-84, 88, and *SR* 3: 74, 78, and 84. Numerous studies have noted the inchoate nature of marriage as presented in the East Syrian law books, including de Vries, *Sakramententheologie*, 257-58; Jean Dauvillier and Carlo de Clercq, *Le mariage en droit canonique orientale* (Paris: Recueil Sirey, 1936), 49-50 (which argues that East Syrian inchoate marriage derives directly from Jewish tradition); Kaufhold, *Rechtssammlung*, 71; and Selb, “Christianisierung,” 4-6 (for the West Syrians).
coming into effect of a legal relationship entailing particular rights and obligations. For example, the ʿAbbāsid-period law books include numerous rulings in which a “betrothal” is nearly as indissoluble as a full marriage and which impose strict penalties for breaking it.\footnote{The following are examples of ways in which betrothal constitutes a legal relationship nearly as binding as full marriage: in Īšōʾbōkt §III.ix, if a woman is betrothed to a man who is absent in a distant land she may not end the betrothal at her discretion, but has to remain in it for three years. Timothy §41 maintains that a betrothal can only be dissolved if one of the spouses commits adultery (zānyūṭā), the same limited grounds as for marital divorce. Īšōʾbarnūn §23 asserts that a man cannot marry his deceased betrothed’s sister, which implies that affine kin relationships are established already with betrothal and before the finalization of the marital union. SR 2: 88 and 126 and 3: 84.}

Betrothal is thus the key moment at which the legal status of marriage takes initial effect in the system of inchoate marriage that the bishops present in their law books. The bishops also quite clearly conceive of betrothal and the initiation of the marriage bond as, in some sense, a contractual agreement between parties. In the East Syrian sources this contractual understanding of the institution is first made explicit in canon §13 of George I’s synod of 676, which refers to the necessity of “a contract of the betrothed ones” (\textit{tanway da-mkīrē w-da-mkīrātā}) in the forming of a marriage bond.\footnote{See Chabot, \textit{Synodicon}, 223.} Īšōʾbōkt’s law book includes many references to marriage contracts between spouses (using, again, \textit{tanway}); we find in Timothy’s law book another offhand reference to one.\footnote{Īšōbōkt §§III.i.1, III.i.7, III.i.9, III.i.1, IV.i.5.a, and IV.i.15 in \textit{SR} 3: 74-78, 100, and 108; and Timothy §29, \textit{SR} 2: 74-76.} None of the law books include focused discussions of the contract itself; but this fact, in addition to the many side references to the institution, indicates the degree to which the bishops took the contractual nature of the marriage bond for granted.

The lack of detailed discussions of the marriage contract, however, leaves certain matters unclear. First of all, the law books do not specify whether by marriage contracts
they mean ones set in writing. The Syriac term that the bishops use for the betrothal contract, *tanway*, is also a standard term for agreements and pacts of a strictly commercial nature; but it does not necessarily distinguish between written and oral agreements.\(^{249}\) We should probably interpret the law books as implying that a written contract is not required to the point of being actually constitutive of a couple’s marital relationship; verbal agreement is equally valid. That being said, written documents testifying to marriage agreements and associated rights and obligations are extremely common in the ancient and medieval Middle East (on which more below), and the bishops assuredly considered it normal to record the contracting of betrothals in this way. In fact, we have examples in two of Ḫnānīšōʾ’s judicial decisions. These decisions respond to cases in which claimants have brought before the catholicos written contracts (*ktābā, ktībā*) that record marriage gifts either delivered or owed as debt by husband to wife.\(^{250}\)

A second point of uncertainty is that the sources are somewhat vague concerning who the actual parties to a marital agreement are. George’s synod mentions that a marriage requires the “consent of [brides’] parents” (*šalmūtā d-abāhayhēn*) in addition to that of the spouses, but it says that the contract is between “the betrothed ones” (*da-mkīrē w-da-mkīrātā*). Īšōʾbōkt allows a couple that has concluded a betrothal agreement to dissolve it if they do not want to finalize the union, which implies that they are the contracting parties.\(^{251}\) Similarly, one of Timothy’s rulings emphasizes a bride’s consent

\(^{249}\) Kaufhold notes that only in the thirteenth-century *Nomocanon* of ’Abdīšōʾ bar Brīkā do we find a specification that the betrothal contract should be written. See *Rechtssammlung*, 78.


(ṣebỳânāh) to a marriage arranged by her parents.\textsuperscript{252} Ḫnānīšōʿ’s law book includes a ruling that strongly discourages persons in betrothals arranged by their parents from breaking those agreements; if one spouse does, his or her household owes restitution to the other spouse.\textsuperscript{253} In all, these rulings present both prospective spouses and their respective households as involved in arranging marriages; but I would tentatively suggest that on the balance they seem to imagine the spouses as the actual parties to the marriage contract (as opposed, for example, to a contract between the groom and bride’s father).

An explicit doctrine, however, is not apparent.

Inchoate marriage and the betrothal contract are thus two fundamental aspects of the East Syrian law books’ conception of the creation of marriage bonds. A third element important to mention (and another one indicative of the contractual, transactional nature of marriage) is marital gift giving. The law books assume as a matter of course that a marriage agreement necessitates transfers of property between the groom, the bride, and/or their respective households. Rulings in the law books describe two main types of gifts in this regard. One is the pernīṭā, the dowry that the bride receives from her father’s household or estate and brings with her to her conjugal household. The other is the mahrā, a payment owed by the groom to his bride.\textsuperscript{254} Numerous rulings treating the amount, rights of usufruct, and disposition upon a spouse’s death of such marriage gifts

\begin{footnotes}
\footnotetext[252]{§30, \textit{SR} 2: 78. The case concerns specifically an orphan who has been betrothed by her father before she reaches legal majority. Timothy asserts that the union can only be finalized with her consent.}
\footnotetext[253]{§29, \textit{SR} 2: 128.}
\footnotetext[254]{This terminological usage is largely standard in the East Syrian legal works, although Ḫnānīšōʿ’s judicial decisions use pernīṭā to designate the payment from groom to bride and zebdā for the dowry. See e.g. §§XI, XIV, XIX, and XX, \textit{SR} 2: 20-22, 26, and 34-38.}
\end{footnotes}
are found throughout the law books of the early ʿAbbāsid bishops, and begin to appear in East Syrian legal works as early as the synod of 585 of the catholicos Īšōʾ yahb I.\textsuperscript{255}

These three elements – inchoate marriage, the betrothal contract, and marriage gifts – are the major legal concepts and institutions involved in the enactment of marriage bonds according to the East Syrian law books. The point to emphasize here, however, is that these institutions are not the bald creations of the bishops. Rather, we should understand their appearance in the law books as the result of the bishops’ effort to streamline longstanding regional legal traditions and inscribe them in the textual tradition of East Syrian law.

In the case of inchoate marriage, scholars have long noted that this particular conception of the marriage bond is characteristic of a wide range of pre-modern Middle Eastern legal cultures. These stretch as far back as the legal systems of the Hebrew Bible, the Babylonians, and the Assyrians, among others.\textsuperscript{256} Though they may differ in details, in all of these systems the legal state of marriage begins to some degree already with the initial contracting of the betrothal (in contrast to classical Roman law, for example, which gave initial betrothal agreements much less legal force).\textsuperscript{257} The two stages of inchoate marriage are evident as well in the qiddušin and nisuʾin of Talmudic law and the

\textsuperscript{255} See §7 and §24 of Īšōʾ yahb’s synod and §14 of Īšōʾ yahb’s letter to Yaʾqūb of Dīrēn, Chabot, \textit{Synodicon}, 143-44, 157, and 181-82.
\textsuperscript{257} On the development from classical Roman law to that of Constantine, which “implies a view of betrothal as a serious contract” in a manner closer to the inchoate systems we have been discussing, see Judith Evans Grubbs, \textit{Law and Family in Late Antiquity: The Emperor Constantine’s Marriage Legislation} (Oxford: Clarendon Press, 1995), 172-83.
marriage contract (ʻaqd al-nikāḥ) and later consummation of Islamic law. East Syrian law, like that of Muslims and Jews, has thus simply put forward a different iteration of this basic conception, one common throughout the broader Middle East and not confined to a particular religious community.

An understanding of marriage as a contractual agreement is similarly common, perhaps ubiquitous, in many Middle Eastern legal cultures. Written marriage contracts from Mesopotamia are as ancient as the numerous Old Babylonian examples, while later documents include the Jewish contracts of Elephantine Island and the Judean desert, several Iranian-language contracts from the Sasanian period, and the large numbers of Greek, Coptic, and Arabic marriage contracts from Roman and Islamic Egypt. Here again, the bishops’ notion that marriages are enacted by contract looks to be a standard note from the pages of common Middle Eastern legal traditions.

Finally, property transfers that go along with the contracting of marriages constitute another essentially ubiquitous characteristic of Middle Eastern legal systems. The East Syrians’ mahrā, the marriage payment from groom to bride, is cognate both linguistically and conceptually with the mohar of rabbinic Jewish law and the mahr of Islamic law. There is a long running debate among scholars of the ancient Fertile

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258 On inchoate marriage in Talmudic law see Satlow, Jewish Marriage, 69-83. Satlow argues that the rabbis’ norms are not continuous with the inchoate marriage of biblical law, but rather a revival of those principles after they had largely fallen out of practice. On the marriage contract in Islamic law see Judith E. Tucker, Women, Family, and Gender in Islamic Law (New York: Cambridge University Press, 2008), 41-50.

Crescent and Semitic civilizations as to whether these institutions developed from a “bride-price” given to the bride’s father by which his daughter would be “purchased” for marriage.\textsuperscript{260} This need not concern us here, however; the point to take away is that a property transfer from groom to bride (or sometimes to her natal household) is another common custom of Middle Eastern legal systems that the bishops have taken over into East Syrian law.

The same holds for the \textit{pernītā}, the dowry that brides bring to their conjugal households. In this case the East Syrian law books appear to largely reflect Iranian and Mesopotamian dotal practices. The transfer of property to women in ancient societies is always intimately connected with inheritance practices and the particular types of households and lineages that they serve to reproduce. Zoroastrian thought placed a high importance on the integrity and perpetuation of patrilineages, which was manifested in material terms in the emphasis placed by Sasanian law on consolidating property in male lines. One resultant Sasanian legal strategy was to consider dowry to be daughters’ share of their fathers’ estates in cases of intestate succession; married daughters therefore had no claim on their deceased fathers’ property and were excluded from the pool of heirs.\textsuperscript{261} We find a similar understanding of dowry as daughters’ patrimony in rabbinic law and the ancient Mesopotamian law codes as well.\textsuperscript{262} As Payne points out, the two East Syrian

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\textsuperscript{260} On the “marriage sale” issue and its relation to rabbinic law see Satlow, \textit{Jewish Marriage}, 77-78. Kaufhold sees the Syriac \textit{mahrā} as a later development of “bride-price.” See \textit{Rechtssammlung}, 71.


\textsuperscript{262} On Jewish law see Satlow, \textit{Jewish Marriage}, 207-208. On ancient Mesopotamia see Driver and Miles, \textit{Babylonian Laws} 1: 272 and idem, \textit{Assyrian Laws}, 238-39. In this respect it is also worth mentioning Josef Partsch’s early twentieth century argument, following from the work of Ludwig Mitteis, that the regional legal cultures represented in the Syriac legal sources were offshoots of Hellenistic law. In support of this position Partsch points to the similarities between
\end{footnotesize}
legal works that originate from Fārs – the law books of Simeon of Rēwardašīr and Īšō’bēkt – both adopt this perspective on pernītā, and we should interpret them to be drawing on Sasanian legal tradition in doing so.263 Timothy’s law book at numerous points maintains a form of this position as well (whether this reflects Sasanian legal tradition or simply Timothy’s take on common regional practice is unclear).264 Īšō’bēkt’s perspective is somewhat different; his ruling §51 acknowledges that a variety of dotal and inheritance practices exist – including considering dowry daughters’ inheritance, giving daughters half the share of a son (pelgā d-ahūh), and giving them a full (šumlāyā) share – and states that any given community should adhere to its own custom.265 But despite Īšō’bēkt’s alternate position, all the East Syrian law books

the Athenian law of intestate succession and the East Syrian law books. See “Rechtsquellen,” 367-75. The idea that Hellenistic law is somehow the singular foundation of’ Abbāsid-era East Syrian law is problematic; but if some kind of Hellenistic law was part of the general mix of Mesopotamian legal cultures out of which East Syrian law was fashioned, it is unsurprising to find that dowry functions as daughters’ inheritance in Athenian law just as it does in Sasanian, Jewish, and ancient Mesopotamian legal traditions. See A. R. W. Harrison, The Law of Athens (Oxford: Clarendon Press, 1968-71), vol. 1: 132.

263 See Payne, “Christianity and Iranian Society,” 215. Simeon’s law book poses the question, “When a daughter marries a man during her father’s lifetime, and her father gives something to her from his property (qenyānēh), and then he dies without having made a testament (diyatēqē), does a portion of her father’s property come to that daughter alongside the rest of the heirs or not?” Simeon’s answer is no. See §2, SR 3: 237. Īšō’bēkt asks, “Why does a married daughter (ba[r]tā da-mzawwgā)… receive no portion from her father’s estate (bēt abūh)? Because in the past she was honored and given something by her father that he wanted [to give to her], and she was released from her father’s household (w-eštaryat men bēt abūh).” §IV.i.4, SR 3: 94.

264 See for example ruling §49: when a man dies, his “daughters, if their father has sent them out with husbands, inherit only what he gave them [at the time of their marriage].” SR 2: 90-92. In several other rulings, Timothy affirms that (unmarried) daughters are not considered their father’s heirs; they receive either bequests that he has stipulated in testament or, in cases of intestate succession, “provisions” (zwādē) from the estate in the amount of one tenth of its value.

Effectively, this is how Timothy proposes that dowries be disbursed for daughters who are unmarried at the time of their father’s death. See §§50, 66, 67, 81, and 83, SR 2: 92, 102-104, and 108-110. In this respect Timothy departs from Sasanian law, which gives an unmarried daughter half the share of a son; but he maintains the overall principle that daughters are dowered from their father’s property but do not inherit from him.

undertake the same basic task in regard to dowry: they recognize various regional legal practices and adopt them into the textual tradition of East Syrian law.\footnote{A point worth adding here is that the basic dowry-inheritance scheme we find in the East Syrian law books is substantially different from that of the Syro-Roman Law Book, and is therefore an argument against Sachau and Partsch’s notion that Syro-Roman legal material is the foundation, background, or substrate on which the later works build. Rather than removing daughters from the pool of a man’s heirs, the Syro-Roman Law Book gives them shares equal to those of a man’s sons. This includes married daughters, who add their dowries back to the estate to be parceled out equally among the heirs. See §94a and §125, \textit{SRRB} 2: 126-27 and 180-83. Sachau himself notes that even though Timothy’s dotal law “rests, in my consideration, on the foundation of the \textit{Leges Constantini Theodosii Leonis} [i.e. the Syro-Roman Law Book]… its intestate inheritance law no longer exists here” in Timothy’s law book. \textit{SR} 2: xxi.}

That, in sum, is the strategy and background to the East Syrian law books’ treatment of the three institutions – inchoate marriage, the betrothal contract, and marital property transactions – discussed in this section. For each the bishops lay out a series of regulations that, by virtue of their propagation by Christian bishops in a self-consciously Christian communal tradition, make these institutions definitive of East Syrian marriage. Prior to the bishops’ deployment of them to “invent Christian marriage,” however, they reflect common, often ancient, regional practices that are not fundamentally wedded to a particular religious tradition.

\textit{Christianizing the Legal Instruments of Marriage: The Betrothal Ceremony}

If the institutions detailed above became “Christian” simply by being included in Christian texts, there is one major respect in which the bishops sought to explicitly connect the mechanics of creating a marriage bond to distinctively Christian doctrine and the ritual practices of the ecclesiastical hierarchy. This was the enjoinment of a betrothal ceremony without which unions between Christians would not be recognized as valid.
In chapter one we touched on the significance of the synod of 676 of patriarch George I, which made unprecedented claims to exclusive judicial authority on the part of the ecclesiastical hierarchy over lay legal affairs. One of the powers claimed for ecclesiastics by the synod concerned the contracting of marriages:

Women who have not [yet] been married or given in betrothal by their fathers shall be betrothed to men through Christian law (*b-nāmōsā krēstyānā*). [This shall be accomplished] according to the custom of the faithful through the consent of their parents, the mediation of the holy cross of our Savior, and a priestly blessing. Because it is easy for Christians, unlike the rest of the nations, strangers to the fear of God, to err in lawful marriage and cleave to something else, a contract of the betrothed ones (*tanway da-mkīrē w-da-mkīrātā*) is necessary and all the more beneficial… Together and through a priestly blessing, [the betrothed ones] shall affirm faithfully that they assent, through the blessing, to the bond of their union (*assārā d-sawtāpūthōn*) according to their hope [of the world to come]. If they transgress against these things because they want to marry anew and despise the established law, when they come to deceive each other they shall be left without recourse… and they shall not deserve to be freed from the injustices [that they visited upon] each other by way of things set down concerning litigation [i.e., by way of judicial rulings]. Along with these things, they shall also be anathematized from the church.²⁶⁷

Present in the middle of this canon’s flowery and admonitory language is its actual subject, the standard legal instrument of the betrothal contract (*tanway da-mkīrē w-da-mkīrātā*). Immediately significant, however, is George’s avowal that Christian marriage agreements only take legal effect through a priestly blessing (*burktā kāhnāytā*). As Payne and others have pointed out, this marks a considerable conceptual shift in the way that earlier East Syrian elites had understood marriage (and the way that they wanted lay people to do so as well). As we discussed in chapter one, recent scholarship has suggested that there must have been many judicial avenues through which residents of the Sasanian and early Islamic empires contracted marriages (as well as other legal arrangements); they might have taken recourse to state-appointed officials or simply

²⁶⁷ Chabot, *Synodicon*, 223.
made informal agreements among themselves. George’s canon, however, arrogates marriage – this common legal transaction – exclusively to the realm of the church’s authority and appropriates it as part of explicitly Christian law. In George’s view, contracting a betrothal would no longer be something that Christians did in a similar manner to their various neighbors. From the time of George’s synod, the Church of the East had adopted the canonical position that a union between Christians could be lawfully contracted only under clerical oversight, and that it was the priestly blessing that brought the legal state of union into effect.268

Exactly why the bishops made this claim to exclusive judicial authority over Christian marriages at the time that they did is difficult to determine. We can explain it generally, though not fully satisfactorily, as both indicative of and a contributing factor to the late antique/early Islamic shift toward religious adherence as a primary aspect of social identity, which was occasioned broadly by the rise of exclusivist monotheistic communities and the decline of classical modes of civic association. In any case, the later East Syrian legal sources all follow from George’s model and situate the contracting of a betrothal in a ritualized Christian setting.269 Īšō’bōkt affirms that a betrothal should be contracted through “the giving of a ring (mattālā d-ʿezqtā) [and] the mediation

268 See Payne, “Christianity and Iranian Society,” 198-201. Walter Selb also discusses the creation of an idea of an ecclesiastical as opposed to “civil” marriage among the West Syrians in “Christianisierung,” 3-7. Some scholars have maintained that some kind of specifically Christian betrothal ceremony among the East Syrians dated to the fifth or sixth century because of a reference in one of the homilies of Narsay to priests blessing a betrothal. See de Vries, Sakramententheologie, 253. Kaufhold, however, has shown this verse to be a later interpolation. See Rechtssammlung, 75-76. Several other brief overviews of the law and liturgy of East Syrian marriage similarly presume it to have essentially always had a specifically Christian shape and priestly involvement, e.g. Korbinian Ritzer, Le mariage dans les Églises chrétiennes du Ier au XIe siècle (Paris: Les Éditions du Cerf, 1970), 149-55; and J. Feghali, “Origine et formation du mariage dans le droit des églises de langue syrienne,” L’année canonique 17 (1973): 416.

269 For overviews of the East Syrian sources on the betrothal rituals see de Vries, Sakramententheologie, 253-54; Kaufhold, Rechtssammlung, 71-74; and Edakalathur, Theology, 76-89, among others.
(meṣʿāyūtā) of the priests and the rest of the covenanters (bnay qyāmā)."²⁷⁰ Timothy similarly requires the “mediation” of some number of ordained clergy, as well as three lay witnesses and the gifting of a cross.²⁷¹ Ḣsōʾ barnūn requires the “witnessing” (sāḥdūtā) of clergy and lay people, as well as “a cross, ḥnānā, and a ring.”²⁷² He presumably means that a cross and ring should be gifted in some way at the betrothal ceremony, while ḥnānā, a mixture of consecrated water and oil and dust from a holy site, would likely have been used to anoint the spouses.²⁷³

Though their exact details differ, it is clear that by the ʿAbbāsid period East Syrian bishops imagined a specific, ritualized process as the proper and lawful means of bringing a marriage bond between Christians into effect. From this perspective they not only claimed particular jurisdictional prerogatives; they also brought the divine to bear on the creation of fundamental social ties and in the process invested those ties with the signs and import of communal belonging. If, as we have noted, the East Syrian legal sources say little explicit about the ecclesiological dimension of worldly marriage, they do affirm that divine sanctification mediated by a Christian priest has the effect of creating the bond of betrothal. The bishops’ message to the laity is that marriage, the fundamental social institution that facilitates the forging of familial networks and the reproduction of the species, can only truly be brought about by divine power. By bringing both divine power and ecclesiastical authority into the establishment of that institution, the bishops orient the basic business of reproducing social relations toward God through the ecclesiastical hierarchy. Getting married as the first step toward weaving the social

²⁷⁰ §III.i.1, SR 3: 74.
²⁷¹ MS Mount Sinai Syriac 82, folio 68b.
²⁷² §29, SR 2: 128.
fabric becomes a practical ritual avowal of commitment to a particular notion of the
divine, the ecclesiastical custodians of its traditions, and the community of faithful that
shares those commitments. Through the priestly blessing, as well as other ritual practices
like the gifting of the cross, anointing with holy water, and liturgical recitation (whatever
its content may have been in the early ʿAbbāsid period), the bishops figure marriage not
only as a legal bond between a man, a woman, and their respective kin networks, but as a
further tie to God and His community of believers.  

“Christian Marriage” and Marriage between Christians in Practice

What communal officials say and what lay people do, however, are often two
very different stories. How successful might the East Syrian bishops have been at
disseminating among the laity their position that only their form of Christian marriage
was a true and lawful one? As usual, the nature of the available source material makes it
very difficult to trace social practice in the period under study, especially given the great
regional and cultural diversity of the many Christians over whom the Church of the East
claimed pastoral authority. But based on the pieces of evidence that follow, our best
guess is that in certain areas ecclesiastics would have been able to institute the ongoing
practice of their Christian betrothal; many other Christians, however, likely continued to
make use of other channels to contract marriages, such as Islamic courts.

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274 As an addendum, we should add that the ʿAbbāsid-period law books mention only a ceremony
for betrothal and not one for marriage. Timothy and Īsōʾ barnūn both apparently expect that a feast
of some kind (a ḥīlālā or mešīṭūā) would be held for the wedding, but they say nothing about the
involvement of ecclesiastical officials. By the eleventh century the East Syrian hierarchy was
prescribing a wedding ritual which involved priestly blessings and the “crowning” (kullālā) of the
spouses. Kaufhold suggests that this may have been adopted from Byzantine practice. See
Rechtssammlung, 76-78. See also de Vries, Sakramententheologie, 259-60.
The aforementioned references to marriage contracts in Ḥnānīšōʿ’s judicial decisions constitute perhaps the only direct evidence for clerical oversight of the contracting of East Syrian betrothals. Both of the decisions specify that the contracts in question have been confirmed with the seal (Syriac ṭabʿā) of a church official: one by Sargīs the bishop of Zābē (Arabic al-Zawābī, a diocese in lower Iraq), the other by Īšōʿzkā the periodeutes (Syriac sāʿōrā, a traveling priest not tied to a specific parish). The former contract, which presumably involved parties from the presiding bishop’s region, recorded a marriage payment of 8,000 zūzē (silver coinage, Arabic darāhim) from groom to bride. The latter stipulated that the groom was indebted to his wife for an appropriate marriage gift because he did not have the means to provide one at their marriage. The location is unspecified, but the fact that the contract was sealed by a sāʿōrā suggests that wherever the parties lived was remote enough not to have the service of a regular priest.

What are we to make of this evidence? Ḥnānīšōʿ became catholicos in 685/6, a mere decade after George’s synod. It is therefore tempting to see the ecclesiastically sealed marriage contracts mentioned in his rulings as evidence of the ecclesiastical hierarchy seeking to carry out the dictates of George’s canon and bring the contracting of Christian betrothals under their purview. The Zābē contract is perhaps less surprising in this regard, because the conditions of its production are those for which we might most expect to find high church officials involved: a region (lower Iraq) with a relatively “thick” ecclesiastical presence and a property exchange large enough that the parties concerned would want it recorded in the event of a dispute. This, however, makes the

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275 See, again, Ḥnānīšōʿ §XI and §XIV, SR 2: 20-22 and 26. On the periodeutes see the works cited in note 150.
second case even more intriguing; as the acting “notary” was a sāʾōrā and the groom did not have the means to provide a marriage payment, it is an example of a clergyman involved in confirming Christian marriages even among poorer people and in more outlying districts.

Ḥnānīšōʾ’s decisions thus demonstrate that at least some church officials were overseeing, in some sense, the contracting of lay marriages. This does not mean, however, that we should infer that ecclesiastics actually achieved the monopoly on officiating Christian marriages that George’s canon seeks; after all, our two contracts hardly constitute comprehensive evidence. It is also worth keeping in mind that the mentions of sealing in Ḥnānīšōʾ’s decisions do not tell us with certainty that clergymen actually officiated and offered blessings at betrothal ceremonies as George’s canon describes it, only that they “validated” marriage contracts. In this regard they appear to be carrying on Sasanian administrative and judicial practices, in which sealing documents was quite standard procedure. This pattern of ecclesiastical officials taking on the duties of the fallen Sasanian state apparatus is what Payne suggests goes hand in hand with George’s claims to exclusive judicial authority over Christians; but it is important to note as well the possibility that clergymen had carried out these functions previously and that, therefore, contracts sealed by Christian officials are not necessarily manifestations of the project of ecclesiastical judicial exclusivity.

Despite these possible reservations, which must be borne in mind, Ḥnānīšōʾ’s judicial decisions do indicate that in the late seventh century at least some ecclesiastical officials oversaw the contracting of Christian marriages in some manner. This, however,

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was before the judicial reforms and the greater development of the caliphal court system of the ʿAbbāsid period. Our evidence for the time of the ʿAbbāsid-period law books is even slimmer, but Simonsohn has highlighted a number of indications that the bishops had to continue to push back against lay tendencies to make use of non-ecclesiastical judicial venues to contract their betrothals. In some cases, the bishops sought to clamp down on “informal” arrangements in which the parties involved might simply make an agreement between themselves with no officiating presence of any kind. So, according to Īšōʿbarnūn’s ruling §29:

There are people who have said simple words (mellē ʿšīmātā) to each other concerning their children, young women and men, in order to marry them to each other. They have not administered the betrothal through the witnessing of priests and their fellow believers, and have not given a cross, ḥnānā, or ring. Later, they do not want [to adhere to] something about which they had spoken (lā ṣābēn b-meddem d-malle[w] ʿam ḫdādē); [but] they receive no ruling (layt ʿlayhōn gzārdīnā).²⁷⁷

Here, Īšōʿbarnūn describes an agreement between families that involves no ecclesiastical oversight or explicit Christian ritual. He then defers any ecclesiastical jurisdiction over disputes arising from such an agreement, effectively asserting that ecclesiastical law does not recognize the marriage as legitimate.²⁷⁸ To note as well is the catholicos’ statement that a betrothal like this is accomplished through “simple words,” mellē ʿšīmātā. The adjective ʿšīmātā here connotes not only simplicity but also the opposite of the sacred or the sanctified; such informal marriages, in other words, do not involve the sanctifying blessings of an ecclesiastical marriage and are in this sense truly “profane.” Several West

²⁷⁷ §29, SR 2: 128.
²⁷⁸ See the discussion in Simonsohn, Common Justice, 152.
Syrian canons of the ninth century attest to bishops’ concern to legislate against such informal, un-officiated contracting of betrothals.\footnote{279} Ḫūdān’s law book also contains a number of rulings related to informally contracted marriages, but his rhetoric is somewhat different from Išō’barnūn’s and his rulings more accommodating of arrangements that are informal or irregular from the ecclesiastical perspective. Išō’bōkt considers the possibility that the regular services of ordained priests might not be available in every locale; he rules that if a man and woman have been living as a married couple but have not contracted an official ecclesiastical marriage, they may present themselves before priests and lay witnesses at a later date and their marriage will be recognized as legitimate.\footnote{280} Even more interesting, another of Išō’bōkt’s rulings allows an unmarried man who “has taken a slave or other woman into his bed” (emtāʿ aw an[t]tā hrētā aḥīd b-tešwītēh) to acknowledge her as his wife (in which case she is freed if she is a slave).\footnote{281} Essentially, Išō’bōkt here allows an unlawful sexual relationship to be brought into the realm of legitimate unions recognized by the church; as in his rulings on informal marriages, the bishop of Fārs provides an “out” in the interest of maintaining already established social relations. Išō’bōkt and Išō’barnūn’s law books thus both attest to the practice of informal marriage arrangements, but the former offers paths to ecclesiastically legalize them while the latter refuses them any recognition (we will see the bishop of Fārs offer further accommodating rulings, in distinction to the harder lines taken by the patriarchs, in later chapters).

Besides the kinds of informal union addressed by Išō’bōkt and Išō’barnūn, the other major non-ecclesiastical avenue through which Christian individuals might

\footnotetext[279]{See Simonsohn, \textit{Common Justice}, 152-53.}
\footnotetext[280]{See §§III.i.2, 3, and 5, \textit{SR} 3: 74-76.}
\footnotetext[281]{§III.i.4, \textit{SR} 3: 74.}
conceivably have contracted marriages was Muslim *qādīs*’ courts. While Simonsohn has persuasively shown that many non-Muslims used Muslim judicial institutions for litigation and to draw up legal documents, it remains a bit of an open question as to how often they would have contracted marriages there given the bishops’ efforts to define marriage in terms of Christian ritual practice and as central to the life of the religious community. Again, however, we would do well to remember Simonsohn’s astute observation that while the bishops presented obedience to the church and ecclesiastical law as the single most important mode of social affiliation, lay people were embedded in other social networks and may not always have acted in accordance with the bishops’ priorities.\(^{282}\) And although evidence from ʿAbbāsid Iraq and Iran is slight, contemporary comparative evidence suggests that some Christians went to the “outsiders’ courts” for the contracting of marriages.

The comparative evidence in question is to be found in a number of Arabic papyri of the ninth and tenth centuries from Egypt. Among the many legal documents of the large numbers of Arabic papyri that have been edited are several marriage contracts drawn up by Muslim scribes, according to Muslim scribal traditions and with Muslim formulas like the *basmala*, for Christian parties. Two relevant documents unquestionably belong to Christians, as they specifically identify the parties as such: a marriage contract of 948 and a receipt of 989 for the payment of a deferred marriage portion.\(^{283}\) Two other

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\(^{282}\) See *Common Justice*, 6-10.

\(^{283}\) These documents were first published in Nabia Abbott, “Arabic Marriage Contracts among Copts,” *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 95 (1941): 59-81, and subsequently in Raif Georges Khoury, ed., *Chrestomathie de papyrologie arabe* (Leiden: Brill, 1993), 26-28 and 38-40. The marriage contract is between a deacon named Theodore (*thdr* in Khoury’s reading, identified as *al-shammās* in the text) and Dbēlī Adāy (*dby ʾdʿy*), daughter of the priest Yuḥannis (*yḥns*, identified as *al-qissīs*). The receipt is between Theodore’s son Qīriqa (*qyrqh*, Kerykos or Kyriakos?), identified as Christian (*al-Naṣrānī*), and his second cousin Elena.
marriage contracts of 885 and 918 were also likely concluded between Christians, judging by the parties’ manifestly Greek and Coptic names.²⁸⁴

Though these documents are few in number, they are significant in demonstrating that some Christians in ʿAbbāsid Egypt did indeed go to Muslim courts (or at least scribes) to register marriages and record transactions concerning marital property. This was, no doubt, largely because the obligations recorded in agreements drawn up in Muslim courts had a better chance of being enforced, as they had the at least theoretical backing of the state.²⁸⁵

Egypt is not Iraq, of course, and we cannot use the evidence from the papyri to conclude anything definite about the behavior of Christians in the eastern caliphate. However, the likelihood that some Christians contracted marriages in Muslim judicial institutions receives a bit more support from another ofĪšōʿbōkt’s rulings:

When a Christian man makes a betrothal contract (neʿbed tanway da-mkīrūtā) without the mediation (mesʿ āyūtā) of priests and lay believers, [but] through a written document (ktābāt) or the mediation of the ḥanpē, and takes a Christian

²⁸⁴ Documents 40 and 43 in Adolf Grohmann, ed. and tr., Arabic Papyri in the Egyptian Library (Cairo: Egyptian Library Press, 1934), 1: 82-85 and 94-96. Simonsohn refers to document 40 in Common Justice, 151. The parties to document 40 (from Ashmūn in Upper Egypt) are Yuḥannīs ibn Shenūda and Darwā bint Shenūda; those to document 43 (location unknown) are one Merqūra (mrqwrh, Merkorios) and the daughter of Pantelis (bnṭls; Grohmann is unable to make sense of the woman’s given name). Abbott (“Arabic Marriage Contracts,” 59) notes that although converts to Islam typically took Muslim Arabic names, we cannot be absolutely certain that the individuals in these two documents are not Coptic converts to Islam because the texts do not explicitly identify them as Christians. In the final analysis, this is true. But if we examine the names of the Muslim witnesses to these and other legal documents from the papyri corpus, they are overwhelmingly Arabic, Muslim ones; having scanned several published collections of papyri, I have yet to find any Coptic names among witnesses that might distinguish recent converts from other Muslims. Thus, it is not unreasonable to draw the conclusion that it was highly improbable for a convert to keep a markedly Christian name like Merkorios or Yuḥannīs, and to have a Muslim scribe write it in a document, in late ʿAbbāsid and Fāṭimid Egypt. For this reason, there is not a great risk for error in concluding that Grohmann’s marriage contracts belonged to Christians.

wife, and later he does not want to keep her, we do not compel a man like this to keep that wife by the law of Christianity, because he did not marry her through Christian law (nāmōsā krēstįnāyā) … we do not compel them [to remain married] because they have not established their pact before us.286

In this passage, Īšō’bōkt addresses Christians who have contracted marriages through the procedures of non-Christians, Syriac ḥanpē. As Īšō’bōkt wrote in the second half of the eighth century, we should probably take this term to refer to Muslims (though it could conceivably cover Zoroastrians as well, as Īšō’bōkt hailed from the Zoroastrian heartland of Fārs; for further consideration of this matter see the appendix to chapter six). In any case, the ruling points to the familiarity of the notion that many Christians might see no great contradiction between their religious affiliation and taking advantage of judicial options to contract marriages that the bishops associated fundamentally with the unbelievers.

As noted above, one presumable benefit to having a contract drawn up according to Islamic judicial procedure was that it had the backing of the state. It is therefore worth mentioning the final possibility that Christian individuals might have a “Christian” marriage blessed by a priest and then walk down the street to have a document registering the marriage and the associated property transfers drawn up according to sharī‘ norms. I am aware of no direct evidence for such practices, but given the wide variety of judicial options available to individuals in the developing urban areas of the ’Abbāsid Caliphate there is no reason to preclude the possibility. We might imagine this to be a convenient way for lay Christians to cover their bases: they would both conclude an ecclesiastically sanctioned marriage and come away with valid documents for use in qādis’ courts in the event of any dispute.

286 §III.i.9, SR 3: 78. I have left out one sentence of this ruling because it is difficult to interpret and not immediately relevant here. We will consider it more closely in chapter six.
Summary

The East Syrian law books exhibit many similarities to other legal traditions of the medieval and ancient Middle East in their understanding of the mechanics of the formation of marriage bonds. This holds especially for the inchoate nature of marriage, the betrothal contract, and the property transfers effected by the conclusion of a marital agreement. In all these areas the bishops shaped the substance of East Syrian law from a range of basic institutions and practices common to various regional legal cultures. Beyond such appropriations and refashionings, however, the bishops of the early Islamic and ʿAbbāsid periods sought also to make the contracting of betrothals into a practice and signifier of communal consolidation. By asserting that the only valid betrothal was one ritually blessed by a priest and witnessed by fellow Christians, the bishops turned an institution that bound individuals together and to each other’s kin networks into one that also bound them to the Christian God, the clerical hierarchy, and that hierarchy’s idea of confessional community. Lay practice, however, likely conformed to the ecclesiastical ideal only imperfectly, as lay people for a variety of reasons made use of other judicial options to contract their marriages.

Conclusions

In *Jewish Marriage in Antiquity*, Michael Satlow argues that the Talmud’s reworking of the biblical law of inchoate marriage was “one of the many areas through
which the rabbis created a collective past and identity by implying a common and continuous tradition from the Bible. This is law in the service of the creation of a collective memory.”

Though the ʿAbbāsid-era East Syrian bishops had less interest in the law of biblical Israel, they too sought to fashion a basic idea of the marriage bond that connected this fundamental social institution to their conception of religious community. In valuing celibacy over married life, emphasizing the purpose of procreation, and reframing common Middle Eastern legal instruments in Christian ritual terms, East Syrian family law placed the basic task of societal reproduction in relation to and under the purview of the East Syrian community of believers. East Syrians may have been ruled by Muslims and may have lived next to Jews and Zoroastrians, but they would marry like Christians.

\[287\] Satlow, *Jewish Marriage*, 76.
Chapter Four

Kinship Prohibitions and Exegetical Tradition: Why Can’t an East Syrian Marry Her Cousin?

Hāshim ibn al-Muṭṭalib ibn ‘Abd Manāf married al-Shifāʾ bint Hāshim [ibn ‘Abd Manāf], and she bore him Yazīd ibn Hāshim. And he was pure with no imperfection in him, for that is what they would call someone whose mother was the paternal cousin of his father.

- al-Balādhurī, *Ansāb al-ashrāf*, on cousin marriage among the Arabs

Sometime after acceding to the East Syrian patriarchate, Īšōʾbarnūn sent the letter to the deacon Makarios of Ḥīra that we discussed briefly in chapter one. The letter contained answers to a series of 74 questions that Makarios had asked the patriarch, the majority of which revolved around matters of liturgical practice and the proper administration of the Eucharist. One question, however, concerned the problem of unlawful marriages: “What fault is there for a man to marry a woman of close relation (*qarrībat besrēh*), whether [he and she are] the children of brothers or sisters [i.e., whether they are cousins] or of more distant relation?”

Īšōʾbarnūn replied that there was none, and that marriage between cousins was perfectly lawful. We, however, might ask in turn: why did Makarios care enough about cousin marriage to pose the issue to the head of the East Syrian church? This chapter will be concerned with investigating this question, and with considering how the regulation of kin marriage functioned as a strategy in the bishops’ promotion of a distinctively Christian social praxis in the ‘Abbāsid Caliphate. Essentially all legal orders that touch on

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289 MS Mingana Syriac 586, folio 433b.
household relations demarcate those kin relatives who are marriageable from those who are not. East Syrian law was no exception, and the notions of kinship that its regulations fostered were in certain respects markedly different from broader marital patterns in the late antique and medieval Islamic Middle East.

This chapter will approach prohibitions of kin marriage in East Syrian tradition from several angles. First, we will survey earlier patriarchs’ efforts to prohibit typically Zoroastrian forms of close-kin marriage among Christians in the Sasanian Empire. We will then follow this story into the ʿAbbāsid period to see how Timothy sought to outlaw cousin marriage, a widespread and common practice of Middle Eastern marital life. Finally, we will consider Īšōʿbarnūn’s opposing perspective on the lawfulness of cousin marriage – and particularly, its relationship to broader developments in intellectual culture in the ʿAbbāsid Caliphate. We will suggest that Īšōʿbarnūn’s disagreement with Timothy on the matter of cousin marriage represented a contestation over legal authority – specifically, over the degree to which the discretionary reasoning of jurist-bishops on the one hand and received tradition on the other should determine the laws that defined membership in the East Syrian community – and examine how this contestation related to parallel developments in contemporary Muslim and Jewish legal cultures.

**Zoroastrianism, East Syrians, and Close-Kin Marriage**

*Mār Abā’s Kin-Marriage Prohibitions and Zoroastrianism in the Sasanian Empire*

The concepts of kinship and exogamous and endogamous marriage have long been favorite topics in the anthropological and sociological study of the family. While
considerations of biology, psychology, and culture continue to complicate efforts to understand the workings of kinship in human societies, scholars generally recognize that most social orders espouse norms that construe notions of kin relationship – be they consanguineous (“blood”) or affine (“in-law”) – in particular and differential ways. Such norms, whether observed or breached in practice, ostensibly govern the choices for spouses available to individuals within and outside of their social groups.290

Prohibitions of kin marriages make up the first conspicuous, discrete corpus of family law regulations in East Syrian tradition, and they relate directly to the relatively unique notions of kinship and marital traditions promoted by Zoroastrian doctrine in Sasanian Iran. In brief, in Zoroastrian cosmology as it developed under the Sasanians “next-of-kin” (Middle Persian xwedōdah) unions – particularly between a man and his mother, sister, or daughter – figure as highly virtuous, and their practitioners as deserving of merit.291 Furthermore, Zoroastrian tradition placed an extremely high importance on perpetuating patrilineages, which led to the emergence of the legal institutions of intermediate and substitute successorship. According to Sasanian law as laid out in several key late antique Middle Persian legal texts, when a man of a certain socio-economic standing dies without male heirs his estate goes to an intermediate or substitute successor – often one of his relatives – charged with entering a temporary marital relationship and producing a male child. This child would then be considered the full legal heir of the deceased and inherit his patrimony. Because a sonless man’s

290 The literature is vast. For a basic orientation see Linda Stone, Kinship and Gender: An Introduction, fourth edition (Boulder, Colo.: Westview Press, 2010), 56-60 and 201-208.
291 Many of the definitive studies of marriage in Zoroastrian tradition and Sasanian law are the work of Maria Macuch. On xwedōdah marriage see her “Incestuous Marriage in the Context of Sasanian Family Law,” in Macuch et al, eds., Ancient and Middle Iranian Studies (Wiesbaden: Harrassowitz Verlag, 2010), 133-48.
consanguineous and affine relatives often took part in producing an heir, marriages for the purpose of intermediate and substitute successorship were often contracted between close kin. So, for example, a daughter might be called upon to provide a male heir for her deceased father by entering into a union with his brother, or a nephew for his deceased uncle with the uncle’s widow.292

As Payne and a few others have recently demonstrated, late antique East Syrian sources indicate that many Christian subjects of the Sasanian Empire practiced some of the same close-kin marital strategies for lineage reproduction promoted by Zoroastrian doctrine. According to a steadily emerging perspective on the part of the East Syrian ecclesiastical hierarchy in the fifth and sixth centuries, however, these practices were fundamentally dissonant with the teachings of Christian scripture, especially the prohibitions of adultery and incest between men and various affine and consanguineous relations enumerated in Leviticus 18. As a result, we find the first body of specifically East Syrian family law regulations in the prohibitions of close-kin marriage issued by the patriarch Mār Abā (r. 540-52).293 Basing his work on Leviticus 18 and targeting those marital practices he viewed as characteristically Zoroastrian, Mār Abā composed a synodal letter and an exhortative exegetical treatise detailing a host of relations with whom no Christian man should enter a marital union. Among affine relations these include his father’s wife, paternal or maternal uncle’s wife, brother’s wife, wife’s


daughter, and wife’s granddaughter. Unmarriageable consanguineous relatives include his mother, sister, daughter, and granddaughter. By marking such close-kin marital unions as inherently un-Christian, Mār Abā sought to bring Christian marital practice in line with his understanding of God’s law, and to differentiate the patterns of marriage and household formation of Sasanian Christians from the empire’s subjects of other religious affiliations.

Iranian Close-Kin Marriage in the ‘Abbāsid Caliphate

Mār Abā’s regulations form the base set of kin-marriage prohibitions of East Syrian tradition that would be elaborated further by later East Syrian jurist-bishops, beginning with Īšō’ bōkt, Timothy, and Īšō’ barnūn. Indeed, close-kin marriages remained a relevant issue for ecclesiastical elites insofar as they continued to be practiced among at least some Christian communities into the Islamic period. Payne has pointed to one example in a letter of the catholicsos Īšō’yahb III (r. 649-59), which condemns a union between a man and his uncle’s widow. And notably, two of Timothy’s pastoral epistles attest to an ongoing conflict between the patriarchal center and regional communities over whether Christian affiliation precluded the customary Iranian forms of lineage reproduction facilitated by close-kin marriages.

Both of these letters of Timothy’s are addressed to the Christians of the province of Khūzistān (Syriac Bēt Ḥūzāyē/‘Ēlām), the southeastern pocket of the Mesopotamian plain nestled between the Persian Gulf and the mountains of Fārs. Khūzistān’s major East

294 For the list detailed in the synodal letter see Chabot, Synodicon, 82-83. For the treatise see Eherecht, SR 3: 258-85.
Syrian metropolitan see was Bêt Lâppāt/Jundīsābūr, also the home of a prominent medical school and a number of wealthy and extremely influential physicians employed at the caliphal court.\(^{296}\) Additionally, its previous metropolitan Ephrem had been Timothy’s principal opposing claimant to the patriarchate (which the chronicles depict Timothy winning through trickery).\(^{297}\) Khūzistān, in other words, was both prominent in East Syrian communal politics and not particularly favorably disposed toward the Iraqi patriarch. Presumably by virtue of its proximity to the Iranian plateau, it also appears to have carried on many typically Iranian – to patriarchs like Mār Abā and Timothy, Zoroastrian – close-kin marital practices. This, at least, is the picture suggested by Timothy’s letters. The first letter is an admonitory message to the Christians of Khūzistān to stay away from the “unlawful marriage of the Magians” (zuwwāgā b-lā nāmōsāyūtā da-mgūšē) and the “Magian laws of Zoroaster” (nāmōsē mgūšāyē d-Zardošt) in favor of the “purity of Christianity” (dakyūtā da-krēştyānūtā).\(^{298}\) Timothy does not specify exactly what unlawful Magian marriages are, but this is presumably a reference to close-kin arrangements (as well as polygynous ones, possibly). The second letter confirms this inference. This epistle does not mention Zoroastrianism, but it again admonishes the Khūzistānīs to exercise themselves in the service of God’s will. As a reminder of how to do this, Timothy offers a “demonstration” (taḥwītā) from several legal texts of Roman provenance. The canons that he cites prohibit a man from marrying his wife’s sister, his brother’s wife, his niece (through his brother or sister), his aunt (maternal or paternal),


\(^{297}\) See the account in Putman, *L’église*, 16-19.

\(^{298}\) Letter 4 in Timothy, *Epistulae* 1: 78-79. The complete text of the letter is found on pp. 78-82. I use the numbering of Timothy’s letters given in Bidawid, *Lettres*. 

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and his father’s wife. Timothy adds further that these canons prohibit any children born of such unlawful unions from receiving inheritance.\textsuperscript{299}

Taken together, the two letters suggest that the practice of close-kin marriages that the ecclesiastical hierarchy associated with Zoroastrianism persisted among some Christians in Khūzistān at least into ʿAbbāsid times. A number of specific issues are worth further comment. First, Timothy’s second letter gives a hint of the particular kinds of household arrangements that might have been customary in the region. The prohibition of marrying a brother’s wife, combined with the exclusion of the progeny from inheriting, suggests that Timothy is targeting the levirate form of substitute successorship – a man marries his deceased, childless brother’s wife to produce an heir who ultimately receives the deceased’s patrimony. The specification of uncle-niece marriage may be indicative of similar arrangements (i.e., marrying one’s deceased, sonless brother’s

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\textsuperscript{299} Letter 12 in Timothy, \textit{Epistulae} 1: 102-106. The texts from which Timothy cites include a widely circulated set of approximately 85 pseudo-apostolic canons, the canons of the synod of Neocaesarea (315), and the Syro-Roman Law Book. Details are as follows. Timothy cites two “canons of the Apostles” (qānōnē da-šīlē) that he numbers §13 and §18. The former prohibits a man from marrying two sisters, his brother’s daughter, or his sister’s daughter; the latter prohibits marriage to two sisters or the daughter of a wife’s sister. Timothy’s canon §13 appears in fact to be a slightly reworked version of canon §18 as found in the East Syrians’ series of 85 pseudo-apostolic canons, which states that anyone who marries two sisters or his niece cannot serve as a cleric – Timothy has simply generalized this prohibition to apply to lay people. For the text of the canon see ʿAbdīšō, \textit{Collectio}, 177. Timothy’s §18 is actually not to be found in any known pseudo-apostolic work; see Kaufhold, “Sources,” 300. From the synod of Neocaesarea Timothy cites canon §2 to the effect that a woman may not marry two brothers; he adds that no man may marry two sisters. For the Syriac text of the canon see Friedrich Schulthess, ed., \textit{Die syrischen Kanones der Synoden von Nicaea bis Chalcedon} (Berlin: Weidmannsche Buchhandlung, 1908), 45-46. From the Syro-Roman Law Book Timothy cites two canons. The first prohibits marriage to a brother’s wife and a wife’s sister, the second to a brother’s daughter, sister’s daughter, paternal aunt, maternal aunt, father’s wife, and father’s concubine. These correspond to §§98a-b in \textit{SRRB} 2: 136-39. Kaufhold points out that Timothy must have known these canons from the recension of the Syro-Roman Law Book labeled RII; see \textit{SRRB} 2: 336-37.
daughter to produce a male heir). It is also possible, however, that these kinds of marital arrangements were customary outside the context of substitute successorship practices.

Also notable is Timothy’s approach to having his strictures against close-kin marriages accepted in practice. Though he cites the rulings from the Roman texts as authoritative, nowhere does he prescribe actual punishments for transgressing them. He relies instead on admonitory language, saying, for example, that transgressors “shall be strangers to the exalted gloriousness of the Kingdom of Heaven until they repent.”

Read in this manner, Timothy’s letters underscore how local communities might contest the patriarchal center’s definitions of which marital practices fell outside the bounds of Christian belonging. Close-kin marriages had clearly persisted in Khūzistān despite the efforts of ecclesiastical elites dating back more than two centuries to end them. The province, moreover, was an ancient and prominent bishopric that looks to have had a strong sense of regional identity and interests (attested not only by the persistence of close-kin marriages but also by local resistance to the metropolitan bishop appointed by Timothy). Timothy did not have any coercive powers to enforce his regulations, but he

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300 In Sasanian law a sonless man’s daughter can be designated an intermediary successor (Middle Persian ayōgēn); she holds his patrimony temporarily until she produces a male heir for him. See Macuch, “Inheritance,” 132-34.
301 The letter’s condemnation of marrying a deceased wife’s sister, for example, does not seem to relate to practices of substitute successorship; it seems more likely to pertain to instances of two families wanting to maintain ties to each other through marriage after one spouse dies. In any case, there was a clear Roman ecclesiastical aversion to marriages between a man and his deceased wife’s sister, as evidenced in the texts that Timothy cites. Basil the Great wrote an epistle condemning these arrangements as well, which Timothy discusses at length in his letter 9 to a teacher and priest named Rabban Petyōn. Petyōn’s question concerning the practice’s permissibility certainly suggests that it was not uncommon. For the text of the letter see Timothy, *Epistulae* 1: 91-100.
303 This resistance is documented in several other letters of Timothy’s. See Putnam, *L’église*, 34-35. We should note as well that claims to independence from the patriarchate by Khūzistān and
also notably stopped short of issuing anathemas against the recalcitrant Khūzistānīs (at least to judge by his letters). The balance of powers between the patriarch of Baghdad and locals of Khūzistān was such that Timothy could admonish and appeal to authoritative Christian traditions beyond his personal rulings. But his ecclesiastical vision of an East Syrian church free of characteristically Iranian close-kin marital practices had to be negotiated with regional actors, and for at least a certain period of his patriarchate the Khūzistānīs appear to have both maintained their close-kin marital proclivities and professed affiliation to the Church of the East.

Cousin Marriage and Communal Identity

Mār Abā issued his set of biblically based prohibitions of kin marriage largely in an effort to rein in Iranian practices among lay people that he viewed as incompatible with Christian commitments. Timothy carried out a similar endeavor in his dealings with the Christians of Khūzistān (whether these customs persisted among Christians elsewhere in East Syrian territories is unclear). But in their general trend toward greater comprehensiveness, Timothy and his contemporary East Syrian bishops also expanded their tradition’s kin-marriage prohibitions beyond those detailed in Leviticus. Of their various additions, none cut closer to ubiquitous patterns of household life in the ‘Abbāsid Middle East than Timothy’s ban of marriage between first cousins and Īšō’barnūn’s subsequent nullification of that ruling. In the rest of this chapter, we will examine closely other provinces at other times were in no way mere fictions or ruses, as local bishops “could summon equally strong apostolic traditions in favor of their bishoprics’ autonomy.” See Richard E. Payne, “Persecuting Heresy in Early Islamic Iraq: The Catholicos Ishoyahb III and the Elites of Nisibis,” in Andrew Cain and Noel Lenski, eds., The Power of Religion in Late Antiquity (Burlington, Vermont: Ashgate, 2009), 400-401.
their dispute over cousin marriage and the issues of East Syrian communal identity and legal authority around which it revolved.

Cousin Marriage in the Pre-Modern Middle East

Before addressing the law books specifically, let us begin with the practice of cousin marriage more generally and seek to appreciate why it was a matter of concern to Christian bishops in ninth-century Iraq. In the twentieth century, a wide range of studies by structural anthropologists asserted that marriage between first cousins, especially parallel paternal ones (i.e., the children of two brothers), was a prevalent practice in the societies of the eastern Mediterranean and western Asia. They also found it to be fairly particular to those regions and much less common in other areas of the world (although later studies were careful not to make of cousin marriage the definitive fact of a reified Middle Eastern kinship system). While debates over cousin marriage’s “function” ranged widely and remain ongoing, most anthropologists explained it as a strategy to negotiate family ties in agnatic kin networks or to keep inheritances within patrilineages.

304 In anthropological jargon a parallel cousin is the child of one’s paternal uncle or maternal aunt, a cross cousin the child of one’s paternal aunt or maternal uncle.

Marriage between cousins indeed remains common down to the present day in many Middle Eastern communities, Christian and Jewish as well as Muslim. It is clear, however, that the practice is ancient; Middle Easterners have been forming households and lineages by marrying cousins to each other since before the rise of Islam. Pre-Islamic evidence for cousin marriage, much of it Roman, is often associated closely with the inhabitants of Syria, Mesopotamia, and the Arabian Peninsula. The Romans appear to have largely disapproved of the practice, and so the emperor Theodosius I (r. 379-95) saw fit to outlaw it. Significantly, however, his son Arcadius rescinded this ban in the eastern provinces by 405. Further mention of cousin marriage comes in a letter of Theodoret, fifth-century bishop of Cyrrhus in northern Syria, who scolds the magistrates of Zeugma on the Euphrates for the frequency of the practice in their city. In pre-Islamic Arabic poetry we find various offhand mentions of approval of marriage between cousins. As one example, the testament of ʿAmr ibn Kulthūm admonishes the poet’s children to “marry the daughters of paternal uncles to sons of paternal uncles” because strangers will never make suitable matches (akfāʾ).

In the Islamic Middle East, cousin marriage continued to be standard practice in many communities and is especially well attested in Arabic Islamic literature. Scholars often point to the fact that bint ʿamm, the Arabic for “paternal uncle’s daughter,” occurs

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in Arabic literature as a euphemism for “wife” as an indication of the practice’s presumable ubiquity, or at least relative frequency. Other references to marriages between cousins in Islamic sources are many and varied but diffuse; precisely because the practice was lawful and largely accepted, it rarely warranted much direct commentary on its own terms. In Islamic tradition, the lawfulness of cousin marriage goes back to the Quranic verses 4:22-23. These list a series of prohibited marital unions between men and various relatives; cousins are not among them, and later commentarial and legal traditions were basically unanimous in interpreting the verses as permitting unions not explicitly prohibited (like those between cousins). Trawling through various other genres of Arabic Islamic literature turns up a range of expressions of praise for cousin marriage. According to one tradition attributed to the Prophet Muḥammad, for instance, an indication that the Day of Judgment has come will be when “a man seeks a peasant (nabaṭiyya), marries her at his expense, and leaves aside his cousin (bint ʿammih), not looking at her.” In other words, it is a true sign of the apocalypse when men choose not to marry their cousins. As another example, an anonymous piece of Arabic wisdom affirms, “whoever is ashamed of his cousin shall have no child born to him.”

Nor was cousin marriage a practice restricted to Muslims. In Egypt, where a wealth of documentary evidence leaves us better informed about social practice than in most other regions, parallel cousin marriage was common in the Jewish community

310 See, e.g., van Gelder, Close Relationships, 23.
311 See, for example, Ṭabarī’s commentary on the relevant verses, which notes that “there is no disagreement” (lā ʿkhtilāf, with partial exceptions) over who the unmarrigeable relations are. Muḥammad ibn Jarīr al-Ṭabarī, Ḥāmiʿ al-bayān ʿan taʿwil āy al-Qurʾān (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1954), 4: 321.
represented in the Cairo Genizah and among Copts.\textsuperscript{314} Although evidence for lay marital patterns among Christian communities in medieval Syria, Iraq, and Iran is of course much slimmer, a few telling points of evidence indicate that cousin marriage was practiced by at least some of them just as it was by their non-Christian neighbors. Writing in the mid-ninth century sometime after Īsā’barnūn’s reign, the East Syrian metropolitan bishop ‘Abdīšō’ bar Bahrīz called marriage to a paternal uncle’s daughter (\textit{mkīrtā ba[r]t dādēh}) “a custom that is held to and is current among the people” (‘\textit{yādā d-ahīd wa-rdē bēt bnay nāṣā}).\textsuperscript{315} In the twelfth century, the West Syrian bishop Dionysius bar Ṣalībī prescribed penitential punishment for Christian men who married their cousins; tellingly, this canon is one of a series of 71 that “concern sins that are committed in our time” (\textit{‘al ḥṭāhē da-b-yawmātan hā mesta ‘rīn}), suggesting that cousin marriage was still a familiar practice in Dionysius’ day.\textsuperscript{316}

In sum, marriage between first cousins – especially paternal parallel ones, the children of two brothers – had long been a characteristic and frequent practice of Middle Eastern societies. What, then, was at stake for the ninth-century bishops in their dispute over whether to allow it?

\textsuperscript{314} For the prevalence of marriage between first cousins in the Genizah, see S. D. Goitein, \textit{A Mediterranean Society}, vol. 3: \textit{The Family} (Berkeley: University of California Press, 1978), 27-33. For the Copts, see el-Leithy’s discussion of a thirteenth-century treatise on characteristic Coptic practices like cousin marriage in \textit{“Coptic Culture,”} 364-67. The prevalence (and social function) of cousin marriage among Copts is also hinted at by a Late Antique hagiographical text from Upper Egypt in which the martyr Demetrios’ parents arrange his marriage to his cousin in order to keep the family’s property intact. See Brown, \textit{Body and Society}, 250.

\textsuperscript{315} ‘Abdīšō’, \textit{Ordnung}, 36-37.

\textsuperscript{316} See §12 in \textit{Qānōnē wa-ṭhumē mmaššēh w-qallīlē d-‘al ḥṭāhē da-b-zabnan hānā hā mesta ‘rīn} (\textit{A Few Regulating Canons and Precepts Concerning Sins That Are Committed in This Time of Ours}), in \textit{Qānōnē d-Mār(y) Diyonisiyos} (\textit{Canons of Mār Dionysius}), MS British Library Oriental 4403, folios 162b-163a. It is also worth noting that cousin marriage is not among the unions prohibited by the West Syrian synods of the eighth and ninth centuries; see canon §8 of the synod of George of 785, §§35-37 of the synod of Kyriakos of 794, and §12 of the synod of Yōhannān of 846, as well as his short treatise on prohibited marriages. These passages are found in \textit{SWST} 1 (text): 3, 14-15, 41, and 46-50, respectively.
We encounter no prohibition in East Syrian legal literature on marriage between cousins until Timothy, who forbade such unions in ruling §23 of his law book. Though the Syriac text of the ruling is not published in Sachau’s edition and has been lost from the East Syrian manuscript tradition, it has fortunately been preserved in manuscripts transmitted among the West Syrians (as well as in abbreviated form in Ibn al-Ṭayyib’s Arabic translation). Timothy’s question and ruling read as follows:

Is it right for a man to marry his paternal uncle’s daughter, his paternal aunt’s daughter, or his maternal aunt’s daughter?

   It is not right for a man to marry (lā ṣādeq d-annessab) either his paternal uncle’s wife or his maternal uncle’s wife. The paternal uncle is like (ak) a man’s father; the paternal uncle’s wife, therefore, is like a man’s mother. And a man’s maternal aunt is like his mother.

   If, therefore, we may not marry (lā šallīṭ lan d-neṣṭawṭep) the paternal uncle’s wife or the maternal uncle’s wife, even though they are not related to us (w-hādē kad lā qarrībīn [sic] lan b-gensā), how can one marry the paternal uncle’s daughter or the maternal uncle’s daughter? We have spoken [of uncles’ wives] as “like the mother,” and we have spoken of the paternal uncle and maternal uncle as “like the father.”

   God forbids one to lie with his sister, the

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317 Linguistic difficulties in the manuscripts’ text are addressed in the following footnotes.
318 The Syriac text has qarrībīn, the masculine plural form of the adjective for “related”; read instead qarrībān, the feminine plural, in reference to uncles’ wives.
319 The Syriac text of this sentence reads as follows: d-akwāṭ emmā mmallīn lan w-ahā tāb d-abā w-ahā d-emmā d-akwāṭ abā mmallīn lan. A literal translation would be something like, “We have said ‘like the mother,’ and we have spoken of the father’s brother and mother’s brother as ‘like the father.’” The problem lies in the first clause, which does not state its object; who, in other words, is spoken of as “like the mother”? It is possible to read “the paternal uncle’s daughter” and “the maternal uncle’s daughter” (ba[r]t ḥād abā and ba[r]t ḥā ḥā d-emmā) from the previous sentence as the object, but nowhere has the text previously called them “like the mother”; rather, it has called the paternal uncle’s wife (and the maternal aunt) “like the mother.” Therefore, since the second clause of this sentence is clearly referring back to the text’s previous statement that “the paternal uncle is like the father,” it is reasonable to infer “uncles’ wives” as the object of the first clause: “We have spoken [of uncles’ wives] as ‘like the mother,’ and we have spoken of the paternal uncle and maternal uncle as ‘like the father.’” On an unrelated point, note also the use of the impersonal passive participle (mmallīn, plural of mmallal) with the agent introduced by the preposition l- to express the perfect tense: mmallīn lan for “we have spoken of.” On this usage see
daughter of his father or the daughter of his mother (Deuteronomy 27:22). Therefore, it is not right for a man to lie with the daughters of the mother’s [and father’s] brothers and sisters who are related by flesh (d-qarrībīn ba-bsar), especially if divine law forbids and admonishes us from uniting with the paternal uncle’s wife or the maternal uncle’s wife and from revealing their shame (w-lā neglē pursāyhēn, cf. Leviticus 18:14), though they are not [even] related to us by flesh (w-lā qarrībīn [sic] lan ba-bsar). Those who do these things [i.e., marry cousins] are transgressors of the law (ʿābray ʿal nāmōsā).

While Timothy’s statement of prohibition here is evident, the explanation may appear somewhat convoluted. However, Timothy is employing a style of analogical reasoning that is worth drawing out: he derives a general prohibitive principle from other recognized impediments to marriage and then builds an analogy on this rule to arrive at a prohibition of marriage between cousins.

As mentioned above, among the Levitical prohibitions of close-kin sexuality that Mār Abā inscribed in East Syrian tradition are several that apply to a man’s paternal and maternal aunts and uncles. Leviticus 18:12-13 forbids any sexual contact between a man and his aunts, being consanguine relatives (Syriac singular qarrībtā) of his parents. The biblical text also attaches certain prohibitions to the household of a man’s paternal uncle: Leviticus 18:14 forbids sex between a man and his paternal uncle’s wife. On this basis, Mār Abā included prohibitions of marriage between a man and his aunts and paternal uncles.


320 The portion of the biblical verse quoted here is nedmak dēn ʿam ḥātēh ba(r)t abū(ḥy) aw ba(r)t emmēh. Other than the addition of the particle dēn, it corresponds exactly to the Peshitta reading.

321 The Syriac text has only “the daughters of the mother’s brothers and sisters,” bnāt aḥē w-ahwātā d-emmā, but throughout the rest of the passage maternal uncles and aunts are spoken of in tandem with paternal ones. The likely sense of the passage is thus bnāt aḥē w-ahwātā d-emmā [wa-d-abā], “the daughters of the mother’s [and father’s] brothers and sisters.”

322 Read again the feminine qarrībān for qarrībīn in reference to uncles’ wives.

323 MS Mount Sinai Syriac 82, folios 67b-68a.

324 It is worth noting that the prohibition is framed from the perspective of males only.
uncle’s wife in his third synodal letter and exegetical treatise on Leviticus 18.\textsuperscript{325} Though the biblical text does not mention maternal uncles, Mār Abā extended a prohibition of marriage to their wives as well in the synodal letter.\textsuperscript{326} Later legal literature, including canon §13 of the synod of Îšō’yahb I in 585 and the second treatise of Îšō’bōkt’s law book, restated these prohibitions.\textsuperscript{327}

Timothy’s received legal tradition thus included a set of norms prohibiting unions between a man and his consanguine and affine aunts; it had not, however, extended prohibitions to the children of a man’s aunts and uncles. The patriarch’s move to do so, as articulated in the law book, is based on an understanding of the prohibitive relationships between a man and his parents as analogous to those between a man and his aunts and uncles; so just as a prohibition on a man’s sisters goes hand in hand with that on his parents, so should one on his cousins go hand in hand with that on his uncles and aunts.

Timothy’s reasoning can be summarized more precisely as follows. In the case of a man’s aunts, a prohibition of marriage to consanguine female relations applies to them just as one does to his mother. In the case of his uncles, the same prohibitions apply to the women of their households as to the women of his father’s – as Timothy says, “The paternal uncle is like a man’s father; the paternal uncle’s wife, therefore, is like a man’s

\textsuperscript{325} For the synodal letter and canons excerpted from it, see Chabot, \textit{Synodicon}, 80-85 and 547-50. 
\textsuperscript{326} See Chabot, \textit{Synodicon}, 82. 
\textsuperscript{327} See Chabot, \textit{Synodicon}, 148-50 and Îšō’bōkt §§II.i.1-2, \textit{SR} 3: 28. Îšō’bōkt §II.i.2 also restates Mār Abā’s position on maternal uncle’s wives, noting that the “law of the Fathers” (nāmōsā d-`abāhātā) prohibits marriage between a man and his maternal uncle’s wife because “they judged her equal to the father’s brother’s wife… in natural kinship (qarrībūtā kyānāyātā).” Timothy repeats the ban on marriage between a man and the wives of his paternal or maternal uncles in decision §22 of his law book. For the Syriac text see MS Mount Sinai Syriac 82, folio 67b; for the Arabic translation see Ibn al-Ṭayyib, \textit{Fiqh} 1 (text): 185.
mother.” Since the marriage prohibitions that apply to one’s parents are thus analogous to those that apply to one’s uncles and aunts, Timothy comes to the conclusion that the prohibitions that apply to the children of one’s parents (that is, one’s siblings) should likewise cover the children of one’s aunts and uncles (one’s cousins). If uncles and aunts are like one’s parents, then cousins are like one’s siblings, and marriage with them is equally unlawful.

This kind of analogizing with the goal of extending and systematizing sets of marriage impediments is certainly not unique to Timothy’s prohibition of cousin marriage. In another ruling, for example, he states that a man and his son may not marry a woman and her daughter because the daughter would be analogous to the son’s sister. To take an example from another legal culture, one of the main points of contention between Karaite and Rabbanite Jews in early ‘Abbāsid Iraq was the formers’ use of particular modes of analogical reasoning to extrapolate new incest prohibitions from the text of Leviticus. In the context of the East Syrian law books, however, Timothy’s prohibition of cousin marriage stands out for the relatively detailed, explicit manner in which he actually describes his line of reasoning.

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328 From a certain perspective it may appear odd to draw an analogy between one’s mother, a close consanguine relation, and one’s uncle’s wife, an affine relation. However, Leviticus 18 can be interpreted to prohibit marriage between a man and his mother not only because she is a female consanguine relation, but also because she is his father’s wife; verse 8 reads, “Do not reveal the shame of your father’s wife, for that is your father’s shame.” Insofar as this parallels verse 14, “Do not reveal the shame of your paternal uncle’s wife,” one’s mother and the wife of one’s paternal uncle are very much “like” each other: both are wives of male kin to whom an analogous prohibition on marriage to their wives applies.


Later in this chapter we will further consider Timothy’s use of analogy in his prohibition of cousin marriage and its relationship to comparable developments in Islamic and Jewish law. First, however, how might we understand a broader social context to the prohibition? As described above, this ruling was essentially the result of an intellectual exercise in analogical reasoning on Timothy’s part; it was not determined by the patterns of social life that it was intended to regulate. Timothy was a bishop steeped in the intellectual traditions of his church, and he compiled his law book in the interest of developing and adding to his community’s legal tradition (it is worth remembering as well that he was a celibate bishop relatively removed from the exigencies of the lives of householders). He identified the lack of a prohibition of cousin marriage as a logical “hole” in that tradition, and so issued the prohibition in the interest of maintaining the internal coherence of the system of legal norms he considered authoritative for East Syrian Christians.

Outside the intellectual world of high clergymen like Timothy, however, a ban on cousin marriage was no mean proposition; as we have seen, the practice had long been part of common marital strategies in a wide swath of Middle Eastern societies. Now Timothy never says that he is prohibiting cousin marriage simply because Muslims, Jews, or any other non-Christians do it. But in the context of his overall project of setting particular standards of marital practice for the East Syrian community, Timothy’s prohibition of cousin marriage stands as an assertion of an idea of a specifically Christian household form sharply distinct from that of the general milieu of the Middle East. If life
in the caliphate dictated that each religious group have its own communal law, Timothy sought to make Christian law systematic and rigorous. In doing so, his prohibition of cousin marriage would imbue lay marital practices with a Christian distinctiveness – one that would separate lay people from the broader social patterns of the Islamic caliphate, much like Mār Abā’s efforts to convince Christians to abandon typically Zoroastrian styles of close-kin marriage in the sixth century. Cousin marriage would no longer just be something many Middle Easterners did; Timothy’s law reconceived an essentially regional practice as one that denoted a particular communal belonging – specifically, belonging to non-Christian communities.

As we have seen, this method of associating certain types of marriages with particular religious traditions was not an uncommon polemical strategy in the forging of sectarian and communal identities in the medieval Islamic Middle East. Mār Abā is an example of an early Christian exponent of it. And by the fourteenth century, the Damascene Shāfiʿī scholar Ibn Kathīr could state concerning Quran 33:50, in which God allows the Prophet to marry his cousins:

This is a just mean between going too far and being too lax (al-ifrāṭ wa-l-tafrīṭ). For the Christians do not marry a woman unless there are seven degrees between her and a man, while a Jew will marry the daughter of his brother or sister. This complete, pure path [of ours] (al-sharīʿa al-kāmilā al-ṭāhirā) came to do away with the excessiveness of the Christians, and so made licit [for marriage] the daughter of the paternal uncle or aunt and the daughter of the maternal uncle or aunt; and [it came as well] to prohibit that in which the Jews are lax, [which is] allowing [marriage to] the daughter of the brother or sister.331

For Ibn Kathīr, Islamic rules for marriageable relations, particularly cousins, constitute a perfect middle ground between excessive Christian strictness and reprehensible Jewish uncle-niece marriage. Different types of marital unions are not valueless; they connote

and indicate adherence to particular religious traditions and belonging to their associated communities.

The strict Christians to whom Ibn Kathīr refers were likely Byzantines; since the eleventh century the Byzantine Church had espoused the specific doctrine that individuals related within seven degrees could not marry.\textsuperscript{332} In ninth-century Iraq, however, the indications we reviewed earlier all point to cousin marriage being common practice among many Christians just as it was among their neighbors. It is in this context that I would suggest we might best understand why the deacon of Ḥīra bothered to ask Timothy’s successor about the lawfulness of marriage between cousins. If some East Syrian lay people were in the habit of marrying off cousins to one another, this would have confronted local East Syrian clergymen like Makarios with a dilemma: a common and customary marital practice had been rendered illegitimate by newly delineated Christian communal law. East Syrian patriarchs like Timothy and other upper clergy claimed that believers had to order their daily practices in accordance with the laws that the ecclesiastical hierarchy promulgated; to do so was to stake a claim of belonging to its authoritative idea of community. But in this situation, a family strategy for strengthening kinship networks and transferring wealth across the generations ran up against and was demarcated as un-Christian by one of these laws. This would have put lower clergymen like Makarios in a bind between ecclesiastical and local loyalties. Presbyters and deacons were both part of the ordained East Syrian clergy and invested in the goings on of local

communities. If they put a premium on obedience to patriarchal authority, their daily commerce with laymen positioned them especially well to encourage practice to conform to the laws that high clergy claimed to be definitive of Christian belonging. At the same time, however, it would have given them a concern for the exigencies and customs of lay life that were less likely to affect scholastic bishops like Timothy. For him, as we have noted, the prohibition of cousin marriage was an exercise in legal reasoning with the goal of making East Syrian family law more conceptually systematic and, as a result, defining Christian social life against that of other religious groups; it was not determined by local practices.

Given such circumstances, how could a clergyman be an effective spiritual custodian if an ostensibly authoritative communal law was unpopular or ignored, as a ban on cousin marriages was likely to have been in many locales? The incongruity of local practices with the notion of communal integrity over and against non-Christians, especially Muslims, that Timothy’s new law promoted must have been a problem confronting many lower clergymen in Iraq and Iran like Makarios who were responsible for mediating ecclesiastical authority, and ultimately divine salvation, to lay communities.

*Cousin Marriage and the Authority of Received Tradition*

Īšōʿbarnūn’s Response: Exegesis versus Analogy

Though Timothy’s ban on cousin marriage was likely a controversial matter (to whatever degree it was actually recognized by local communities and clergies), we know
that Ïšō‘barnūn rescinded it some twenty years later when Makarios brought the issue to him. In doing so, the new patriarch opened a small dispute that affords a view into how the ninth-century East Syrian bishops negotiated the dynamics of personal and scriptural authority as they sought to construct an idea of Christian family and community shaped by lawful practice. This dispute, as we will see, was also part of a broader trend in the Middle Eastern religious traditions of the time of grappling with the authoritative sources of religious law.

As we noted above, the characteristic feature of Timothy’s prohibition of cousin marriage is that he derived it by way of analogical reasoning, a method that the patriarch explicates: he identifies a prohibitive principle common to two groups of relatives (uncles/aunts and parents) and therefore determines that the same specific rules should apply to both (a prohibition on marrying one’s cousins should parallel the prohibition on marrying one’s siblings). Implicit in this method is an assertion of Timothy’s personal authority as chief bishop of the East Syrians to extrapolate and issue new norms from those already established in the tradition by means of his discretionary reasoning.

In Ïšō‘barnūn’s response to Makarios concerning cousin marriage, however, we find a very different claim. Where Timothy reasons by analogy, Ïšō‘barnūn turns to the authority of scripture:

> That a man may marry the daughter of his father’s brother, or a woman the son of her father’s brother, God commands to Moses. For He said [that] the daughters of Zelophehad should marry the sons of their paternal uncles. And just as the children of brothers may [marry], so also may the children of sisters.\(^{333}\)

Here, Ïšō‘barnūn cites the story of Zelophehad’s daughters from Numbers 36 – in which the women in question were married to their parallel paternal cousins in order to keep

\(^{333}\) MS Mingana Syriac 586, folio 433b.
their father’s patrimony in the tribe of Manasseh – as a scriptural proof that God has sanctioned marriage between cousins. This remains valid for the church through the tradition of the Apostles and Church Fathers, none of whom, according to Īšō’barnūn, have prohibited this practice. Evincing a marked dislike for his predecessor, Īšō’barnūn adds that “Timothy, however, attempting to undo God’s commandment and claiming (nḥāwē) that the Apostles and Fathers acted evilly, established himself against God and His saints and forbade this thing [cousin marriage], reproaching (kad ʿādel) God and His saints.”

What we have here, then, is a specific but revealing contestation over the authoritative sources and methods that should determine the laws of Christian marriage. Where Timothy looks to extrapolate analogically a new ruling from established ones, Īšō’barnūn holds that any such derivation must accord with God’s prescriptions and the practices of the biblical forebears as found in scriptural narrative. Indeed, Īšō’barnūn expands on this argument in other writings. His approval of cousin marriage communicated in the epistle to Makarios turns up again as ruling §26 of his law book. Here, Īšō’barnūn cites the story of Zelophehad’s daughters as proof, but adds more significantly an East Syrian exegetical tradition that Abraham and Sarah were cousins. Moreover, we learn from another treatise of Īšō’barnūn’s that this tradition was among the teachings of Theodore of Mopsuestia (d. 428), the late antique theologian discussed in chapter one whose exegesis and Christology were authoritative for and definitive of the

334 MS Mingana Syriac 586, folio 433b. Īšō’barnūn is somewhat notorious in East Syrian chronicle literature for being “quick to annoyance and rashness” (sarīʿ al-harad wa-ʾl-ḥaysh) and “harboring enmity toward and loathing Timothy” (yuʿādī Timāthāʾ us wa-yubghīduhū); see Gismondi, Akhbār 1: 75. The reasons for this enmity remain unclear.
335 SR 2: 126.
East Syrian clerical elite’s doctrinal identity. In other words, Īšōʾ bārnūn tells us that God allowed the first patriarch to marry his cousin, that “neither the blessed Apostles nor those after them prohibited [this practice],” and that we know these facts of scriptural history from the East Syrians’ chief exegetical authority. The conclusion to be drawn is that cousin marriage must therefore still be permissible for contemporary East Syrians.

We can see why Īšōʾ bārnūn is so concerned to invoke this scriptural and exegetical precedent against Timothy’s prohibitive ruling if we dwell for a moment on the exegesis behind the claim that Abraham and Sarah were cousins. In effect, this “cousin tradition” on Abraham and Sarah’s kinship was a Christian alternative to traditional rabbinic Jewish readings that rendered the patriarchs uncle and niece – which was permissible in the law of the rabbis but conflicted with common Christian notions of acceptable degrees of kin marriage. The problem for the rabbis stems from Genesis 20:12, in which Abraham appears to say that he and Sarah are half-siblings. As this would have been a manifest transgression of the incest prohibitions of Leviticus 18, the rabbis developed a reading (found in the Babylonian Talmud) of the genealogical passage Genesis 11:26-30 that identifies Sarah with Yiskah, the daughter of Abraham’s brother Haran – making Abraham and Sarah uncle and niece. Since the rabbis allowed and

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336 Īšōʾ bārnūn’s set of exegetical questions and answers on the Pentateuch affirms again that Abraham and Sarah were “the children of brothers” (bnay abē), and that “the Interpreter” (mpaššqānā) taught in his exegesis of Genesis 20:12 that Sarah “was born to the brother of [Abraham’s] father.” See question §23 in Selected Questions, 30 (translation) and facsimile folios 12v-13v (Syriac text). However, Īšōʾ bārnūn also attributes a second opinion on Abraham and Sarah’s kinship to Theodore, on which see note 344 below.

337 SR 2: 126.

338 This identification is found in Megillah 14a and Sanhedrin 69b of the Babylonian Talmud. The identification hinges on wordplay with the Hebrew root of Yiskah, s-k-h, derivations of which mean “to see” or “to foresee.” So, the Talmudic teachings state that Sarah was called Yiskah because she foresaw the future through holy inspiration, with reference to Genesis 21:12, “Whatever Sarah tells you, do as she says”; or that because she was beautiful, people constantly gazed at her. See Reuven Firestone, “Prophethood, Marriageable Consanguinity, and Text: The
even encouraged marriage between a woman and her paternal uncle, this reading of the genealogy became an accepted and neat solution to the exegetical problem of Abraham and Sarah’s kinship.339

Syriac exegesis knew the same identification of Sarah with Yiskah as far back as Ephrem’s commentary on Genesis in the fourth century, and Êšō’barnūn repeats it in his law book,340 but Christian ecclesiastical circles had traditionally been much less accommodating of uncle-niece marriage. In the Roman Empire this was largely a function of widely propagated legal and moral norms; classical Roman law had specifically prohibited uncle-niece marriages, and later imperial edicts restated it (with special attention to the eastern provinces, in some areas of which the practice was likely customary).341 By Êšō’barnūn’s time East Syrian law had recognized the same prohibition, likely as another way to distinguish Christian legal tradition from Jewish and

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339 For the origins of the “uncle-niece tradition” in the disputes between the Pharisees (who promoted uncle-niece marriage) and other Jewish groups, see Eliezer Segal, “Sarah and Iscah: Method and Message in Midrashic Tradition,” The Jewish Quarterly Review 82 (1992): 417-29. In addition to the Talmudic passages, the identification of Sarah as the daughter of Haran appears in Josephus’s Jewish Antiquities (on which see Segal, “Sarah and Iscah,” 424) and in the text of the Palestinian Targum of Genesis 11:29: “Haran the father of Milkah and Yiskah, that is Sarah” (see Firestone, “Prophethood,” 336).


341 The classical Roman ban on uncle-niece marriages had in fact been lifted, amid great controversy, when the first-century CE emperor Claudius sought to marry his niece Agrippina, but it was reinstituted in Late Antiquity. For example, a law of 342 addressed to Phoenicia (roughly modern Lebanon) and enacted in Antioch banned marriages between uncles and nieces. See Evans Grubbs, Women and the Law, 137-38 and 161.
Zoroastrian norms; statements of the ban on uncle-niece marriages are found in the law books of Īšōʾbōkt, Timothy, and Īšōʾbarnūn.\(^{342}\)

Given this general aversion to uncle-niece marriage on the part of Christian ecclesiastical elites, how were they to deal with the vexed problem of Abraham and Sarah’s kinship? The answer given by Īšōʾbarnūn’s exegetical tradition is as follows. Sarah was indeed to be identified as Yiskah, daughter of Haran; but the Haran in question was not actually Abraham’s brother. Rather, he was “Haran the elder (rabba), brother of Teraḥ the father of [Abraham].”\(^{343}\) Accordingly, Sarah was in fact the daughter of Abraham’s paternal uncle, making her and Abraham parallel paternal cousins rather than uncle and niece.

From this vantage point, we can see why Īšōʾbarnūn, as a high cleric schooled in the East Syrians’ authoritative traditions of biblical exegesis, was so opposed to Timothy’s prohibition of cousin marriage. The aversion to uncle-niece marriage widely held in ecclesiastical circles necessitated a particular reading of the genealogy of the Old Testament patriarchs, which made Abraham and Sarah parallel paternal cousins in order to absolve them from sharing in an unlawful union between uncle and niece. The East Syrians, moreover, had received this teaching from none less than Theodore of

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\(^{342}\) See Īšōʾbōkt §II.i.2, SR 3: 28; Timothy §21 and §24, MS Mount Sinai Syriac 82, folios 67b-68a and Ibn al-Ṭayyib, *Fiqh* 1 (text): 185-86; and Īšōʾbarnūn §1 in Sauget, “Décisions,” facsimile folio 1. The ban of uncle-niece marriage is found in no East Syrian source earlier than Īšōʾbōkt, but the matter comes up in the third synodal letter of Mār Abā: “as for the daughters of [a man’s] brother or sister, they are not explained for us (la mparršān lan) in the scriptures.” The sentence is somewhat vague and turns on the phrase la mparršān lan. Because the sentence comes as something of an endnote after a long passage in which the patriarch delineates very clearly the forbidden unions, I take Mār Abā to mean that scripture gives no indication of whether uncle-niece marriages are allowed or not, and that he therefore declines judgment himself. See Chabot, *Synodicon*, 83. Precisely why later East Syrian tradition adopted the ban of uncle-niece marriage is not entirely clear, but the combination of Roman preferences and differentiation from Zoroastrian and Jewish law is a likely explanation.

\(^{343}\) Īšōʾbarnūn §26, SR 2: 126.
Mopsuestia, their primary exegetical authority and the individual traditionally acclaimed as “the Interpreter” (ṃpaššqāna) par excellence in East Syrian literature. In view of these considerations, Timothy’s attempt to make East Syrian law more systematically consistent by banning cousin marriage did no more than implicate the biblical patriarchs in a second incestuous marriage after exegetes had gone to great lengths to explain them out of a first. Given such circumstances, Timothy’s personal use of legal reasoning could not take precedence over received exegetical tradition. Īšō’bārnūn had to reject Timothy’s opinion in order to maintain the coherence of East Syrian exegetical teachings, as well as their congruence with the community’s established legal traditions.

The Wider Contexts of ʿAbbāsid Legal Culture

The dispute over cousin marriage between Timothy and Īšō’bārnūn brought to the fore important problems of communal authority in the bishops’ efforts to define a distinctively East Syrian tradition of family law in the ʿAbbāsid Caliphate. However, it also bears significance for broader developments in caliphal society as a whole. This significance lies chiefly in the manifest parallel between the East Syrian bishops’ dispute

344 It is important to note here that in addition to Theodore’s “cousins” teaching, Īšō’bārnūn also acknowledges that Theodore, in the introduction to his commentary on Matthew (ʾelltā d-puşšaqā d-Mattay), had called Abraham and Sarah uncle and niece: Īšō’bārnūn quotes Theodore as saying, “Although he [Abraham] was also her uncle…” Īšō’bārnūn explains this discrepancy as a mistake, saying that Theodore wrote “Abraham in the place of Teraḥ, his father”; in other words, he should have or meant to write that Abraham’s father, not Abraham himself, was Sarah’s uncle. Īšō’bārnūn further explains away the uncle-niece interpretation by calculating the ages of the various biblical family members involved and concluding that it is impossible for the patriarchs to have been uncle and niece. See again question §23 in Īšō’bārnūn, Selected Questions, 30 and facsimile folios 12v-13v. This passage is worth noting because it shows that the Theodoran exegetical tradition was not uniform on the question of Abraham and Sarah’s kinship, and that Theodore had apparently tolerated them as uncle and niece. Theodore also, however, professed the “cousins” interpretation, and this is the one that Īšō’bārnūn adopted on Theodore’s authority.
over cousin marriage and comparable developments in Muslim *fiqh* and Jewish law in the same period.

Over the course of the eighth to tenth centuries, Muslim legal thinkers in the Ḥijāz, Iraq, and Egypt engaged in a process of hammering out the authoritative sources and methods by which legal norms could be derived. As the story is commonly told, the core of this process was a back-and-forth between those who considered *raʾy* – personal, discretionary legal reasoning – a valid source, and those who sought to position the growing body of *hadīth* – the sayings and practices of the Prophet – as more authoritative. Ultimately, a general consensus among Sunnī Muslim jurists emerged in the centuries following the pioneering work in legal theory of Muḥammad ibn Idrīs al-Shāfīʿī (d. 820).\(^{345}\) This consensus recognized prophetic *hadīth*, in newly canonized textual form, as a source of Islamic law second only to the Quran; a limited form of analogical reasoning (*qiyās*) became the third source, to be applied to the first two by trained specialists in order to derive new norms.\(^{346}\) In the realm of Jewish legal culture, scholars have noted that the emergence of Karaism in ʿAbbāsid Iraq and Iran is comparable and likely related in some fashion to these trends in Islamic law. The Karaite movement coalesced in the second half of the ninth century out of a variety of sectarian

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345 Schacht, *Origins* makes the major case for Shāfīʿī’s preeminent role in devising a systematic Sunnī Islamic legal theory in which the norms of prophetic *sunna*, as embodied in *hadīth*, take precedence over jurists’ discretionary reasoning. An argument against Shāfīʿī’s singular importance in the emergence of Islamic legal theory is Wael B. Hallaq, “Was al-Shafiʿī the Master Architect of Islamic Jurisprudence?”, *IJMES* 25.4 (1993): 587-605. El Shamsy has recently returned emphasis to Shāfīʿī and argued for the influence of a “Shāfīʿī paradigm” on other schools and movements in formative Islamic jurisprudence; see “From Tradition to Law,” 158-215.

groups in opposition to rabbinic Judaism and its academies at Sura and Pumbedita.\footnote{See Gil, “Origins of the Karaites,” 73-118.}

Among the Karaites’ principal points of divergence from the Rabbanites was their rejection of Mishnaic and Talmudic tradition. In place of the rabbis’ Oral Torah and its law, early Karaite scholars – of whom Abū Yūsuf Yaʿqūb al-Qirqisānī (fl. first half of the ninth century) is the primary exemplar – applied analogy to the biblical text in order to derive new rulings. The Karaites’ legal principles of authoritative text (naṣṣ), analogy (qiyyās), and consensus (ijmāʿ) look remarkably similar to formative Sunnī legal theory as expounded by Shāfīʿī; some scholars have posited that this is a result of Islamic influence on Karaite legal thought.\footnote{See, for example, Imran Ahsan Niazi, “The Karaites: Influence of Islamic Law on Jewish Law,” Islamic Studies 32.2 (1993): 137-47. For an alternate perspective that the similarities between Islamic and Karaite law are the result of contextual parallels but not direct influence, see Fred Astren, “Islamic Contexts of Medieval Karaism,” in Polliack, Karaite Judaism, 145-177.}

In general terms, these developments in Ṭabaṣrid-era Islamic and Jewish legal culture represent a fundamental grappling with the authoritative sources of legal norms: the analytical capabilities of trained specialists and communal elites on the one hand, textual traditions and scripture (whether hadīth, Bible, or Talmud) on the other. As we have seen in this chapter, the East Syrians’ dispute over cousin marriage represents an entirely similar case – Timothy’s analogy versus Īshō barmūn’s recourse to traditional exegesis. How might we evaluate this East Syrian point of similarity to Jewish and Islamic law, and how might it shed light on the broader landscape of legal culture in the early Ṭabaṣrid Caliphate?

The first obvious (and thorny) matter to take up is that of “influence.” Scholars speak frequently of the phenomenon and manifestations of intercultural influence, but its social mechanics and the modes of transmission and reception through which it occurs...
are often obscure. In the East Syrian case, a number of factors suggest that Timothy’s use
of analogy has no necessarily direct connection to Islamic or Jewish legal thought. In
general terms, Timothy was learned in Aristotelian logic; he certainly did not need
anyone outside of East Syrian scholastic culture to tell him that syllogism and analogy are
basic tools of reasoning. In view of Islamic law, we have no evidence that Muslim legal
texts were circulated, much less studies, in East Syrian schools and monasteries.349 And
though Muslims and Christians certainly cultivated a shared idiom of theological and
philosophical disputation in the salons and courts of metropolitan Baghdad,350 these
venues do not seem to have taken up law in the manner of the Muslim study circles in
cities like Kūfa and Baṣra. There is thus no readily apparent social or institutional context
in which Christians and Muslims engaged in sustained legal study that might suggest the
direct influence of Islamic legal thought on East Syrians in Timothy and Ḥūrin’s time.

The similarities between the East Syrians’ dispute and the Karaites are in a certain
respect more suggestive, insofar as one of the main points of contention between the
Karaites and the Rabbanites was the Karaites’ use of analogy to expand the Levitical
incest prohibitions – much like what we have seen Timothy do and Ḥūrin react
against. Though a self-identified Karaite movement did not emerge until several
generations after Timothy, the idea that the Levitical prohibitions should be extended
through various styles of systematic reasoning was apparently held by a number of the
late eighth and early ninth century Jewish figures roughly contemporary to Timothy, like
ʿAnan ben David, Benjamin al-Nihāwandī, and Daniel al-Qūmisī, whom the later Karaite

349 See the discussion in chapter two.
350 On this shared intellectual culture see Griffith, Church in the Shadow, 75-128; and Joel
tradition would claim as its early authorities.\textsuperscript{351} There are, moreover, specific similarities between the Karaites’ analogical principles and the reasoning that Timothy evinces in his law book. The Karaites understood the biblical idea that husband and wife become “one flesh” (Genesis 2:24) literally; therefore, “all the members of the wife’s family become automatically the kinsmen of the groom and his family,” and the concomitant incest prohibitions apply to all of them.\textsuperscript{352} As we saw in chapter three, the literal understanding of “one flesh” was well rooted in East Syrian tradition, and it apparently underlies several of Timothy’s novel rulings in his law book. His stricture against a man marrying his father’s wife’s daughter (i.e., his stepsister), for example, stems from the view that the woman and her daughter have become the man’s mother and sister; the father and his wife have become “one flesh.”\textsuperscript{353}

Like the case of Islamic legal thought, however, these similarities are not evidence of necessarily direct influence of between the Karaites and the East Syrian bishops. The “one flesh” idea was quite ancient in East Syrian tradition; and even if it was floating around the intellectual stew of early ’Abbāsid Iraq and Iran, there remains no compelling reason why Timothy and the proto-Karaite figures could not have simply taken it up as a principle of legal analogy independently. Additionally, Timothy’s prohibition of cousin marriage remains unique in comparison to Karaite analogizing; the Karaites prohibited uncle-niece marriages in opposition to the Rabbanites, but cousin marriage never became a point of contention between the two groups. Moreover, Timothy’s particular mode of analogizing in the cousin marriage case is not congruent


\textsuperscript{352} Olszowy-Schlanger, “Early Karaite Family Law,” 280.

with those of the Karaites. Timothy does not begin from the “one flesh” principle in the case of cousin marriage (he states emphatically that uncles’ wives are not actual blood relatives, which they would be if a man’s uncle and wife were literally one flesh). Rather, his ruling is built off of an analogy between father and uncle: the wives of either are unmarrigeable; so is the daughter of the former, and therefore the daughter of the latter (i.e., the cousin) should be as well.

In sum, the question of whether Muslim or Jewish modes of legal reasoning had any direct influence on Christian ones in the early ‘Abbāsid Middle East is largely indeterminate. Rather than pursue this issue, I would suggest that a broader significance lies in the fact of these trends’ parallel emergence in the particular intellectual milieu of early ‘Abbāsid Iraq and Iran. From this vantage point, these trends represent reactions to a problem common to the scriptured religious communities of the caliphate: what role should received, authoritative traditions play in defining the daily practices of everyday believers? The early ‘Abbāsid centuries were very much a formative period in the composition of the religious communities that made up medieval Islamic societies. Muslim groups ran the gamut from Muʿtazilites to the ahl al-ḥadīth to proto-Shīʿī ghulāt to the Khārijite sects; East Syrians, West Syrians, and Melkites were still in the process of defining distinct doctrinal identities in Arabic and Syriac theological idioms; and a wide variety of heterodox, hybrid, and millenarian sectarian groups remained very active in the towns of Iraq and the mountains of Iran. The religious elites who have left us

354 In addition to prohibitions based on the literal “one flesh,” the Karaites extended prohibitions along ascending and descending generational lines (i.e., the prohibition on marrying mothers includes grandmothers and their ascendants) and across genders (i.e., if an aunt cannot marry her nephew, an uncle cannot marry his niece). See Olszowy-Schlanger, “Early Karaite Family Law,” 280.
355 See my discussion in the introduction, especially notes 2-5.
most of our sources, however, sought to shape this variegated world according to an ideal vision of a social and political order composed of discrete religious communities. The development of legal traditions was one of their primary means of doing so. But a problematic followed from this endeavor, and it constitutes the heart of the parallel disputes over legal authority among Muslims, Jews, and Christians we have examined in this chapter: to what degree should received traditions – foci of the scholarly cultures of religious elites – determine the shape of communal law? The ongoing dispute between and eventual synthesis of the perspectives of the hadīth and ra’y parties among Muslim jurists are the best-known manifestation of this theme, but the Jewish sectarian imperatives that rejected Talmudic tradition and led to the emergence of the Karaites are an example as well. And as we have seen, the East Syrians’ cousin marriage dispute represents a Christian aspect to this story. In fact, we find further comparable instances elsewhere in the East Syrian law books. For example, Īsō’barnūn presents the orations of the fourth-century Church Father Gregory Nazianzen, who held that a husband’s infidelity should count as grounds for divorce, as authoritative for communal law; this Īsō’barnūn offered against the customary notion upheld by Īsō’bōkt that only wives’ adultery had that legal effect.

Fred Astren has pointed to this broader contextual significance to the parallel development of Islamic and Karaite law in similar terms: “…it can be said that proto-Karaite, Karaite, and other Jewish sectarian strategies for solving religious and social problems are contemporary to and often share features with similar developments made in Islam. This suggests that both Jews and Muslims were adapting to similar problems and conditions. Appositively, one of the primary over-arching historical developments of this era is the evolution of Muslim and Jewish hegemonies, to which populations might acquiesce or resist, thereby laying out the groundwork for the construction of established forms of society and religion and their alternatives.” Astren, “Islamic Contexts,” 146.

See Īsō’barnūn §101 and Īsō’bōkt §II.xii, SR 2: 162 and SR 3: 58-60.
All told, the early ʿAbbāsid centuries saw learned circles of each of the Abrahamic religious traditions engage in contestation over the authoritative sources of the legal norms by which their communities of adherents were supposed to be defined. Regardless of whether their respective techniques of legal reasoning might have influenced one another, these disputes represent facets of a common process by which religious elites in the ʿAbbāsid Caliphate sought to shape social relations in a manner that accorded with their ideal understanding of religious community as the primary mode of social affiliation. As religious elites articulated the traditions of legal norms that would mark that affiliation in daily practice, a determinate part of doing so was contestation over whether and how received textual traditions – as opposed mainly to the discretionary legal reasoning of individual specialists – were to determine those norms. The process of hammering out some kind of consensus on this matter was thus a cross-religious pattern fundamental to the articulation of a predominant social imaginary that would characterize the pre-modern Islamic Middle East, an imaginary according to which the locus of social belonging was the religious community. Though a relatively minor matter confined to East Syrian ecclesiastical circles, Timothy and ʿĪšōʾbarnūn’s dispute over cousin marriage was a revealing facet of this broader process.

**Conclusions**

Kin-marriage prohibitions were a major piece of the East Syrians’ legal tradition going back to the Sasanian period; they constituted a fundamental means by which bishops sought to created specifically Christian standards for marital practice distinct
from Zoroastrians, Jews, and later Muslims. But even as bishops sought to define the bounds of Christian marriage in opposition to those others, the cousin marriage dispute between Timothy and Īšō’barnūn exemplifies a fundamental parallel between the development of Christian and other religio-legal traditions in the ʿAbbāsid Caliphate.

In Timothy’s letters, we saw the catholicos admonish the Christians of Khūzistān to give up typically Iranian forms of close-kin marriage that East Syrian bishops had been condemning since Mār Abā. Mores surprising, however, was Timothy’s prohibition of cousin marriage, a prevalent practice in many Middle Eastern societies. Timothy reasoned analogically to arrive at a prohibition of cousin marriage in the interest of making East Syrian law more systematic and consistent; but in doing so, he reconceived a widespread, quotidian feature of Middle Eastern family life as a marker of religious belonging.

Īšō’barnūn, however, rejected Timothy’s prohibition of cousin marriage, and for him matters were at stake other than the systematic coherence of East Syrian law. From Īšō’barnūn’s perspective, Timothy’s prohibition of cousin marriage conflicted with the authoritative teachings of East Syrian exegetical tradition, which had devised a particular scriptural reading that rendered the biblical marriage between Abraham and Sarah one between cousins (rather than an illicit one between uncle and niece). Timothy had affirmed his analogically derived prohibition of cousin marriage on his own authority; but for Īšō’barnūn, a patriarch’s personal authority was not wide enough to establish communal laws solely by way of discretionary reasoning. Those laws had to be in line with received tradition (in this case the practices of the biblical patriarchs and the
established exegetical authorities’ understandings thereof), which the prohibition of cousin marriage was not.

Where Timothy foregrounded personal ecclesiastical authority and discretionary reasoning, therefore, Īšōʾbarnūn gave precedence to authoritative textual traditions. The broader significance of this disagreement between the East Syrian patriarchs lies in the fact that contemporary Muslim jurists, as well as Rabbanite and Karaite Jews, were carrying on largely parallel disputes over the role of received traditions in determining communal legal norms. From a comparative perspective, the East Syrians’ dispute – as well as the Islamic and Jewish cases – represent more than developments internal to each religious tradition. Rather, they make up a larger story of the formation of religious communal identities in the ʿAbbāsid Caliphate. As elites across the religious spectrum increasingly affirmed that religious affiliation was the primary marker of social belonging, they had to confront the problem of how to regulate the daily social practices that would both lead to salvation and demonstrate that belonging. Coming to an acceptable balance as to how the received traditions cultivated by scholarly elites would inform communal legal norms was a fundamental part of that process, and one that the East Syrians bishops had to debate much like their Muslim and Jewish contemporaries.
Chapter Five

Polygyny and East Syrian Law: Local Practices and Ecclesiastical Tradition

Sometime in the last decade of the seventh century, a wealthy Christian man of Karkā d-Bēt Slōk (modern Kirkuk) named Aḥōnā passed away. What happened next was predictable enough, given that Aḥōnā was a man of some means: his relatives got in a fight over how to split up the property he left behind. In this particular case, however, those relatives included wives and children from two separate – but simultaneous – marriages. The clerical hierarchy of the Church of the East was none too happy about this situation, a fact that was to have a decisive impact on the outcome of the case when it came before the patriarch Ḥnānīšō’. 358

While polygynous arrangements like Aḥōnā’s were relatively common in many societies and cultures of the medieval Middle East, essentially all lettered Christian traditions had long maintained that polygyny was outside the bounds of acceptable practice for committed Christians. In this chapter we will examine the ongoing efforts of East Syrian bishops from Sasanian times to the ʿAbbāsid period to impress upon lay people a notion of Christian marriage as necessarily monogamous. The chapter has three main purposes: to document the presence of polygynous practices among Christian communities in Syria, Iraq, Arabia, and Iran; to examine the development of ecclesiastical strategies to mark such practices as specifically un-Christian in the context of the socio-political transformations of the late antique and early Islamic Middle East; and, where possible, to bring to light lay reception and responses to the ecclesiastical position. By the chapter’s end, we will see that various forms of polygynous household

358 We will explore this outcome later in this chapter. For the case see Ḥnānīšō’ §XV, SR 2: 26-28.
organization were customary in certain sections of Middle Eastern societies, especially elite ones, and that many lay Christians held to them just as did their non-Christian neighbors. From an early date, however, East Syrian bishops set a legal standard defining polygyny as outside the bounds of the marital practices that denoted membership in their vision of Christian community. In the ‘Abbāsid period the opportunities of Muslim courtly society gave new visibility to polygynous practice among elite Christians. At the same time, the increased efforts of bishops like Īšōʾ bōkt, Timothy, and Īšōʾ barnūn to formalize a comprehensive communal legal tradition resulted in new strategies to combat lay polygyny, particularly by regulating the inheritance practices of Christians, like Aḥōnā and his competing heirs, ever more closely.

**Polygyny in Comparative Perspective**

Before delving into our historical subject, it is worth considering first the concept of polygyny as a social phenomenon. We are confronted at the outset with a certain terminological problem. Polygyny in its strictest sense refers to the practice of a man having multiple wives simultaneously, and more loosely to men cohabiting with multiple wives and/or concubines. However, the different forms of such household formations attested widely in Eurasian and African history, all of which we might conveniently label “polygynous,” often represent different cultural values, are regulated differently through custom and law, and function differently as strategies of household reproduction in their respective societies. So, for example, a medieval Irish chief who takes multiple wives and concubines as a prerogative of his elite status and a Sasanian Zoroastrian who enters into
a second marriage with the widow of a childless kinsman for the sole purpose of producing a proxy heir for the deceased are doing very different things in the context of their respective religious and social economies. Our single English word “polygyny” elides such distinctions.

At the same time, however, East Syrian legal discourse makes effectively the same elision and includes all polygynous practices under a single category of activity. For the East Syrians, as in essentially all other lettered Christian traditions, any sexual activity outside of monogamous marriage was fundamentally immoral and unlawful, contradictory as it was to the “singleness of flesh” and indissolubility of the marriage bond discussed in chapter three; polygyny could never be more than willful, ongoing adultery, and the differences between its iterations were not meaningful. Therefore, treating our subject as “polygyny” broadly conceived is a reasonable approach insofar as Syriac Christian discourse defines it in largely the same way. In light of these observations, we can take the terms “polygyny” or “polygynous practices” as a category covering the whole range of household formations in which men cohabit with multiple women (including wives and/or concubines). At the same time, however, we will have to keep in mind that the practices addressed by our sources may in fact be quite distinct from one another even when their differences remain obscure to us.

To set our subject in a broader perspective, it is also worth noting the wide attestation of polygynous practices in the pre-modern cultures of the Mediterranean basin

and Middle East.\textsuperscript{360} In the rough time frame of our general interest, it is well known that Islamic law permitted a man to marry up to four women and take concubines,\textsuperscript{361} and that such practices were found throughout the Islamic Near East and North Africa. But they were characteristic as well of various social groupings in the Christian Roman Empire and its successor states in medieval Europe. Though the lettered traditions of early and late antique Christianity generally saw monogamy (excluding sequential as well as simultaneous spouses) as the only acceptable kind of marriage,\textsuperscript{362} polygynous practices in no way disappeared overnight as communities were Christianized. The early medieval sources for Ireland and continental Germanic societies, for example, attest that polygyny and concubinage remained common at least among social and political elites until the eleventh and twelfth centuries.\textsuperscript{363} In the Latin heartlands of the Roman Empire, outright polygynous households with multiple wives, which Roman law prohibited, were not customary; but to the East, “Greek tradition had been more flexible than Roman… on whether it was possible to have a concubine at the same time as a wife.”\textsuperscript{364}

In the Sasanian Empire, both Iranian sources and Greek observers tell us that polygyny and concubinage were “an ancient privilege of the [Iranian] aristocracy and

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\item \textsuperscript{360} We should note here that calling a society polygynous should not be taken to imply that a majority of its male members is presumed to cohabit with multiple women. By all accounts, most ostensibly polygynous societies actually see very low rates of polygyny, since usually only a small social stratum has the resources to afford it.
\item \textsuperscript{361} See Wael B. Hallaq, \textit{Sharīʿa: Theory, Practice, Transformations} (Cambridge: Cambridge University Press, 2009), 277-78.
\item \textsuperscript{362} Some early Christian movements rejected worldly marriage of any kind, on which see Brown, \textit{Body and Society}, 83-102.
\item \textsuperscript{363} Jack Goody, \textit{The Development of the Family and Marriage in Europe} (Cambridge: Cambridge University Press, 1983), 41-43; and Herlihy, \textit{Households}, 38-49.
\item \textsuperscript{364} Gillian Clark, \textit{Women in Late Antiquity: Pagan and Christian Lifestyles} (Oxford: Oxford University Press, 1993), 32.
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spiritual dignitaries.” Rather unsurprisingly, and much in line with the pattern throughout the Mediterranean basin, polygynous households were characteristic of at least some elite strata in Sasanian Iran. Additionally, the Zoroastrian legal institutions of intermediary and substitute successorship – which, as discussed in chapter four, allowed for the relatives of a man who had died without sons to enter into temporary marital unions for the purpose of producing heirs for the deceased – could result in polygynous arrangements if an already married man was called on to carry them out.  

**Christians and Polygyny in the Sasanian Empire**

Reform and Regional Practice

In the history of East Syrian law, polygyny is one of the first topics to be addressed in the area of family law (though not in as comprehensive a fashion as close-kin marriage). The apocryphal “Arabic canons” of Nicaea, which the East Syrians received at the synod of the catholicos Isaac in 410, decree that anyone who marries multiple women simultaneously “shall be cast out of the community” (neštēdemangawā). Our first hints of Sasanian Christians engaging in polygynous practices come from the few extant canons of the ecclesiastical synod of Bēt Lāppāt (Jundīsābūr) of 484. This synod was convened by a group of bishops (led by Barṣawmā, metropolitan of Nisibis) in opposition to the catholicos Bābawayh. The chronicles tell us that the

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366 See Macuch, “Incestuous Marriage,” 144.
368 See Stephen Gero, *Barṣawmā of Nisibis and Persian Christianity in the Fifth Century*, CSCO 426 (Louvain: Peeters, 1981), 38-57. Because the synod’s decisions were later annulled in an
synod’s goal was to bring order to a prevailing climate of disciplinary confusion among the clergy and general moral laxity;\(^{369}\) whatever historical conclusions we draw from such rhetoric, three of the synod’s eight extant canons do treat questions of improper marital practices. Among them, one affirms that “it is not right (lā zādeq) for a believing man to take two wives or a concubine (drūktā) in addition to his wife.” Even if divine teaching did not foist this stricture upon the forebears, it has been established “by the law of Christ and the teaching of the apostles” (b-nāmōsā da-mšēḥā wa-b-yulpānā da-
šīḥē).\(^{370}\) Because the synod saw fit to comment on the issue, this canon is our first suggestion in East Syrian legal sources of lay people engaging in polygynous practices. And, in a typical pattern, the synod’s response was to claim the authority of apostolic and Christian tradition to label such practices as transgressive of that tradition’s rules for social and spiritual conduct (although the synod of Bēt Lāppāṭ did not prescribe any penitential punishment that we know of for their infraction).

While the Arabic canons of Nicaea and the canons of the synod of 484 constitute the first East Syrian sources to explicitly broach the subject, Mār Abā’s third synodal letter treats polygyny in the context of the patriarch’s broader efforts to mark off the Christians of the Sasanian Empire from other religious groups.\(^{371}\) In the text, Mār Abā condemns Christian

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\(^{370}\) Chabot, Synodicon, 623.

\(^{371}\) See the discussion in chapter four and Payne, “Christianity and Iranian Society,” 145-90.
beastly ones (b ʿīrāyē), each of whom, being unsatisfied with a single woman like Adam with the first woman Eve, dares during the life of his lawful wife to take another in addition to her in transgression of the canons (ʿbar qānōnā ʿīt), and becomes husband to two women.

The patriarch decrees that anyone in such a polygynous marriage shall be given a limited amount of time in which to dissolve the union; whoever fails to do so will be banned from the Eucharist.372

Notably, neither Mār Abā’s letter nor the synod of Bēt Lāppāṭ presents polygyny as specifically characteristic of non-Christian religious commitments, as they do some of the other practices they rebuke. To Mār Abā, for example, levirate marriage (to a deceased brother’s wife) is done “like the Jews” (ak yehūdāyē), while close-kin unions typical of Zoroastrian substitute successorship (to an uncle’s wife, son’s wife, sister, daughter, etc.) are done “like the Magians” (ak mgūšē).373 Polygyny (as well as divorce), however, is presented as transgressive of the church’s canons but is not overtly associated with another specific community. In similar terms, among the synodal canons of Bēt Lāppāṭ is one that prescribes anathema for all Christians who “imitate the Magians in impure marriage (zuwwāgā танpā).”374 Though the canon does not specify exactly what impure Magian marriage is (we should infer substitute successorship/close-kin marriages), polygyny receives a separate canon and is thus not labeled as explicitly Magian.

Though the distinction is fine, Mār Abā’s letter and the synod of Bēt Lāppāṭ thus present polygyny as a generalized category lacking the particular cultic overtones of the levirate or Zoroastrian close-kin marriages in late Sasanian society. This is particularly

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373 Chabot, *Synodicon*, 82-83. Marrying a non-Christian is done “like the heathens” (ak ḥanpē).
notable given the fact mentioned above that a temporary union between an already 
married man and the widow of a kinsman would have been a distinctly possible 
polygynous arrangement in the Zoroastrian system of substitute successorship. We know 
that some Christians availed themselves of this institution and that Mār Abā and the 
synod decried it, but the fact that neither associates it with polygyny suggests that other 
polygynous household arrangements were general customary practice among the broader 
population, at least some Christians included, in Sasanian Iraq and Iran. For Mār Abā 
and the synod, polygyny was not Zoroastrian or Jewish, but it was still certainly un-
Christian.

Implementing Reform: Ecclesiastics vs. Lay Elites

Mār Abā’s reforms (as well as the synod of Bēt Lāppāt, in a less comprehensive fashion) affirmed that affiliation to the church, realized through right practice in 
accordance with its regulations, necessitated the abandonment of social practices and 
commitments deemed outside its bounds. We saw in chapter four that close-kin marital 
arrangements persisted in the province of Khūzistān at least into Timothy’s time in spite 
of the earlier efforts of Mār Abā. How was his prohibition of polygyny received by lay

375 Also notable in this respect is a passage from the hagiographical account of Mār Abā’s life in 
which shah Yazdegard II recounts the patriarch’ transgressions from the perspective of the 
Sasanian elite. Among them are infringements on specifically Magian realms, including making 
conversions to Christianity (mgūšē mahpek a[n]t men dīn) and trying to arrogate Magian judicial 
powers (dīnē men mgūšē ḫtapi). Another, however, is that Mār Abā “will not allow [his] 
community to take multiple wives as they desire” (la-bnay ʿammāk lā šābeq a[n]t l-hūn d-
nessbōn nēšē saggīʿātā ak d-bāʾēn). Though this stance likely offended the Magians because 
polygyny was acceptable in Iranian social life, the text betrays no sense of construing it as a 
specifically Magian practice. See Paul Bedjan, ed., Histoire de Mar-Jabalaha, de trois autres 
patriarches, d’un prêtre et de deux laïques, nestoriens (Leipzig: Otto Harrassowitz, 1895), 254.
communities in Sasanian lands, and how did ecclesiastical elites seek to ensure that regulations like it were observed?

Scattered evidence for continued polygynous practices throughout the following centuries suggests, unsurprisingly, that not all Christians in Iraq and Iran were eager to give up their accustomed modes of structuring households. And though that evidence is predictably meager, we are fortunate that a few high profile cases stand out in the chronicles during the reign of shah Khusraw II Parvīz (r. 590-628). These cases demonstrate how ecclesiastical efforts to regulate lay marital practices, particularly polygyny, could bring about factional strife between ecclesiastical and lay elites.

The relevant late Sasanian cases revolve around anathemas pronounced by the patriarch Sabrīšōʿ I (r. 596-604) and his contemporary, Gregory metropolitan of Nisibis (d. 611/2), against several prominent Christians who took multiple wives. Gregory, originally from Kaškar in lower Mesopotamia, is remembered in the sources for having tried zealously to reform the deviant practices of Christian clergy and laity in his see. As part of this project, he banned polygyny and anathematized several Nisibene physicians in Khusraw’s service for persisting in keeping multiple wives. The Nisibenes, however, appear not to have been particularly happy with an outsider coming in and attempting to change their ways; they denounced Gregory to Khusraw, who subsequently forced him to

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376 Some forty years after Mār Abā, for example, the synod of patriarch Īšōʿyahb I issued an admonitory canon reaffirming the previous patriarch’s marital regulations, and devoted more than half of its text to adducing arguments against polygyny. See §13 in Chabot, *Synodicon*, 148-50.

377 Lay/ecclesiastical factional strife was a fairly constant feature of Church of the East communal politics from the beginning of the sixth century into the early Islamic period. Morony summarizes this trend as one that “generally pitted the monks and clergymen favoring ecclesiastical autonomy against the landed Persian Christian aristocracy and courtiers who favored the kind of official status and toleration for their church in which they could exercise patronage.” Though his claim that Persian/Aramaean ethnic divisions constituted another dimension of the conflict is dubious, Morony’s overview is instructive: see *Iraq*, 346-54 (quote on p. 347).
leave his diocese and retire to a monastery.³⁷⁸ Later, at Sabrīšōʾ’s death in 604, we are
told that the bishops of the Sasanian Empire supported Gregory to succeed to the
patriarchate. Several of Gregory’s old physician opponents from Nisibis, however, were
not interested in seeing him take the Church of the East’s highest office; so they obtained
the support of Khusraw’s Christian wife Shīrēn for an alternate candidate who was
ultimately consecrated patriarch.³⁷⁹

Though the chronicles do not make an explicit connection, Sabrīšōʾ’s activities
against lay polygyny appear to have been related to the factional conflict between
Gregory and the Nisibene lay elite. Sabrīshōʾ is said to have anathematized Gabriel of
Sinjār, Khusraw’s chief physician, for taking two wives in addition to his first (Gabriel
responded by switching his allegiance to the Miaphysites, who were becoming prominent
in Sasanian lands at the time).³⁸⁰ Now, Gabriel’s hometown of Sinjār (Syriac Šiggār) was
near Nisibis, certainly fell in the cultural orbit of that major regional city, and was most
likely under the jurisdiction of its metropolitan.³⁸¹ From this angle, Gabriel appears to

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³⁷⁸ See the accounts in the Chronic of Khuzistan: Ignatius Guidi, ed. and tr., Chronica minora 1,
CSCO Scriptores Syri 3.4 (Leipzig: Otto Harrassowitz, 1903), vol. 1: 17-19; and Scher,
Chronique de Séert 4: 509-510. Only the latter discusses the polygynous physicians and
Gregory’s pronouncement of anathema. Other than lay polygyny, the other main issue in the
conflict was Gregory’s opposition to Ḥnānā, the head of the school of Nisibis, for his alleged
Miaphysite theological leanings.
³⁷⁹ Guidi, Chronica minora 1: 21-22 and Scher, Chronique de Séert 4: 498. The latter mentions only
one additional wife. On the development of the Miaphysite clerical and monastic population of
Sasanian Iraq, see Morony, Iraq, 372-80.
³⁸⁰ According to the medieval Arabic geographer Yāqūt al-Ḥamawī, Sinjār was three days travel
from Nisibis: see Mu jam al-buldān (Beirut: Dār Ṣādir, 1977), vol. 3: 262. Though we do not find
have been another Nisibene layman who achieved prominence in the shah’s service. Furthermore, he was a close confidant of Shīrēn, the queen with whose backing the Nisibene physicians succeeded in preventing Gregory from winning the patriarchate.\textsuperscript{382}

Though the chronicles do not explicitly mention him as one of their number, it is likely that he was. Sabrīshōʿ, like Gregory, is thus remembered for having issued an anathema in an attempt to end the polygynous practices of the Nisibene elite associated with the shah’s court.

Read together, Sabrīshōʿ and Gregory’s conflict with the Nisibene physicians exemplifies how ecclesiastical attempts to regulate polygyny could be complicated by competing interests and wider factional strife between bishops and lay elites. Ecclesiastics sought the disciplinary reform (and ultimate salvation) of their lay flocks, but also required recognition by those lay people of their authority to direct the patterns of lay life. The lay elite, on the other hand, was interested in maintaining its influence over local affairs (hence the Nisibenes’ rejection of the outsider Gregory), a say in electing ecclesiastics favorable to its interests, and the accustomed social practices of elite life, like polygyny, that reformer bishops sought to ban. In these conditions, Sabrīshōʿ and Gregory appear to have overplayed their hands. Though the bishops could deploy the anathema as a kind of spiritual and social pressure to coerce lay people to change their ways and acknowledge their authority, their physician opponents could draw on their own reserves of social capital: influence at court, which the Nisibenes used to remove Gregory from his position as metropolitan, prevent him from becoming patriarch after

\textsuperscript{382} See Guidi, \textit{Chronica minora} 1: 19.
Sabrīšō’s death, and further influence ecclesiastical politics for the following years. The case of the Nisibene physicians thus demonstrates how enforcing ecclesiastical rules like the ban on polygyny could be much more complex than simply issuing and circulating a canon. In this case, at least, the Nisibenes were able to muster the resources necessary to depose their ecclesiastical opponents and presumably retain their polygynous ways.

If the obstinate laymen of Gregory and Sabrīšō’s day refused to admit of any discord between their polygynous marital practices and their Christian affiliation, however, Richard Payne has noted that a unique document dated to the late sixth or early seventh century attests that some lay East Syrians took the marital reforms initiated by the synod of Bēt Lāppāṭ and Mār Abā to heart. The document in question is a collection of statutes for an artisans’ association from an unknown city (preserved in Gabriel of Baṣra’s systematic legal compendium). Besides various stipulations on sharing expenses and other practical matters, the pact asserts that the members “shall obey without dispute all the holy laws laid down by the leaders of the Church.” Among these are specified Mār Abā’s marriage-related prohibitions, including “the foul practice of having two wives.”

As Payne points out, this document provides evidence of at least some lay Christians

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383 On Gabriel’s continued activity at court to the benefit of Miaphysites in this period, see Morony, *Iraq*, 350-51.

384 It is worth noting that my reading of this conflict has been a “generous” one insofar as I take the chronicles more or less at face value in presenting the bishops as sincerely interested in the disciplinary reform of lay people. A more skeptical reading might wonder whether polygyny was just an excuse for issuing anathemas as an offensive in the context of a longstanding factional conflict. In either case, however, the point that the enforcement of the ecclesiastical ban on polygyny depended on the balance of various social forces still stands.

385 Sebastian P. Brock, “Regulations for an Association of Artisans from the Late Sasanian or Early Arab Period,” in Philip Rousseau and Manolis Papoutsakis, eds., *Transformations of Late Antiquity: Essays for Peter Brown* (Farnham, UK: Ashgate, 2009), 58. For the Syriac text see Kaufhold, *Rechtssammlung*, 177.
acknowledging Mār Ābā’s vision of Christian community as authoritative and attempting to implement its strictures in practice.⁴³⁶ These anonymous town artisans were presumably outside the Nisibene physicians’ world of elite power and privilege, and, in contrast to those elites, pledged to order their social affiliations in accordance with the notion of community propagated by the church.

**The Transitional Seventh Century**

With the uptick in the production of legal texts and the burgeoning efforts to define communal boundaries in the wake of the Arab conquests, we find a widening body of evidence for lay Christian polygyny and further contestation over the subject with religious elites in the seventh century. Several notable examples come from Greek or West Syrian sources. The *Questions and Answers* of Anastasios of Sinai (fl. second half of the seventh century) suggest that some Chalcedonians in Egypt, Palestine, and Syria took multiple wives and adduced the example of the Old Testament in support of the practice.⁴³⁷ In the West Syrian sources, the canons of Jacob of Edessa (d. 708) include a prohibition of polygyny.⁴³⁸ The seventh-century letter of the Miaphysite bishop Yōnān

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⁴³⁶ See the discussion in Payne, “Christianity and Iranian Society,” 189-90.
⁴³⁸ §97 in a series of canons found in MS Mardin Church of the Forty Martyrs 310, folio 211b. Thanks are due to the Hill Museum and Manuscript Library, where a digital copy of this manuscript available, for allowing me to examine and cite it. For an overview of the various series of Jacob’s canons, both published and in manuscript, see Hoyland, *Seeing Islam*, 601-610.
tells as well of certain individuals disputing with church officials over whether they may take more than one wife.\footnote{MS Cambridge Additional 2023, folios 254b-259a. Tannous discusses polygyny with reference to this text and Jacob’s canon in “Syria between Byzantium and Islam,” 257-58.}

In the East Syrian sources, George I’s synod of 676 includes a canon devoted entirely to the condemnation of “the heathen customs (ʿyādē ḥanpāyē) of taking two wives.”\footnote{Canon §16, Chabot, Synodicon, 224.} George convened his synod on Dīrēn, an island in the Persian Gulf, to mend an ecclesiastical schism between the East Syrian patriarchate and the local Christians of the Arabian coastline and nearby islands (the region known in Syriac as Bēt Qaṭrāyē, Arabic Qaṭar).\footnote{See John F. Healey, “The Christians of Qatar in the 7th Century A.D.,” in Ian Richard Netton, ed., Studies in Honour of Clifford Edmund Bosworth Volume I (Leiden: Brill, 2000), 222-37. The sources are divided over whether the schism was formally mended at George’s synod of 676 or earlier; see Sebastian P. Brock, “Syriac Writers from Beth Qaṭraye,” ARAM 11-12 (1999-2000): 87.} The synod also, however, aimed to bring local conditions in line with official church standards, which suggests that polygyny was a persistent issue among the Qaṭarīs.\footnote{The introductory declaration to the synod states that “in all times people come to change and have a weakness for works (suʿrānē) that are acceptable among various nations and in various places… Those who have been distinguished for leadership by God’s grace become concerned to aid [and] correct them.” George has thus come to Qaṭar to set straight local error through “the establishment of correct laws (sīm nāmōsē ṭrisē) that keep their fulfillers within the bounds of the fear of God.” Chabot, Synodicon, 216.} Further indicative of the same is a hagiography of the Qaṭarī monk Mār Yōnān (no relation to the bishop mentioned above) composed in the late seventh or early eighth century.\footnote{For a study of the text and its date of composition see Richard E. Payne, “Monks, Dinars and Date Palms: Hagiographical Production and the Expansion of Monastic Institutions in the Early Islamic Persian Gulf,” Arabian Archaeology and Epigraphy 22 (2011): 99-105.} At one point in the story, a rich man named Zarqōn brings his demon-possessed son to be healed by the holy man. Before he heals the child, Mār Yōnān replies that Zarqōn must expel his concubine (drūktā) from his home, because “it is not right for you… to behave like the godless heathens” (lā zādeq lāk… l-mes ar ak ḥanpē d-lā
Whatever the specific historicity of this anecdote, Mār Yōnān’s hagiography thus offers additional evidence that polygynous practices (in this case concubinage) were known among Christians in Qaṭar, and that the spiritual custodians of the community were particularly interested in reining them in.

Ecclesiastical Jurisdiction, Inheritance, and Polygyny

More significant for polygyny in East Syrian discourse and practice, however, is the seventh-century bishops’ tendency to claim expanded judicial authority, as proposed by Payne and discussed in chapter one. According to Payne, one aspect of this move was a greater focus on regulating succession in Christian communities, evident especially in the late seventh-century works of Simeon of Rēwardašīr and Ḥnānīšōʿ. How might these apparent shifts in East Syrian legal culture have informed the church’s approach to polygyny, as well as polygynous practice among lay people? Whether or not the bishops’ involvement in regulating the devolutio of inheritance was entirely novel, one of Ḥnānīšōʿ’s decisions shows us a strategy for combating lay polygyny that is not apparent in earlier sources and would have been available only to more judicially involved bishops. This is the case of Aḥōnā and his feuding heirs.

Ḥnānīšōʿ lays out the details of the case in an epistle to an unnamed local priest charged with carrying out his ruling. The recently deceased Aḥōnā had a number of sons by his wife in Karkā d-Bēt Slōk while also maintaining a second wife and at least

395 See the discussion in chapter one.
one child on his properties in Kūfa (Syriac Ṭāqūlā) in lower Iraq.\footnote{The scribe who copied this decision sought to remove the precise name of Aḥōnā’s lawful family’s town of residence, calling it “Karkā d-Bēt so-and-so” (Karkā d-Bēt pulān). However, Payne points out that there is only one known Karkā d-Bēt so-and-so, and that is Karkā d-Bēt Slōk. See “Christianity and Iranian Society,” 209, note 552.} At his death, Aḥōnā’s Kūfan wife apparently attempted to secure a share of the patrimony for herself and her unwed daughter (we do not know whether she had other children by Aḥōnā) that would be proportionate, in some respect, to that of the wife and sons in Karkā, who contested her claim. How this dispute reached the patriarch is not specified, but it seems likely that Aḥōnā’s deacon son Daniel, whom Ḥnānřšō’ singles out by name, brought it to his attention. In any case, Ḥnānřšō’ rules that only Aḥōnā’s first wife and sons can be considered his legitimate heirs; the Kūfan wife, having been married unlawfully (lā nāmōsāʾīt), has no rightful claim on Aḥōnā’s estate. Ḥnānřšō’ does allow the Kūfan wife and her daughter to remain on one of Aḥōnā’s properties in Kūfa and to receive a minimal amount of maintenance and clothing. However, even this will be cut off if and when the wife chooses to remarry and the daughter is old enough to earn her keep “by the labor of her own hands” (men pulḥānā d-īdēyḥ). If the Kūfan wife further contests Ḥnānřšō’ s ruling, he tells the unnamed priest to bar her from “mixing with Christians in all of the churches” (ḥulṭānā d-ʾam krēṣṭyānē b-ʾēdātā kulhēn) in Kūfa and nearby Ḥīra.

The case of Aḥōnā’s multiple households is revealing of both a particular style of lay polygyny and techniques for regulating it available to judicially active bishops like Ḥnānřšō’. To note first are the details of Aḥōnā’s polygynous households. This layman, whose multiple properties show him to have been wealthy, maintained two separate households in Karkā and Kūfa. We hear of similar arrangements elsewhere in East Syrian sources, which suggests that this kind of polygynous conjugal setup was possible for men
who traveled frequently (merchants come to mind) and had the resources to support multiple households.\(^398\) Without overestimating the impact of George I’s canon enjoining clerical oversight of marriage (discussed in chapter three), it is also worth raising the possibility that such arrangements might have been easier for Christians to maintain than multiple wives in a single location. Separate households might be better kept away from the prying eyes of local clergies and other concerned parties – at least until someone died and estates came into the picture, as Aḥōnā’s case demonstrates.

Ḥnānīšōʾ’s determination of inheritance allotments in the Aḥōnā case also exemplifies a different strategy for polygyny regulation on the part of the bishops. By all accounts, the Church of the East’s well-established canons banning polygyny were not enough to prevent Aḥōnā from marrying multiple women. However, Ḥnānīšōʾ saw to it that Christian law would order Aḥōnā’s household affairs after his death by excluding his second family from any real share of inheritance. In doing so, Ḥnānīšōʾ prescribed a kind of social stigmatization and economic marginalization of that second, unlawful family. If Ḥnānīšōʾ could not punish the deceased for his polygynous practices, he could make an example out of his (unwitting?) abettors and progeny in an attempt to discourage other Christians from such practices. Cutting polygynous family out of the inheritance stream would both sideline them symbolically and divest them of any crucial economic role in the intergenerational transfer of property and, therefore, the reproduction of a man’s

\(^{398}\) Canon §16 of George I’s synod refers to men keeping multiple wives “far” (\(b\)-rubqā) from one another. Ruling §71 of Timothy’s law book discusses a man who “went to a distant village and sought a wife while already having one in his own village.” See Chabot, Synodicon, 224 and SR 2: 104. We also have some evidence for men in the Genizah society maintaining multiple wives in different cities: see Mordechai A. Friedman, “Polygyny in Jewish Tradition and Practice: New Sources from the Cairo Geniza,” Proceedings of the American Academy for Jewish Research 49 (1982): 37-38 and 49.
lineage. If elite laymen might not always listen to ecclesiastical bans on polygyny, inheritance regulation could encourage a certain pruning of Christian family trees after their death – to the detriment of second wives and their children.

*East Syrians and Polygyny in the ’Abbāsid Period*

Together, the seventh century East Syrian legal sources provide evidence for continued polygynous practices among East Syrian Christians as well as previously unseen modes of ecclesiastical regulation of those practices. George’s canon against polygyny, on the one hand, continues much in the vein of Mār Abā: it declares polygyny characteristic of that mass of non-Christians outside the bounds of the community of the saved, affiliation to which is assured by adherence to the ecclesiastical hierarchy’s regulations. The decisions of Ḥnānīšō’, on the other hand, give some hints of alternative strategies that bishops might use in overseeing the conduct of Christian family life. We will now examine how Ḥnānīšō’, Timothy, and Ḥsūn further developed these trends in the ’Abbāsid period. The ’Abbāsid-era law books attest again to contestation between lay people and the high clergy over whether one could be a Christian and still engage in the polygynous practices customary in various regions and social classes in the Middle East. They also demonstrate the further development of ecclesiastical strategies for combating these practices. Finally, sources in other genres, especially biographical

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399 We should note that in Aḥōnā’s case the perpetuation of his male line was not really at stake because he already had lawful sons and, as far as we know, only a daughter by his Kūfan wife. It might therefore be argued that Ḥnānīšō’ was less concerned to give Aḥōnā’s second family a share of inheritance because it included no male heirs, whatever its legal status might have been. However, Ḥnānīšō’ includes daughters as partial heirs in other decisions (see Payne, “Christianity and Iranian Society,” 215-16), and he is very explicit in the Aḥōnā case that the unlawfulness of the marriage to the second wife is the reason for her and her daughter’s exclusion.
dictionaries, give us a glimpse of how burgeoning Muslim society gave renewed prominence to certain types of polygynous household formations, and new import to polygynous practice as a marker of cultural difference.

*Slaves and Concubines*

Unsurprisingly, the East Syrian law books of the early ʿAbbāsid period include reaffirmations of the traditional prohibition of polygyny. 400 ʿĪsāʾ bōkt details an extended justification for the Christian position in which the metropolitan musters some standard biblical citations and attempts to explain away the multiple wives and concubines of various Old Testament figures, which suggests that many Christians in Fārs were still opposed to the ban on polygyny in ʿĪsāʾ bōktʾs day. Unfortunately, we have little other information on Fārs with which to contextualize this ruling.

More notable in the ʿAbbāsid-era sources is the relatively greater number of rulings that deal with sexual relationships between married Christian men and their female slaves. Between them, the law books of Timothy, ʿĪsāʾ barnūn, and ʿĪsāʾ bōkt include four rulings that tackle the status of children born of such arrangements, while another is found in an epistle of the patriarch Yōḥannān bar Abgārē (known in Arabic as Yūḥannā ibn al-Aʾraj, r. 900-905). 401 How should we interpret the bishopsʾ concern for

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400 ʿĪsāʾ barnūn §3 in Sauget, “Décisions canoniques,” facsimile folio 1; ʿĪsāʾ bōkt §II.xi, SR 3: 56-58. Additionally, canon §34 of the West Syrian synod of Kyriakos of 794 prescribes exclusion from the Eucharist for any man who takes two wives; see *SWST* 2 (text): 14

401 Timothy §70, ʿĪsāʾ barnūn §§100-101, and ʿĪsāʾ bōkt §IV.iv.6, SR 2: 104, 160-62, and SR 3: 114-16. For patriarch Yōḥannān, see §16 in Nuskhat kitāb nufidḥa min abīnā Yūḥannā ibn ʿĪsā al-jāthaliq ʿafidannā Allāh bi-ṣalawātihi ilā rajul min ahl al-Yaman (Copy of a letter of Yūḥannā ibn ʿĪsā the Catholicos to a Man from Yemen), MS Vatican Arabic 157, folios 88b-89a; and *BO* 3.1: 252 (in his *Bibliotheca orientalis*, Assemani published the texts of the responses, but not the
this particular mode of polygyny? Slave concubinage was certainly not new to the Christian males of Iraq and Iran; we have already seen examples of Christian men taking slave concubines in the seventh-century sources related to Qaṭar. And in more general terms, it was a basic reality of institutionalized household slavery in the hierarchical societies of the Middle East and eastern Mediterranean that masters often freely exercised sexual dominion over (male and female) slaves’ bodies; sex was often tacitly recognized as a prerogative of any male with the resources and power to own slaves.\footnote{See Brown, \textit{Body and Society}, 23-24.}

From another perspective, however, certain developments of ʿAbbāsid society likely contributed to the growing prominence of concubinage in the perception of the East Syrian bishops (and perhaps in practice as well, though we do not have the sources to know with certainty).\footnote{This should not be taken to imply, of course, that outright polygyny disappeared.} First is the aforementioned unfeasibility of polygynous marital arrangements in light of the continued emphasis on clerical oversight of the contracting of marriages.\footnote{This may be better understood as a result of the increased specialization of ecclesiastical infrastructure.} Wherever ecclesiastical infrastructures might have attempted to extend the church’s regulatory power into lay life in this manner, it likely would have been difficult for a man to walk into his local church and get a polygynous marriage blessed by a priest. Slave concubinage (much like Aḥōnāʾ’s multiple households in different cities),

\footnote{This is a concession to the men who owned female slaves. See Brown, \textit{Body and Society}, 23-24.}
however, remained a certain kind of alternative: a more discreet form of polygyny through which men with means might evade clerical scrutiny.

Second, the early ‘Abbāsid period witnessed the development of Islamic legal traditions that regulated master-slave sexuality as a particular style of concubinage.\footnote{On concubinage in classical Islamic law, see Spectorsky, \textit{Women in Classical Islamic Law}, 30 and 95-97.} This was a reality that, if in no way introducing the subject to Christians, offered particular models of polygynous household arrangements to elite non-Muslims with polygynous proclivities and the resources to sustain them.\footnote{The same development has been noted by el-Leithy for the better-documented milieu of Mamlūk Egypt, where Coptic lay elites began to take concubines in emulation of the privileges enjoyed by their Muslim neighbors. See “Coptic Culture,” 382-433.} And this was particularly significant now that the imperial capital had returned to lower Iraq: in a scene reminiscent of the Nisibene physicians at the Sasanian shah’s court, East Syrian physicians, scribes, and other laymen moved prominently in the elite circles of the ‘Abbāsid capitals at Baghdad and Sāmarrā’. Wealthy and intimately enmeshed in the capitals’ goings on and politics, these Christian men were nothing if not participants in the elite male culture of the Muslim caliphal court – where keeping concubines was often a mark of status.\footnote{On the world of the wives and concubines of the ‘Abbāsid court, see Abd al-Kareem al-Heitty, “The Contrasting Spheres of Free Women and ‘jawārī in the Literary Life of the Early ‘Abbāsid Caliphate,” \textit{al-Masāq} 3 (1990): 31-51.}

The most prominent lay elites at this time were individuals from a number of lineages of East Syrian physicians ministering to caliphs, viziers, and other members of caliphal entourages. The major figures came from the families of Bukhtīshū’, Māsawayh, and al-Ṭayfūrī; most hailed originally from Khūzistān, where Bēt Lāppāṭ/Jundīsābūr had a long history of instruction in Greek medicine.\footnote{The exact nature of this culture of medical instruction, and whether it included some kind of official school, is disputed; see Dols, “Origins of the Islamic Hospital.” For studies of the}
dictionaries and chronicles preserve information on the lives and careers of these figures; from these, we will examine a few anecdotes for insight into the dynamics of ecclesiastical-lay contestation over concubinage in ʿAbbāsid Baghdad.

**Stories about Doctors**

Our first narrative comes from ʿAmr ibn Mattāʾ’s eleventh-century Arabic chronicle of the East Syrian patriarchs in the *Kitāb al-majdal*. The tale begins with patriarch Timothy I scolding Jibrīl ibn Bukhtīshūʾ (d. 828), the richest and most prominent physician in Hārūn al-Rashīd’s service, for taking slave concubines. Jibrīl does not mend his ways, so Timothy anathematizes him. Jibrīl confronts Timothy, who says simply, “I fear Christ’s anger for you.” Jibrīl responds angrily and calls the patriarch a pederast (*lūṭī*), outraging Timothy and his entourage. Not long afterward, Jibrīl receives divine retribution for the insult when he is trampled in the street by a horse. Timothy keeps away from the offender for two days even after his mother’s pleadings, but then gives Jibrīl communion and anoints him before the altar; Jibrīl heals. The narrative ends there, but the implication is that Jibrīl subsequently gave up his errant ways.

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409 Gismondi attributes this chronicle to Mārī ibn Sulymān in his published edition; on the correct attribution to ʿAmr ibn Mattāʾ see Holmberg, “Reconsideration.”

410 Gismondi, *Akhbār* 1: 74. The source for this anecdote is uncertain but is likely to have been a now lost section of the *Chronicle of Seert*, on which ʿAmr ibn Mattāʾ’s chronicle depends heavily (Hoyland, *Seeing Islam*, 452). Where the *Chronicle of Seert*, in turn, picked up this tradition is even more difficult to say; possibilities include the chronicle of the Christian physician Qusṭā ibn Lūqāʾ (d. c. 912) or the ecclesiastical history of Īšōʾ danaḥ of Baṣra (fl. mid ninth century), both of which are now lost but were utilized by the *Chronicle*’s compiler. See Louis Sako, “Les sources de la chronique de Séert,” *Parole de l’Orient* 14 (1987): 155-66; and James Howard-Johnston,
A second anecdote concerns Yūḥannā ibn Māsawayh (d. 857), another physician in the service of Hārūn al-Rashīd and several of his successors. The biographical sources tell us that Yūḥannā was known for keeping slave concubines and was often upbraided for it. The situation was further complicated because the physician served in church as a deacon. At one point, a group of Christians tells him that he has to either restrict himself to one woman or leave the deaconate. Yūḥannā responds defiantly,

We are commanded [by scripture] to take neither two women nor two garments (cf. Luke 3:11). So who gave the motherf***** catholicos more of a right to have twenty garments than wretched Yūḥannā to take four concubines? Go tell your catholicos to adhere to the laws of his religion (qawānīn dīnīh) in order for us to do so with him; if he transgresses them, we will too.411

If Jibrīl and Yūḥannā prove themselves to be less than model Christians, Jūrjiyūs ibn Bukhtīshūʿ (d. 769), Jibrīl’s grandfather and the first member of the Bukhtīshūʿ family to enter the caliphal service, projects a different image. In this narrative, the caliph al-Manṣūr becomes concerned for Jūrjiyūs, having heard that he has no wife. Jūrjiyūs informs the caliph, “I have an old, weak wife (zawja kabīra ḍaʾīfa) who is unable to move from her spot.” In consideration of his favored physician’s no doubt difficult sex life, the caliph sends him a gift of three Byzantine slave women. When Jūrjiyūs returns home, he is incensed to find that his Christian pupil ʿĪsā ibn Shaḥlāfā has allowed the women into his house. The physician returns them to the caliph and explains that “we, the

community (maʿshar) of Christians, do not marry more than one woman, and as long as she lives we do not take any other than her.”

Patriarchs and Lay Elites Negotiating Christian Polygyny

Setting aside the question of whether the specific courses of events in these narratives are properly historical, the anecdotes themselves remain valuable sources for cultural history: their subtexts and literary tropes portray general social perspectives and betray cultural assumptions of ʿAbbāsid society. In this regard, they demonstrate the perceived normalcy of polygynous concubinage as an elite male privilege in ʿAbbāsid court circles, regardless of religious affiliation. In the Jūrijyūs story, a gift of slave women is a simple caliphal gesture to a favored member of his entourage. The caliph shows no hesitancy in giving such a gift to a Christian, and has to be told afterward that it is religiously inappropriate; the presumption going into the events of the narrative is that any normal male would welcome adding concubines to his household. In Jibrīl’s anecdote, the physician is so incensed that anyone would claim to deny him the

412 Qifṭī, Ikhbār, 110 and Ibn Abī Uṣaybiʿa, ṬUyūn, 184-85. Ibn Abī Uṣaybiʿa attributes this anecdote to Fathyūn (Syriac Petyôn) al-Turjumān, frequently cited in the ṬUyūn as an authority on the East Syrian physicians. This figure has been identified as Fathyūn ibn Ayyūb, a translator of several biblical books into Arabic who flourished in the second half of the ninth century. See Georg Graf, Geschichte der christlichen arabischen Literatur (Vatican City: Biblioteca Apostolica Vaticana, 1944-53), vol. 2: 120-21; and Alberto Vaccari, “Le versioni arabe dei Profeti,” Biblica 3 (1922): 413-16.

413 Having duly noted the difficulty in determining the precise historicity of the anecdotes, I find that Jibrīl’s excommunication and fateful encounter with a horse in the Baghdad streets are the only elements of the three anecdotes that appear particularly suspect. We know from Timothy’s letters that he was extremely close to Jibrīl and dependent on his influence at the caliphal court; anathematizing such a powerful ally conflicts with that record. That Jibrīl (and Yūḥannā) might have taken concubines, however, appears perfectly plausible given the rest of the evidence presented in this chapter. I see no reason to doubt the veracity of the Yūḥannā and Jūrijyūs stories, as they were transmitted by near contemporaries and contain no particularly extraordinary elements. On Timothy’s relationship with Jibrīl see Putman, L’église, 98-101.
polygynous privileges of his social position that he calls the chief bishop of his church a pederast for trying to do so. The Yūḥannā story intimates that concubinage might have been common enough among the Christian elite of Baghdad that it was tacitly accepted at times, since the physician’s Christian opponents say he can keep his concubines as long as he steps down from the deaconate. The text implies that it is too much of an affront to have a known polygynist/adulterer aiding in the administration of church vessels and services; but otherwise it leaves the elite layman to his ways.

Additionally, the stories of Yūḥannā and Jibrīl are notable for their depiction of elite laymen fighting back against the patriarchs’ claim of sole authority to mark those marital practices that precluded communion with the Christian social and theological body, and for the fact that they do so in the very language of their shared religious tradition (or at least a flippant version thereof). Yūḥannā’s retort references Luke 3:11 (that anyone with two tunics should give one away) in order to assert that the patriarch has ignored the Christian ethic of compassion for the poor by comporting himself extravagantly. Jibrīl’s use of the ḫūṭī insult against Timothy evokes the Arabic literary trope that celibate Christian monks often indulge in pederasty; he thus implies that if the church’s spiritual custodians transgress its canons on sexual conduct, the patriarch is in no place to call a layman un-Christian.

414 Together, the narratives suggest that powerful

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414 On the association between monks and pederasty in medieval Arabic literature, see Everett K. Rowson, “The Categorization of Gender and Sexual Irregularity in Medieval Arabic Vice Lists,” in Julia Epstein and Kristina Straub, eds., Body Guards: The Cultural Politics of Gender Ambiguity (New York: Routledge, 1991), 76, note 27. Jibrīl’s insult is, in fact, a particularly rich literary moment in the narrative, and one open to other interpretations. We might take the accusation of pederasty against Timothy to imply that taking concubines was so normative an aspect of elite male sexuality that anyone who would try to circumscribe it must therefore be sexually deviant. However, pederasty was not particularly irregular or pathological according to urban ʿAbbāsid conceptions of male sexuality, as far as we understand them from contemporary Arabic belles lettres; penetration of a passive object, male or female, was the normative model of
laymen (like the Nisibene physicians before them) might contest the patriarchs’ authority to declare that the privileges customary to their social networks were incompatible with their identity as Christians. In Yūḥannā’s allusion to scripture, especially, we see a layman claiming a bit of interpretive authority himself to assert that he can live as both a Christian and an elite functionary of the caliphal court.

From another angle, however, the narratives (excluding Yūḥannā’s) lend support to the ecclesiastical hierarchy’s normative prohibition of polygyny. The story of Jibrīl and Timothy, for example, depicts an errant and arrogant layman incurring divine punishment and physical harm for engaging in polygynous practices in defiance of ecclesiastical law. He is saved only by the patriarch’s indulgence and special ability to channel the healing powers of the Christian mysteries. The anecdote thus functions as a warning to the faithful to adhere to the ecclesiastics’ Christian laws and set aside the customs and prerogatives of other social networks. The Jūrjiyūs anecdote is edifying in a different respect, because Jūrjiyūs explicitly turns down the polygynous privilege of his court position. The narrative allows Jūrjiyūs an opportunity to perform Christian difference: he affirms the monogamy expected by ecclesiastical elites and inscribes in his conduct a social ethics distinct from that of the Muslim caliphal court. He is, in this sense, operating much like the artisans or the rich layman Zarqūn we met earlier: by giving priority to ecclesiastical law over the customs of his social world, Jūrjiyūs affirms the primacy of his affiliation to the church in the terms defined by the clergy.

male sexual desire (although all the monotheistic religious traditions sternly prohibited male homosexual practice, of course). See Rowson, “Categorization,” 57-62. Though we have no way to know whether Jibrīl or the composer of his anecdote shared this perspective, this reading remains less compelling to me than the “monks and pederasty” one.
The anecdotes discussed above give us an evocative if imprecise picture of the practice of concubinage among elite Christians in 'Abbāsid Iraq, and, like the conflict between the bishops and Nisibene physicians of late Sasanian times, demonstrate how lay people might contest (or sometimes endorse) the ecclesiastical definition of right marital practice. How might the bishops have responded to this situation? The Jibrīl story features an example of a surprisingly (perhaps dubiously) effective deployment of the anathema by Timothy to curb concubinage, but we have no way to extrapolate from this one instance any broader picture of the use of the ban. We can, however, consider other ecclesiastical strategies for dissociating concubinage from the practices of Christian marital life by returning to the law books. Chief among those strategies is to prescribe the exclusion of children born to married men and their slaves from inheritance, following on Ḥnānīšōʿ’s precedent, and to thereby marginalize economically the unlawful (from the bishops’ point of view) branches of Christian family trees.

As mentioned earlier, the law books of Timothy, Īšō’barnūn, and Īšō’bōkt all include rulings that address the status of children born of relationships between married men and their slaves. According to Īšō’bōkt, the father of such a child should “raise him”

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415 We catch a few additional glimpses of concubinage among elite East Syrian men elsewhere in 'Abbāsid-period sources. Jibrīl’s son Bukhtīshū (d. 870) is said to have worked for the appointment of the patriarch Theodosios (r. 853-58) because he would not anathematize the physician for taking concubines. We hear reports some fifty years later of a certain Yūḥannā ibn Bukhtīshū, metropolitan of Mosul and a competitor of Yōḥannān bar Abgārē for the patriarchate, having trouble drumming up popular support because he was the child of a concubine (wilādatuḥu min surriya’alā sabīl al-zinā’). After succeeding to the patriarchate, Yōḥannan had to depose the metropolitan of Bēt Garmay because he was carrying on some kind of inappropriate relationship with a singing girl and her daughter (ittāsala bi-Yūḥannā [ibn al-A’raj] akhbār faḍā’ihi wa-annahu yahwī mughanniyya wa-annahā wa-bnatahū ‘alā sabīl qabīḥ). For these various points see Gismondi, Akhbār 1: 79 and 87-89.
and “give him something from his property in a just manner (zādqāʿ īt)”; but “he cannot
make heirs of unlawful (d-lā nāmōs) [children].” 416 Timothy’s legal language is less
precise, but his ruling is also instructive in this regard:

[What is the ruling concerning] a man who falls upon his female slave, she bears a
son, and [the man] does not acknowledge [the son] during his life; but [then]
stipulates at the time of his death that inheritance be given to him like one of his
[legitimate] sons, and acknowledges that he is his own son?

He is considered [one] of the [man’s] sons. But not like freeborn sons
(bnay ħerūṭā); rather, as the son of a slave woman he shall be given a 1/20 share
by way of adoption (b-ṭaybū), as a warning that no one should be defiled
(netṭannap) [and] that no offspring should be excluded from inheritance. 417

Though Timothy calls the portion of the father’s estate going to the slave’s son
inheritance, it is again a small sum meant only for his maintenance; the child has no right
to a share equal to that of his legitimate brothers. 418 And though Timothy presents the
granting of even that small share as merciful, it in fact carries the stigma of “defilement.”

Īšōʾbūn’s ruling on the illegitimate sons of slaves echoes the other bishops’
position that “inheritance should not be given to [the son of a man and his slave]
alongside the sons of the free wife”; the legitimate sons, however, “should have mercy on
him” (ne bdūn ʿlaw[hy] raḥmē) and give him “some portion as a blessing” (mnātā
meddem ak burktā). 419 Īšōʾbūn adds another ruling on the sons of married men and

416 §IV.iv.6, SR 3: 116. Īšōʾbūn is almost certainly drawing from Sasanian legal tradition here:
Sasanian law gave inheritance only to the children of a “marriage with full matrimonial rights”
(Middle Persian pādxšāy-zanih). See Macuch, “Inheritance,” 129.
417 §70, SR 2: 104.
418 In this respect, Timothy’s use of the concept “adoption” is a bit curious and not particularly
precise. In the Roman and Sasanian legal traditions, adoption grants the status of a full and
legitimate son or daughter to the adoptee. Timothy’s sense of the term seems to recognize the
adoptee as the natural offspring of the deceased but marks him as specifically unequal to and
different from the legitimate heirs. One gets the sense that Timothy may have been only vaguely
familiar with adoption as a legal institution and deployed the term in an imprecise sense here. On
Sasanian and late Roman adoption see, respectively, Macuch, “Zoroastrian Principles,” 243 and
419 §100, SR 2: 160. We should note that all three of the law books’ rulings on slaves’ children
and inheritance seem to be addressed to cases of intestate succession. It is fair to infer, however,
slaves which, though not addressed to successionary status, promotes their further social marginalization. It specifies that the son of a married man and his slave “should be raised as a slave for the shame of his adulterer father” (*netrebēʿ* *abdāʿīṭ l-behtāḏ abū[hy] d-zannī*), and that the slave mother should be sold off and sent out of the household.\(^ {420} \)

The treatment of illegitimacy evident in the East Syrian law books is largely comparable to the case of medieval Europe, where clerical reformers put a good deal of effort over the course of centuries into admonishing and convincing lay people that only the progeny of monogamous marriages could be considered legitimate.\(^ {421} \) Late Roman law, too, put varying restrictions on the devolution of property to children not born of marital unions.\(^ {422} \) In the context of the Islamic Middle East, however, it is worth stepping back to consider the shape of the Christian household that the East Syrian rulings promote in comparison to Islamic law and Muslim social mores. The rulings detailed above exclude children who are born of slave women, but whose paternity is acknowledged, from any meaningful share in their fathers’ patrimonies; ʿĪṣōʾ bārnūn, additionally, maintains that such children should be raised as slaves. The difference between this stance and Islamic norms could not be more striking. In the Sunnī legal traditions, men may legally keep as many slave concubines as they can support.

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\(^ {422} \) Constantine banned the bequeathing of property to the children of concubines; later emperors alternately loosened and tightened this stricture. See Arjava, *Women and Law*, 211-217.
Moreover, any children born to concubines are considered free and legitimate (as long as their paternity is acknowledged) and are therefore entitled to normal shares in their fathers’ estates.⁴²³

In the face of these norms, the East Syrian bishops’ rulings on the inheritance of slaves’ children emerge as an attempt to sculpt Christian lineages in a manner radically distinct from other household patterns in ‘Abbāsid society. As we have seen, concubinage was fairly standard practice in certain elite Muslim echelons, and some Christians partook of it too. But Muslim sons of concubines were theoretically not disadvantaged in comparison to the sons of free women in terms of inheriting from their fathers and, therefore, contributing to the reproduction of patrilineages. Now, this may well not have been the case in practice at times, especially when fathers, for a variety of reasons, declined to acknowledge the paternity of their slaves’ children. But Islamic history is full of prominent men born of concubines; and it is particularly noteworthy that by the time of ʿĪsā barmūn’s death in 828, four ‘Abbāsid caliphs (al-Manṣūr, al-Hādī, Hārūn al-Rashīd, and al-Maʿmūn) had been sons of concubines.⁴²⁴ The East Syrian ecclesiastics’ rulings on the inheritance of the children of married men and their slaves, on the other hand, socially and economically marginalizes such children by divesting them of a meaningful role in the intergenerational transfer of wealth and, therefore, the reproduction of lineages and households.⁴²⁵ As the stories of Jibrīl and Yūḥannā

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⁴²⁵ We have noted above that the law books’ rulings, especially ʿĪsā bōkt’s, on the inheritance of slaves’ children may be drawn partly from earlier legal traditions. This does not mean, however,
demonstrate, the bishops may not always have been able to convince powerful laymen to abandon the polygynous practices, especially concubinage, that were characteristic of the elite social circles of the Muslim caliphate. But through a Christian inheritance law starkly distinct from that of Islam, they could seek to mark certain offspring as unlawful and thereby curtail the effectiveness of concubinage as a strategy for lineage reproduction. 426 This, in turn, would encourage the longer-term shape of Christian households to conform to the monogamous ecclesiastical ideal.

As we have noted throughout this chapter, however, the bishops’ vision would be realized only where their regulations were acknowledged and administered in practice. In the absence of any comprehensive evidence, our best guess is that this happened in some areas of the caliphate and not in others; it must have depended on whether local clergy actually played significant judicial roles in the civil affairs of Christian families and were able to mediate the bishops’ rulings to local communities. In this respect, the letter of the early tenth-century patriarch Yōḥannān bar Abgārē (mentioned above) offers some instructive evidence.

This epistle was a response to a certain Yemeni priest named al-Ḥasan ibn Yūsuf who had previously sent the patriarch a number of questions related to ritual and family law. 427 One described a case that had arisen concerning a slave woman’s child:

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426 On concubinage as a strategy for lineage reproduction, see Goody, Development, 75-78.
427 That al-Ḥasan was Yemeni is mentioned in the manuscript incipit but nowhere in the text of the letter itself. Assuming that his location is in fact noted correctly, it is difficult to say exactly who and where in Yemen his Christian community might have been. The town of Najrān was well known for its Christian population said to have been expelled by ʿUmar ibn al-Khaṭṭāb in the seventh century; what kind of presence Christians had there in later centuries is less clear. Timothy is known to have consecrated a bishop of Ṣanʿāʾ in 800, and Zaydī sources attest to the presence of Christians in Yemen in the tenth century. Ultimately, however, we know next to

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A man had a wife and a slave woman (jāriya). When the slave died, he acknowledged her son and said that he was his. But when this man died, his cousin (ibn ʿammih) came and also declared that the son was his. Should [the boy] receive inheritance (hal yajib lahu l-mīráth)?

Here again we see the problem of the successionary status of children born to married men and slaves, but this time from the perspective of a local clergyman who actually had to mediate the inheritance dispute that unfolded after the father’s death. Notably, Ḥasan turned to the patriarch for advice on this quandary, which indicates an interest in balancing the interests of local parties and the principles of the church.

The issue at stake for Ḥasan was in part the confused paternity of the slave woman’s child. Patriarch Yōhannān’s response, however, does not concern itself with the paternity issue or the cousin’s counterclaim; instead, it goes about upholding East Syrian legal doctrine. First, the patriarch states unequivocally to Ḥasan that no Christians should be getting themselves into this position in the first place:

No one is allowed to take (sexually, ittikhād) a slave woman unless he frees her and marries her by means of a marriage payment and a blessing (bi-l-mahr wa-l-baraka) in the presence of priests and the community. Also, she must be one [i.e., one wife], taking the place of a free woman.

If, however, reliable witnesses in the community (jamāʿa maqbūla) affirm that the deceased indeed fathered the child, there are two possibilities. If the man has no legitimate son, half of his estate goes to the slave’s son and the other half to the rest of his

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428 Yōhannān bar Abgārē §16, MS Vatican Arabic 157, folio 88b.
relatives. If the man did bear sons by his lawful wife, the slave’s son gets 1/20 of the estate (*nisf al-ʿushr*) and the rest goes to the lawful sons.\(^{429}\)

Yōḥannân’s allowance of inheritance to the slave’s son if he is an only child is an interesting exception to the bishops’ general aversion to assigning property to unlawful progeny; it is probably best explained as stemming from the general principle that property descends more or less naturally through patrilineages, even an illegitimate one if no others are available.\(^{430}\) But more significantly, Yōḥannân’s ruling of the 1/20 share is a reaffirmation of Timothy’s position,\(^{431}\) and an example of the patriarch communicating the ecclesiastical concern to trim the polygynous branches of Christian family trees directly to a local community (by way of its priest). Though we do not know the ultimate

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\(^{429}\) MS Vatican Arabic 157, 88b-89a and BO 3.1: 252.

\(^{430}\) I have not found an exact precedent for Yōḥannân’s position in East Syrian legal sources. Īšōʾbōkt allows a man to acknowledge his sons by a slave as fully legitimate heirs, but with the specific condition that he has not married another woman. Therefore, even if the bishop allows some leeway for the legitimation of progeny from an unlawful union, they must still have issued from a monogamous one. Simeon of Rēwardāšīr allows a man who only has children by his slave to acknowledge them as legitimate heirs (*mqabbel l-ḥūn*, perhaps with the sense of adoption); however, he does not specify whether this still holds if the man has a lawful wife in addition to the concubine. Thus, neither explicitly covers the case ruled on by Yōḥannân in which a man’s only children have issued from a union that is unlawful by virtue of its being polygynous. For the rulings see Īšōʾbōkt §IV.iv.4 and §IV.iv.7 and Simeon §22 in *SR* 3: 114-16 and 251-53.

\(^{431}\) As an aside, we should mention here a treatise on succession attributed to Yōḥannân bar Abgārē that contains two rulings related to the present case. One states that if a deceased man leaves behind an illegitimate son in addition to lawful ones, the illegitimate one receives the same share that a wife would, which another ruling in the text specifies as one eighth of the estate (as opposed to the 1/20 stated by the epistle). If the man leaves behind only illegitimate children, they receive half of the estate, while other relatives split the other half (corresponding to the ruling in the epistle). These rulings appear only in the Arabic translation of this treatise, which is found in the same unique manuscript as Ibn al-Ṭayyib’s *Fiqh al-naṣrāniyya*, and not in the treatise’s several Syriac versions. Kaufhold, who has studied all versions of the treatise closely, doubts the veracity of its attribution to Yōḥannân bar Abgārē. The attribution, however, appears in the margins of the Arabic manuscript, which suggests the possibility that at some point in the transmission of the Arabic version a scribe or translator who knew of Yōḥannân’s epistle added the two (imperfectly corresponding) rulings from it to the treatise. For the rulings in the text of the pseudonymous treatise see Ibn al-Ṭayyib, *Fiqh* 2 (text): 189 (§2) and 198 (§9 and §10). On the treatise as a whole see Hubert Kaufhold, *Syrische Texte zum islamischen Recht: Das dem nestorianischen Katholikos Johannes V. bar Abgārē zugeschriebene Rechtsbuch* (Munich: Verlag der bayerischen Akademie der Wissenschaften, 1971).
fate of the unnamed slave woman or her child, the fact that Ḥasan the priest recognized
the patriarch as an authoritative source from whom to seek a judgment on this local
instance of the married man/concubine issue demonstrates that the bishops’ rulings were
more than literary exercises. They might even have been instantiated in practice at times,
though this would always require committed local agents.432

Conclusions

In examining East Syrian discourses on and practices of polygyny, we have seen
that various forms of polygyny and concubinage were time-worn styles of household

432 One more intriguing but conjectural case is worthy of mention in this respect. In note 415
above, I hinted that Yūḥannā ibn Bukhṭīshū’, metropolitan of Mosul c. 900, may have been the
unlawful son of the prominent physician Bukhtīshū’ ibn Jibrīl and a concubine. This suggestion is
based on a few passages in the Kitāb al-majdal that establish that Bukhtīshū’ was known for
taking concubines, that Yūḥannā’s father’s name was Bukhtīshū’, that Yūḥannā’s mother was a
concubine, and that the two men’s chronologies line up such that they could have been father and
son. The text does not say explicitly, however, that this was the case. Now, the extensive notices
on Bukhtīshū’ in the biographical dictionaries of al-Qifṭī and Ibn Abī Uṣaybi’a specify that when
the physician died he left behind (khallafa, suggesting also “named as successor”) a son named
ʿUbayd Allāh and three daughters; various ʿAbbāsid functionaries subsequently extorted from
them (yuṣādirūnahum wa-yaṭlibūnahum bi-l-amwāl) the considerable wealth they had inherited.
There is no mention of a son named Yūḥannā. This set of data raises a few intriguing
possibilities. If Yūḥannā the metropolitan was indeed the unlawful son of Bukhtīshū’ the
physician, did he escape the notice of the biographers because he actually was excluded from
inheritance (and, hence, the predations of powerful imperial servants), much as the East Syrian
bishops prescribed? That an illegitimate son without much expectation of an inheritance might be
shipped off for an education and subsequent career at a monastery would explain his
reappearance as a metropolitan bishop (the ranks of the customarily unmarried East Syrian higher
clergy were drawn from the monasteries). Though the possibility that we have here an example of
the real application of the ecclesiasts’ rulings on inheritance and concubines’ children is
intriguing, it must remain conjecture. On Bukhtīshū’’s children, see Qifṭī, Ikhbār, 73 and Ibn Abī
Uṣaybi’a, ʿUyūn, 209. We should also make mention of a physician named Yūḥannā ibn
Bukhtīshū’, an entry for whom is found in Ibn Abī Uṣaybi’a, ʿUyūn, 276-77. This Yūḥannā, who
served a son of al-Mutawakkil (d. 861), is roughly contemporary to Yūḥannā the metropolitan
and Bukhtīshū’ ibn Jibrīl, but he should probably be identified as neither the former nor the son of
the latter. Physicians were laymen, and I know of no examples of any serving as high clergymen
in the ʿAbbāsid period; and Ibn Abī ʿUṣaybi’a groups the entries of family members together in
the ʿUyūn, but Yūḥannā ibn Bukhtīshū’ comes well after the distinguished line to which
Bukhṭīshū’ ibn Jibrīl belonged.
organization in the largely patriarchal and patrilineal societies of the Middle East. This was true among Christians as well as their non-Christian neighbors. Since the Sasanian period, however, polygyny had been one of the first areas of familial relations that East Syrian legal tradition aimed to regulate, and prohibit, in a manner consistent with Christian teachings. Polygynous practice might have structured households in particular traditional ways, but Christians would have to eschew it.

Ecclesiastical strategies for propagating this notion and encouraging lay practice to conform to the church’s strictures developed with the socio-political transformations of the late antique-early Islamic world. The broad canonical legislation characteristic of the late Sasanian period threatened polygynous lay people with exclusion from the salvific Christian mysteries, the standard tool of persuasion available to ecclesiastics with no real coercive powers. But the conflict between the Nisibene physicians and the bishops Sabrīšōʿ and Gregory demonstrated that the effectiveness of this persuasion depended greatly on the relative social power of the parties involved; proclaiming canons and issuing anathemas might simply not be enough to stop prominent lay people from availing themselves of the polygynous prerogatives customary in their social environments.

After the Muslim conquests, however, the East Syrian bishops’ expanded judicial horizons led them to formalize in the texts of their legal tradition techniques for reining in lay polygyny different from the mere threat of anathema. Beginning in the seventh century and continuing into the ʿAbbāsid period, the sources show bishops seeking to order the intergenerational transfer of wealth in Christian lineages in a manner that excluded the children of polygynous arrangements from any meaningful share in their
fathers’ patrimonies. In doing so, the bishops aimed to marginalize unlawful progeny and thereby sculpt Christian households in the monogamous terms of the ecclesiastical ideal, as well as discourage other Christians from polygyny as a strategy for household reproduction. The East Syrian ecclesiastics thus used inheritance law to promote a notion of the Christian household quite different from household patterns at elite levels of Islamic society, where polygyny and concubinage were standard techniques for the perpetuation of lineages.

The bishops’ voices, however, were not the only ones raised in the course of their ongoing attempt to curb polygyny in the service of their broader vision of Christian community. We have seen some lay people (like the artisans, Zarqôn, and Jūrjīyūs ibn Bukhtīshū’) endorse the ecclesiastical understanding of Christian commitment as primary and operative to the exclusion of social practices like polygyny. Others (like the Nisibene physicians and Yūḥannā ibn Māsawayh) contested the patriarchs’ authority to declare their customary polygynous practices un-Christian, and sought to maintain these aspects of their social lives as elite males while still claiming association with the Church of the East. But these obstinate laymen notwithstanding, the bishops, as custodians and authoritative interpreters of Christian tradition, largely set the terms of the debate. Mār Abā’s letter in the mid-sixth century appears to have been the first concerted effort to cast in stark relief the idea that certain marital practices contradicted the church’s teachings; in this respect its assertion that true Christians could not engage in polygyny was perhaps a bit novel. But by the ninth century, a layman like Yūḥannā knew well that he was transgressing the church’s canons by taking concubines, no matter how much he tried to justify himself by pointing to ecclesiastical hypocrisy. Though their laws might not
always be obeyed, by the ʿAbbāsid period the East Syrian bishops had seen to it that the prohibition of polygynous practices would be a marker of Christian difference in the Islamic caliphate.
Chapter Six

Breaking the Bond: Divorce in the East Syrian Law Books

At certain points in this dissertation, we have seen that the substance of the family law of the three major Abrahamic traditions – Muslim, Christian, and Jewish – in ʿAbbāsid Iraq did not always differ greatly. When the East Syrian bishops enjoined forms of inchoate marriage and obligated the exchange of marriage gifts, for example, they inscribed common institutions of Middle Eastern legal culture into their particular tradition of law. In other areas, however, Christian tradition diverged sharply from that of Muslims and Jews. One such area was polygyny; the other most notable one was divorce. Muslim and Jewish tradition both granted men a fairly unequivocal right, even if not always wholly condoned, to divorce their wives at will. On the other hand, Christian ecclesiastics throughout the Mediterranean world had been trying for centuries to end or rein in divorce among lay people, basing themselves on Gospel and Pauline teachings of the indissolubility of the marital bond. In this chapter, we will explore the legal discourse on divorce that the early ʿAbbāsid-era East Syrian bishops articulated in an effort to impress that notion of indissoluble marriage onto the social worlds of householders. First, we will examine the limited circumstances in which the bishops permitted Christian men and women to dissolve their marriages, as well as how their strictures might have applied in practice – especially in view of the alternative legal venues open to lay people in the ʿAbbāsid Caliphate. We will then examine how the East Syrian discourse on divorce mapped onto a prevalent social and legal problem in the pre-modern Middle East: the traveling, absent, or missing husband. We will close by considering how the East Syrians’ approach compared to Muslim jurists’ treatment of the same issue.
East Syrian bishops like Īsōʾ bōkt, Timothy, and Īsōʾ barnūn were the heirs of a tradition that, like essentially all other Christian ones, greatly stigmatized divorce. This perspective was rooted in several well known teachings of the Gospels and Pauline epistles: that husband and wife become one flesh, that the marriage bond is in some sense affirmed by God such that no human can undo it, and therefore that to leave one spouse and “marry” another is to commit adultery.\(^{433}\) The only significant exception to this perspective in Christian scripture is found in Matthew 5:32, which gives adultery on the part of the wife as the single legitimate cause for a husband to leave a marriage.\(^{434}\) This characteristically Christian position is much in evidence in the few discussions of divorce to be found in East Syrian legal tradition prior to the ʿAbbāsid-era law books. So, for example, canon §13 of the late sixth century synod of Īsōʾ yahb I offers the general prohibition with the Matthean exception: “canonically, no one may let loose (nešrē) his lawful wife without [the cause of] adultery (d-lā zarūtāt) and marry another.”\(^{435}\)


\(^{434}\) In the Peshiṣṭa, “anyone who lets loose his wife other than for the cause of adultery (l-bar men mellūd d-zarūtāt) causes her to commit adultery.”

\(^{435}\) Chabot, *Synodicon*, 149. §32 of the Arabic canons of Nicaea also forbids divorce other than for a wife’s adultery; see Vööbus, *Canons Ascribed to Mārūṭā* 1: 80. Though the East Syrians received the apocryphal Arabic canons of Nicaea in the fifth century, Edakalathur states that Īsōʾ yahb’s canon is the first instance in East Syrian tradition that divorce for adultery is recognized as legitimate; see *Theology of Marriage*, 75. We might add that Mār Abāʾ’s third synodal letter admonishes as un-Christian any man who “leaves (šābeq) his first wife without a just cause (elltā kēntā),” but it does not specify what a “just cause” might be. See Chabot, *Synodicon*, 82.
Unsurprisingly, the ʿAbbāsid-period law books uphold the general Christian prohibition of divorce. However, they also modestly expand the grounds on which marriages might be legitimately dissolved in a few interesting ways. In this regard, ʿĪšōʾ bōkt apparently sets the precedent that Timothy and ʿĪšōʾ barmūn follow. In the second treatise of his law book, ʿĪšōʾ bōkt describes the grounds on which a man may separate from his wife as “exactly three”:

The first is rejection of God (kpuryā da-b-Alāhā), the second is adultery (gawrā), and the third is murder (qetlā); it being known that sorcery (ḥarrāšūtā) is also rejection of God, for no man is able to attempt this abomination without rejecting God first.

As an addendum to his principal three causes, ʿĪšōʾ bōkt states that the leaders of the church might also allow a man to divorce a disobedient wife (a[n]ttā paknītā wa-mšaʾ rānītā); however, they allow this only rarely (ḥdā lakmā). In a subsequent ruling, ʿĪšōʾ bōkt recognizes the husband’s desire to lead a holy life of continence (or “virtuousness,” myattrūtā) as grounds for divorce as well. He does not allow divorce for a husband’s infidelity, nor for a wife’s desire for holy continence; in his view, a wife may legitimately leave her husband for sorcery/rejection of God or murder only. There are thus a few summary points worth noting in regard to ʿĪšōʾ bōkt’s discussion of divorce. First, he has expanded the traditional Christian grounds for the dissolution of marriage beyond adultery to include also “rejection of God” (i.e., apostasy), “sorcery” (the precise meaning of which we will discuss later in this chapter), murder, and desire for the holy continent life (and, in rare cases, wifely disobedience). Second, his list is gendered. These

436 §II.xi, SR 3: 56.
are essentially the grounds on which a man might divorce a wife, while a wife has more limited rights to divorce her husband.

In Timothy’s law book we again find a list of grounds for divorce that extends beyond adultery. Its similarity to Īšō’bōkt’s discussion, in addition to the fact that we know Timothy to have been familiar with Īšō’bōkt’s law book (he had it translated from Middle Persian to Syriac), suggests that Timothy drew this material from Īšō’bōkt. His formulation of grounds for divorce includes adultery, vows of continence, apostasy/sorcery, and “death” (mawtā):

There are four causes (ʿellātā) on account of which wives and husbands may be loosed from each other. First, in order to keep righteousness (zākūtā), as when the husband does not turn to another woman and the wife does not turn to another man. Second, bodily adultery (zānyūtā pagrānītā w-gawrā). Third, spiritual adultery (zānyūtā napšānītā), which is sorcery (ḥarrāšūtā) and apostasy in denial of God and demonic servitude (npūlūtā d-men Alāhā ba-kpurūyā w-pulhānā šēdānīyā). Fourth, death.⁴³⁹

Timothy’s list thus includes adultery, sorcery, and apostasy in common with Īšō’bōkt’s, and he follows the latter further in folding sorcery and apostasy into a single category. We also find largely the same terminology used in both texts: harrāšūtā for “sorcery” and kpuryā for “rejection” or “apostasy.” The main difference appears to be that Timothy has “death” in place of Īšō’bōkt’s “murder”; but as we will discuss below this may simply be the result of a textual corruption or a mistake in scribal interpretation. A clearer difference is that Timothy does not assert a gender difference to these prerogatives as Īšō’bōkt does (he also leaves aside wifely disobedience, but that is a more marginal matter for Īšō’bōkt as well). All told, however, the similarities between the two lists are

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⁴³⁹ §36, SR 2: 84-86. Ruling §42 also gives Timothy’s grounds for divorce, but does not mention death. Timothy states explicitly vows of continence (“when one of them turns to another marriage [i.e., to Christ],” kad metpnē had menhōn l-zuwwāgā hrēnā) and adultery (zānyūtā); we can interpret the latter cause as encompassing both “bodily” and “spiritual” adultery, as in §36. See SR 2: 88.
enough to suggest that Īšōʾ bōkt was Timothy’s source for his rules on divorce. In a
similar fashion, Īšōʾ barnūn largely reproduces Īšōʾ bōkt and Timothy’s stipulations,
although he leaves aside murder/death.\footnote{For adultery, see §5 and §101; for sorcery (harrāšūtā), §6 and §35; for apostasy (mekpar), §114; for vows of continence, see §16 and §17. \textit{SR} 2: 120-24, 130, 160-62, and 168.}

In the following sections we will examine these various grounds for divorce, and their relationship to social and religious practices in the medieval Middle East, in more
detail. Before we do so, however, two issues require further comment. First, we should consider whether the bishops’ limited circumstances that permit divorce imply the
permissibility of remarriage. In light of the doctrine of a single flesh created by the
marital/sexual bond, it is less divorce per se and the end of cohabitation than remarriage
and sex with another that poses theological problems for Christian thinkers. In this vein,
for example, the writings of many Church Fathers tended generally to allow divorce for
adultery, but \textit{not} remarriage for the innocent party while the other was still alive; only
death could finally end the bond of the flesh.\footnote{See Roger S. Bagnall, “Church, State and Divorce in Late Roman Egypt,” in Karl-Ludwig Selig and Robert Somerville, eds., \textit{Florilegium Columbianum: Essays in Honor of Paul Oskar Kristeller} (New York: Ithaca Press, 1987), 47.} However, the East Syrian ecclesiastics do not appear to have adopted this general position. Though they never give explicit,
systematic statements allowing remarriage, their rulings tend to permit a wronged spouse
with a lawful reason for divorce to remarry, as well as a spouse who has been unlawfully
divorced by his or her partner.\footnote{The following are rulings that specifically allow remarriage for the wronged party. In cases of divorce for adultery: Timothy §32, \textit{SR} 2: 80; Īšōʾ barnūn §101, \textit{SR} 2: 160-62; §12 in Īšōʾ barnūn’s letter to Isaac of Qaṭar, MS Mingana Syriac 587, folios 367a-b; and Īšōʾ bōkt §II.xvii, \textit{SR} 3: 66. In cases of unlawful divorce/abandonment: Timothy §§33, 41, and 74, \textit{SR} 2: 80-82, 88, and 106; and Īšōʾ bōkt §III.iii, \textit{SR} 3: 80. In case of a husband’s desire for the continent holy life, an allowance for his wife to remarry is Īšōʾ bōkt §II.xix, \textit{SR} 3: 68. In cases of a man’s disappearance, an allowance for his wife’s remarriage after a specified amount of time is Īšōʾ bōkt §III.ix, \textit{SR} 3: 84. The one exception to this trend of allowing remarriage is Timothy’s ruling §31, which states} By contrast, the bishops tend to consider the spouse

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who has transgressed the law as having excluded him or herself from the community, and therefore as unable to remarry a Christian.

The second matter that requires further comment before we examine the law books’ grounds for divorce individually is whether any particular traditions underlie the ‘Abbāsid-era bishops’ formulations that extend those grounds beyond adultery. Walter Selb, for example, has noted the prominence of “prostitution, sorcery, death” as a trinity of mortal sins in the writings of church fathers like Tertullian, Gregory of Nyssa, and Basil the Great, and speculates that Timothy may have drawn on this tradition for his “adultery, sorcery, continence, death” formulation. Additionally, we might note that “sorcery” had a long history of condemnation in Roman imperial and ecclesiastical legislation. However, if I am correct that the expanded grounds for divorce that we find in the ‘Abbāsid-era East Syrian legal works originate with Īšō’bōkt, I would tentatively suggest that the metropolitan of Fārs may have been drawing on local Iranian traditions in formulating them. This possibility emerges if we examine several notable similarities between Īšō’bōkt’s formulation and Zoroastrian legal writings. Zoroastrian tradition allowed for divorce by mutual consent, but otherwise it permitted the dissolution of marriage only when a wife committed a grievous sin (one that rendered her margarzān, specifically that “Neither a man nor a woman who leave each other, with or without the cause of adultery or sorcery, are permitted to marry again unless one of them dies”; SR 2: 78-80. However, Timothy’s other rulings noted above clearly contradict this position, a discrepancy we should attribute to the composite nature of his law book.

443 See Kirchenrecht 1: 211.
444 See, for example, a pseudo-apostolic canon that condemns “sorcerers, soothsayers, and diviners” (ḥarrāšē w-qāšōmē w-kaldāyē); canon §23 of the synod of Ancyra, which prescribes penance for recourse to sorcerers, soothsayers, and “pagan custom” (yādā d-ḥanpūtā); and §36 of the synod of Latakia, which condemns priests who act as sorcerers and make use of “incantations” (luḥšātā). For the pseudo-apostolic canon see §12 in William Cureton, ed. and tr., Ancient Syriac Documents (London: Williams and Norgate, 1864), 27. For the synodal canons see Schulthess, Syrischen Kanones, 44 and 99.
“deserving death”). The classification of sin in Zoroastrian thought is fairly complicated and not entirely consistent across the sources; but murder, sorcery, adultery, and wifely disobedience (all of which we find in Īšōʾbōkt) figure prominently in lists of grievous sins and transgressions that allow for divorce in Zoroastrian texts, especially the Middle Persian rivāyats of the ‘Abbāsid period. Also worth mentioning in this respect is an account of Zoroaster’s teachings on divorce in Abū Mansûr al-Thaʿālibī’s (d. 1037/8) history of the pre-Islamic Iranian dynasties. According to Thaʿālibī, Zoroaster taught that “there can be no divorce other than for one of [the following] three [reasons]: adultery, sorcery, and apostasy (al-zināʾ wa-l-sihr wa-l-tark al-dīn).” While the historicity of this report is no doubt questionable, it does indicate that Thaʿālibī, in the early eleventh century, understood Zoroastrian tradition to allow divorce only for these causes (which, of course, look very similar to Īšōʾbōkt’s formulation).

What conclusions are we to take from these disparate points? We saw in chapter two that Īšōʾbōkt drew on Sasanian jurisprudential works and claimed to have composed his law book in accordance with the traditions of the Christians of Fārs. In this light, the

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447 See, for example, “whoring, sorcery,” and “refusing to submit herself unto the husband” as transgressions that permit divorce in the late ninth or early tenth century Rivāyat-i Hēmīt-i Ašawahistān, quoted in Shaki, “Divorce,” 444. Another rivāyat from the same period includes among the margarzān sins wifely disobedience (specifically, a wife who says three times to her husband, “I will not fulfill the duties of a wife for you”), murder, sorcery, and “false-teaching.” See §34 and §41 in A. V. Williams, ed. and tr., *The Pahlavi Rivāyat Accompanying the Dādestān i Denīg* (Copenhagen: Munksgaard, 1990), vol. 2: 61 and 69.
similarities between Zoroastrian law and his formulation of the legitimate grounds for
divorce are suggestive of some kind of shared background. Adultery and the desire for a
continent holy life are of course characteristically Christian concerns; but murder,
apostasy, and sorcery (as well as wifely disobedience) figure prominently as major sins
and grounds for divorce in Zoroastrian sources (as well as in Thaʿālibīʾs account of
Zoroastrian tradition). While murder and sorcery are condemned in Roman imperial and
ecclesiastical legislation, I know of no Christian tradition that Īšōʾbōkt might have drawn
on that presents them specifically as grounds for divorce. Additionally, Īšōʾbōktʾs law
book, like the Zoroastrian traditions, strongly genders divorce, allowing husbands to
divorce wives for the causes we have enumerated but limiting wivesʾ prerogatives to do
so. In view of these congruencies, I would suggest the possibility that Īšōʾbōkt drew on
regional traditions in Fārs, similar to those evident in Zoroastrian law, in expanding the
grounds for divorce in East Syrian law beyond adultery to include murder, sorcery, and
apostasy. These same formulations were subsequently taken up by Timothy and
Īšōʾbarnūn, both of whom rendered them “gender-symmetrical” (i.e., they allowed wives
to divorce husbands for the same transgressions that permitted husbands to divorce
wives). But insofar as these doctrines on divorce were introduced into East Syrian

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449 It is worth mentioning in this regard that Īšōʾbōktʾs formula bears a certain resemblance to one
of the Roman Emperor Constantineʾs edicts, but it is doubtful that this is the result of any
connection between the two. This edict of the year 331 allowed wives to divorce husbands for
murder, sorcery, or tomb destruction and husbands to divorce wives for adultery, sorcery, or
procuring clients for prostitutes. Despite the fact that Īšōʾbōktʾs formula also includes murder and
sorcery, he makes murder grounds for wives to divorce husbands in addition to the converse; and
he makes no mention whatsoever of tomb destruction or procuration. Moreover, no version of this
edict appears in the Syro-Roman Law Book, and, as Kaufhold has argued, there is no compelling
evidence that Īšōʾbōkt had any knowledge of Roman legal traditions. See “Römisch-
byzantinisches Recht,” 156. On Constantineʾs divorce law see Clark, Women in Late Antiquity,
21-23 and Arjava, Women and Law, 178-79.
tradition by Īšō’bōkt, I would suggest the likelihood that the metropolitan of Fārs drew them more from Iranian regional traditions than from explicitly Christian precedents.

Whatever the origins of Īšō’bōkt’s particular formulation may have been, however, the grounds for divorce that he, Timothy, and Īšō’barnūn enumerated were also pertinent to the contemporary world of social practice that the bishops sought to regulate. These doctrines on divorce marked particular acts as so transgressive (or, in the sole case of continence, as so virtuous) that they permitted the dissolution of otherwise unbreakable marital bonds. In what follows, we will examine the individual grounds for divorce in more detail with a view to understanding exactly what the bishops meant by concepts like “sorcery” and “apostasy” in their ‘Abbāsid context, and how they construed these particular transgressions to permit the dissolution of Christian marriage.

Adultery

As we have noted, adultery as grounds for marital dissolution in Christian tradition is rooted in the Gospel of Matthew, and is found already in the early East Syrian legal sources of the Sasanian period. As a concept and a “social practice,” of course, adultery is likely as old as the institution of marriage. The most notable aspect of the ‘Abbāsid-era bishops’ treatment of the subject, mentioned above, is that the Iraqi patriarchs diverge from Īšō’bōkt in allowing wives to divorce adulterous husbands; the metropolitan of Fārs, on the other hand, defines only wives’ infidelity as adultery that permits divorce. In addition to its presence in Zoroastrian tradition, this gendered understanding of extramarital sex – according to which only married women can commit
adultery, while men’s extramarital sex is merely fornication – is in fact common in many
legal cultures of the ancient Mediterranean world, including Roman and Jewish law. In Īšō’bōkt’s explanation a husband’s fornication is not grounds for divorce because it does not pose the threat of mixing up the man’s lineage by foisting heirs upon him who are not naturally his own. An adulterous wife, on the other hand, poses a much greater danger because “those who are born from her receive sonship, maintenance, and inheritance from her husband, they who were not sired by him.” This strong fear of the confusion of natural lineages is suggestive again of the Iranian background to Īšō’bōkt’s law book, as Sasanian and Zoroastrian tradition placed an extremely high value on the integrity and perpetuation of patrilineal lines of descent. Timothy and Īšō’barnūn, on the other hand, likely drew on certain strands of late antique Roman Christian thought in making adultery “pan-gender.” Īšō’barnūn, in fact, cites one of the Church Father Gregory of Nazianzen’s Orations to make precisely the point that a woman whose husband commits adultery should be able to divorce him just as a man might divorce an adulterous wife.

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451 SR 3: 58.
452 Īšō’barnūn cites Gregory as asking, “Why is a woman who commits adultery with a man condemned (methayybā), while a man is not?” See §101, SR 2: 160-62. On the Syriac versions of Gregory’s Orations (the 37th remains in manuscripts), see note 164 in chapter two. We might add that Islamic law as well prescribe the same punishments for male and female adulterers, on which see Hallaq, Sharī’a, 312-15.
As I have argued, all the early ʿAbbāsid-era law books follow Īšōʿbōkt in including apostasy as grounds for divorce. However, we would do well to consider more carefully the ecclesiastics’ terminology for this transgression and the precise conceptual distinctions that it makes. A more literal translation of Īšōʿbōkt and Timothy’s terms for what I have called apostasy by way of shorthand is “rejection of God” (kpuryā da-b-Alāhā) and “the state of having fallen away from God through rejection [of Him]” (npīlūtā d-men Alāhā ba-kpuryā). A strict reading of these phrases does not present us with apostasy as “conversion,” in the sense of trading one set of propositions about the divine for a different but equivalent one; the terms speak, rather, to a denial of the true divine. From the bishops’ perspective, a believer cannot “convert” from one faith to another; he or she either espouses the correct confession (and is conventionally labeled Christian) or has “rejected” the truth.

A notable aspect of these phrasings is that they leave the ecclesiastics wide latitude to define exactly what constitutes “rejection of God.” In fact, the examples they give – principally “sorcery” (ḥarrāšūtā), also “demonic servitude” (pulḥānā šēdnāyā) – are nothing as blunt as conversion in the sense of adopting new sets of beliefs about the divine or declaring affiliation to a different community. Rather, they denote practices of which the bishops disapprove and which they view as corrupting, or demonstrating the corruption of, an individual’s devotional bond with God. Timothy’s notion of apostasy as “spiritual adultery” (zānyūtā napšānāytā) is instructive in this sense. Evoking the image of Christ as bridegroom of the collective Christian community, Timothy suggests that
deviant practices – “cheating on the divine” – break a Christian’s salvational pact with God.  

Now, this is not to imply that conversion in the sense of swapping doctrinal systems, associated ritual practices, and communal affiliation does not constitute grounds for divorce in the bishops’ view; it undoubtedly does. Practicing Muslim rituals of devotion, for example, surely constitutes rejection of Christianity, and the fact that the law books do not allow most marital unions between Christians and non-Christians in the first place is further evidence of this. The point to keep in mind, however, is that the law books’ conception of “rejection of God” allows for a considerably wider array of beliefs and practices to be construed as un-Christian and therefore grounds for marital dissolution – and “sorcery” is the major catch-all term that covers such practices. Now, the question of what constitutes “magic” and “sorcery,” both as traditions in antiquity and as categories of analysis adopted in modern anthropology and historiography, has generated a vast amount of literature, and is far too broad a topic to treat in depth here. That having been said, we can still eke out a basic sense of the contemporary resonances and associations that the law books suggest when they deploy these terms.

453 On Christ as bridegroom of the church in Syriac Christian piety see chapter three.
454 Īšō‘barnūn’s ruling on the subject suggests this notion of apostasy as conversion in the more general sense: “If there is a Christian woman who marries a man, and later… he apostasizes and compels her to apostasize (kāpar wa-āles lāh l-mekpar), she may loose herself from him by the law of the church.” See §114, SR 2: 168.
455 Timothy stipulates that a man may marry a non-Christian woman in the hopes of instructing her in Christian faith, but anathematizes a Christian woman who marries a non-Christian man (as well as any family members who oversaw the union). See §26 and §27 in MS Mount Sinai Syriac 82, folio 68b and Ibn al-Ṭayyib, Fiqh 1 (text): 186. Īšō‘barnūn takes generally the same position, although he only allows a Christian man to marry a non-Christian if she converts. See §10 and §11, SR 2: 64-66. Īšō‘bōkt states that no Christian, man or woman, may marry a non-Christian. See §II.viii, SR 3: 50-52.
We should note first that magic and sorcery are usually not “insider, self-descriptive term[s] but, rather, [tend] to function as… polemical term[s] of abuse for those who are religiously or politically aberrant from the preferences of the one employing the term[s].”\textsuperscript{456} In other words, the bishops view sorcery as incompatible with Christian devotion; but Christian “sorcerers” themselves, as well as those who made use of their services, likely recognized no such contradiction between these practices and their communal affiliation. So what, exactly, might these practices have been? Keeping in mind the possibility of regional variations between Īšō’bōkt’s Iran and the patriarchs’ Iraq, the “sorcery” of which the law books speak likely consisted of a broad variety of “amulets, recitations of incantations, and performance of adjurational rituals” for the purposes of effecting healing, protecting against personal and familial calamities, or visiting negative effects on one’s enemies.\textsuperscript{457} These kinds of “magical” practices were extremely widespread in the late antique Mediterranean world and western Asia.

Underpinning such practices was a certain shared conception of the order of reality in which demons, unseen and malicious beings, were responsible for the many tragedies – sickness, miscarriage, famine, infant mortality, and others – that often befell human communities. Certain individuals, objects, and rituals, however, had the power to protect against or manipulate these demonic forces.

For the late antique and early Islamic milieu of the Fertile Crescent, we have some particularly evocative evidence for these shared conceptions of the forces at work in the world, how they related to and impacted the lives of human communities, and how


such forces could be harnessed for human goals. The Babylonian Talmud relates a diffuse assortment of such practices, at times portrayed positively when used by rabbis to ward off demons and their ill effects, at other times negatively when employed by (usually female) others. A few examples include wearing locust eggs and fox teeth as healing amulets; cleaning up crumbs as a ritual to ward off “the angel of poverty”; and “the prophylactic efficacy of abstaining from vegetables tied in a bunch by the gardener.”

The seventh-century letters of the West Syrian Jacob of Edessa list many uses of similar talismanic objects for apotropaic and other purposes, from wolves’ paws to pottery shards to laurel bunches to bull’s dung to buried locks. Sasanian-era East Syrian synods include a number of canons banning the use of amulets (qetērē and qammīʾē), incantations (luḥšātā), auguries (nehšē), and divinations (qēṣmē). One such canon describes the practice of divining future events by observing the involuntary movements of human bodies or scrutinizing the songs of birds. 461 Īšōʾ barnūn’s law book condemns recourse to sorcerers (harrāsē) for the purposes of effecting love charms, killing enemies, retrieving stolen property, and healing illnesses.

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458 I have taken the first two examples from Giuseppe Veltri, “The Rabbis and Pliny the Elder: Jewish and Greco-Roman Attitudes toward Magic and Empirical Knowledge,” Poetics Today 19.1 (1998): 69; and the last from Kimberly Stratton, “Imagining Power: Magic, Miracle, and the Social Context of Rabbinic Self-Representation,” Journal of the American Academy of Religion 73.2 (2005): 362, which also discusses the gendering of magic and sorcery in Talmudic tradition. Various other examples of “magical” practices mentioned in the two Talmuds can be found throughout these articles.


460 See §5 of the synod of Isaac (repeated as Mār Abāʾ’s canon §23), §19 of the synod of Joseph, and §3 of the synod of Ezekiel. Chabot, Synodicon, 24, 106, 116, and 548-49.

461 §14 of the synod of Īšōʾ yahb I in Chabot, Synodicon, 150-51.

462 §§34-39, SR 2: 130-32. Noteworthy here is the rough “gender equality” of Īšōʾ barnūn’s rulings. A common motif in pre-modern Mediterranean/Middle Eastern traditions was an association of magic with the feminine (as illustrated by the Talmudic depictions of malicious sorceresses mentioned above); magic was often presented as a specialized women’s knowledge divorced from the male world’s orthodoxies. Among Īšōʾ barnūn’s rulings §§34-39, however, some are addressed to men, some to women, and some to both genders. In fact, none of the Syriac
However, the most instructive and fascinating evidence for “magical” practices unsanctioned by the official religious hierarchies of the late antique and early Islamic Middle East are the Aramaic incantation bowls found buried in the ancient Mesopotamian settlement of Nippur. These date from around 600 CE, and attest to the wide variety of shared ritual practices among Jews, Christians, Manichaeans, and Mandeans in the region. Most of the bowls are inscribed with incantations (in the sense of formulas that, when recited, were intended to bring about some effect) or supplicatory prayers seeking healing or protection for the clients who had the bowls inscribed, as well as their households and livestock. Other bowls include incantations that direct curses or love charms toward others. The bowls’ scripts likely indicate the nominal religious affiliation of the scribes who wrote them; thus, Jewish scribes wrote Aramaic in Hebrew characters (the majority of the bowls), Mandeans in Mandaic, and Manichaeans and Christians in Syriac. However, the content of the incantations and the wide variety of clients’ names demonstrate just how much of an interpretive mistake it can be to try to identify these pieces of material culture with one scriptural religious community. They attest, rather, to the wide assortment of sources of magical power that contemporaries of all religious affiliations recognized in the world around them; and to the fact that this power bled out across the communal boundary lines imagined by elite religious hierarchies. Among the many incantations written in Hebrew script, for example, occur

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463 A fair amount of literature is devoted to this subject. A helpful introduction is Dan Levene, *Curse or Blessing: What’s in the Magical Bowl?*, Parkes Institute Pamphlet 2 (Southampton: University of Southampton, 2002), accessible online at www.soton.ac.uk/parkes/docs/levene.pdf.

464 The majority of the Syriac bowls are generally ascribed to Manichaean scribes, not Christians. See Levene, *Curse or Blessing*, 17 and 34-35.
invocations of Hellenistic, Mesopotamian, and Iranian deities, as well as the Christian trinity, while some Mandaic bowls feature quotations of Jewish texts. At the same time, individuals of particular religious affiliations did not hesitate to commission incantations from others.\footnote{Evidence for this last assertion is that bowls of different scripts have been found buried in a ritual manner, facing down with one bowl per corner of a room, in single houses in Nippur. Additionally, bowls in Jewish Aramaic and Syriac have been found for one client, a certain Dadbeh bar Asmandukh. On all aspects of religious boundary crossing by inanimate magic bowls, see Levene, \textit{Curse or Blessing}, 32-36. In consideration of the magic bowls’ relevance to our broader subject, it bears mentioning here that Christian clients and scribes are underrepresented in the bowl texts in comparison to Jews, Mandaens, and Manichaens. However, this may simply be a function of there having been fewer Christians resident in the one settlement where most of the bowls that have been studied were found. In any case, we do have a small amount of positive evidence in the form of a few bowl clients with fairly unambiguously Christian names (Sabriššō, Batsāhdē, Gregory, Bathadšabbā), as well as some invocations of Christian symbols of divinity. For Christian names, see Edwin M. Yamauchi, “Aramaic Magic Bowls,” \textit{JAOS} 85.4 (1965): 523; and Markham J. Geller, “Jesus’ Theurgic Powers: Parallels in the Talmud and Incantation Bowls,” \textit{Journal of Jewish Studies} 28.2 (1977): 149. For a Trinitarian formula in a Syriac bowl text, see James A. Montgomery, “A Syriac Incantation Bowl with Christian Formula,” \textit{The American Journal of Semitic Languages and Literatures} 34.2 (1918): 137-39. For invocations of Jesus as healer, see Geller, “Theurgic Powers,” 149-55.} All of this is by way of saying that a wide variety of such “magical” practices involving the extrahuman powers at work in the world could be found among all the communities of the late antique and early Islamic Middle East. And for the trained religious professionals of Christian communities, these kinds of practices simply did not map onto their lettered traditions of correct faith transmitted by generations of authoritative teachers. Many lay people were after spiritual power wherever they could find it; whether it was channeled through prayer in church or an incantation written by a Mandaean scribe mattered little as long as the chosen medium could affect the unseen forces that brought about the small victories of a good harvest or the familial pain of a miscarriage. For many ecclesiastics, on the other hand, true power came through Christian piety and the singular mysteries of the Eucharist and baptism. All these other
practices, effective as they may or may not have been, came through other channels that, not being divine, were necessarily demonic. To have recourse to such powers demonstrated loss of commitment to the true power of God – and constituted in that sense “apostasy” from Christianity.\footnote{In support of this point the bishops could muster 1 Corinthians 10:21, “You cannot drink the cup of the Lord and the cup of demons. You cannot partake of the table of the Lord and the table of demons.” Canon §3 of the synod of Ezekiel cites this verse as a proof text against sorcery.}

The other important element to note in this ecclesiastical perspective is one of decided self-interest. If lay people were in the market for aid against the forces at work in the world, Christian elites or “religious professionals” represented only one option.\footnote{I owe much of the analysis that follows to the discussion in Tanno\textsc{us}, “Syria between Byzantium and Islam,” 287-315.} Ordained clergy controlled the sublime benefits of the Eucharist, and monks were well known for effecting miracles through their great piety. But when seen as part of a “spiritual” landscape that included all the rituals, practices, and practitioners reviewed above, they start to look very much like sellers in a buyer’s market. The ecclesiastics’ response to this competition was to call other sources of extrahuman power sorcery and assert that recourse to them actually precluded participation in the Eucharist, the source of ultimate salvific power; by doing so, the bishops effectively sought a monopoly on the market. The ecclesiastical hierarchy’s communal authority and, to a certain extent, its institutional income from tithes and bequests depended on lay recognition of the clergy’s relevance and effectiveness as mediators of divine power. Calling everyone else sorcerers who could only lead to damnation, and trying to make an “us or them” choice obligatory on lay believers, was one method of acquiring that recognition.\footnote{It is important to note that “sorcerers” were not the ecclesiastics’ only competition in the sacred power market. A variety of other peddlers of healing in Syria and Iraq dealt in talismans and ritual practices that, while not sanctioned by the ecclesiastical hierarchy, still had particularly}
This digression into pre-modern magic has been lengthy but necessary to give a sense of the socio-cultural context of the law books’ presentation of “apostasy” and “sorcery” as grounds for marital dissolution. In briefest terms, we can understand these rules to mean that if someone leaves the Christian religion, his or her spouse has a legitimate right to divorce and remarry. However, the bishops themselves present such an act of “conversion” as rejection of divine truth, not just swapping one religion for another. Such rejection might take many forms, from the open profession of a different religious faith (almost too obvious for the bishops to explain in any great detail) to the use of common apotropaic, healing, and other religious practices and objects, which the bishops called sorcery and saw as a threat to their monopoly on the mediation of sacred power.  

Christian associations and resonances. Bishops often refrained from calling such practitioners sorcerers, but maintained that they appropriated sacred power in illegitimate or corrupting ways. Jacob of Edessa’s letters, for example, relate a whole host of “talismanic” uses of left-over Eucharistic bread, from wearing chunks of it as amulets to burying it in gardens; and his canons condemn rogue clergy who give out the sacred body to be used in such ways. See Tannous, “Syria between Byzantium and Islam,” 292-300. In the East Syrian sources, Īšō’yahb I’s canon §14 gives a particularly evocative picture of peddlers of the sacred powers of saints’ relics. After forbidding the standard divinatory and apotropaic practices of sorcerers, the canon describes individuals who “creep among the believers” with the bones of saints and give them as amulets to be worn around the neck, or offer the oil with which the bones have been anointed for people to place in their mouths or nostrils. By such practices, according to the canon, “the merciful name of Christianity is blasphemed (metgaddap).”

As an addendum, although I have not dealt with astrology in this section, lettered Christian traditions often consider it a corollary to sorcery as profane knowledge and practice, or even subsume it under the same category. The history of astrology in Syria and Iraq is complex, growing as it did out of Greek, Iranian, Indian, and ancient Mesopotamian traditions. It is possible that certain terms in the Syriac legal sources like qeṣmē and nešhē, “divinations” and “auguries,” refer to astrological practices. Ruling §40 of Īšō’barnūn’s law book is the most explicit reference to astrology among the legal texts: it condemns believers who “affirm astronomy and astrology as true, and profess [adherence to] reckoning by the spheres in the pagan manner” (mšarrar l-astronomiyā wa-l-astrologiyā w-mawdē b-huşbānā d-kawkbē ḫanpā ʾīṭ). This ruling follows directly after those on sorcery (§§34-39) in Īšō’barnūn’s law book; the text thus presents astrology as of the same category of unbelief. Where the rulings on sorcery unequivocally prescribe anathema and exclusion from the holy mysteries for transgression, however, the ruling on astrology threatens no public punishment; it only admonishes and warns that any astrologer “knows in his heart that he is estranged from Christianity… and that if he
If apostasy and sorcery as grounds for divorce might have been introduced to East Syrian legal tradition from Īšōʾ bōkt’s Iranian background, the commitment to continence is a more generally Christian concern. As we mentioned briefly in chapter three, the holy life of continence was an old and deeply significant style of piety going back to our earliest records of Syrian and Mesopotamian Christianity. Achieving “holiness” (Syriac qaddišūtā) through sexual renunciation is already a cornerstone of Aphrahat’s thought in the first half of the fourth century. By the same period, the Christian communities of Syria and Mesopotamia had also seen the development of their characteristic institutional style of ascetic piety: īḥādāyūtā, the “singleness” of sexual renunciation assumed by community members called the “sons and daughters of the covenant” (bnay and bnāt qyāmā) at baptism. These “covenanters” were lay people who committed to a life of holiness by taking vows of either virginity or, if they were already married, continence within married life. They tended to live among lay communities and to perform a variety of liturgical and administrative roles. Most significantly, “they took their [covenantal] stand with an anticipatory view to the Resurrection… Their status in the community served as a type for the expectations of all the baptized.”

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471 Griffith, “Aseticism,” 238. Griffith’s article is the most recent and thorough treatment of pre-monastic ascetic piety and its characteristic institutions in the early Syriac churches, and clears up a number of misconceptions surrounding the Syriac ascetic vocabulary. See the article as well for the fairly extensive bibliography on the bnay and bnāt qyāmā.
and cenobitic monasticism began to overtake the covenanters as the predominant style of ascetic piety in Syriac Christianity. Though monastic practices and institutions seem to have coexisted for a time with the older, indigenous styles, holy continence became more and more the purview of organized communities of ascetics living apart from village and urban laity.\textsuperscript{472} In whatever form, however, ascetic piety remained a fundamental tradition of the Syriac churches.

This history of ascetic practice in Syriac Christianity is the context for the early Abbāsid-period ecclesiastics’ approval of marital dissolution for the continent. There are, however, some fine points to their positions that we should note. First of all, the law books do not state explicitly whether married people who aspire to the paradigmatic holy life should seek to join cenobitic monastic communities, or might adhere to older traditions and remain among the laity. Some studies have suggested that “covenanter” modes of ascetic piety persisted among Christian communities in Syria and Iraq into the Islamic period, perhaps as late as the tenth century.\textsuperscript{473} The law books, however, do give a few hints that the bishops expected those who took vows of continence to join monastic settlements. One of Īšōʾbarnūn’s rulings, for example, prescribes penalties for a man who seeks to break a betrothal by claiming disingenuously that he wants to become a monk (\textit{dayrāyā}); he makes no mention of such a man desiring to be a continent layperson.\textsuperscript{474} Īšōʾbōkt chastises men who abandon their families “and, like ravens with no concern for their chicks, make haste to the mountains and deserts (\textit{rāḥṭīn l-ṯūrē wa-l-madbrē}), believing that it is sufficient for the fulfillment of all virtue that they cut their hair and

\textsuperscript{472} See again Griffith, “Asceticism,” as well as Brock, “Early Syrian Asceticism,” 17.
\textsuperscript{474} See §22, \textit{SR} 2: 124. By Īšōʾbarnūn’s time Syriac \textit{dayrāyā} denotes very specifically a member of a cenobitic community.
wear the garments of the strong.” The references to residing in mountains or deserts, cutting hair (the tonsure), and wearing particular clothes imply that such men sought ascetic lives apart from lay communities.

Furthermore, there are a number of indications in the law books that the concept of the sons and daughters of the covenant had lost much of its old meaning in the ʿAbbāsid bishops’ milieu. In one ruling, for example, Īšōʾbōkt states that “a son of the covenant with ecclesiastical rank” (bar qyāmā d-īt lēh dargēʾ ē[d]tānāyē) must divorce a wife who has committed adultery. “Son of the covenant” here seems to mean no more than “member of the (marriageable) clergy”; it certainly does not mean one who has taken a vow of virginity, as the individual in question has a wife. Similarly, ruling §55 in Īšōʾbarnūn’s law book gives a widow the option “to become a daughter of the covenant in the women’s monasteries (b-dayrātā d-nešē).” This usage conflates the term “daughter of the covenant” with nun, suggesting a loss of the older, particular sense of a laywoman who has taken a vow of continence. Though only indications, these points in the law books suggest that by the early ʿAbbāsid period East Syrian bishops expected lay people who dissolved marriages through vows of continence to join cenobitic communities rather than remain among the laity.

The second point deserving of comment in the law books’ treatment of continence is whether a marriage might be dissolved when one spouse alone turns to the holy life, or whether the consent of both is needed. Timothy in his stipulations is the most vague of the three ecclesiastics in this regard, and he in fact gives two contradictory answers. Ruling §36 appears to state that a marriage can be dissolved only if both spouses take

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476 §II.xvi, SR 3: 66.
477 SR 2: 140.
vows of continence: “when the man does not turn to another woman and the wife does
not turn to another man.”

Ruling §42, however, states that a spouse can leave his or her partner “when one of them turns to marry another [that is, takes a vow of continence
toward Christ; italics mine].”

This discrepancy is probably best explained by the composite, redacted nature of Timothy’s text; these contradictory rulings were likely
added to the law book from two different sources.

Īšō’barnūn is much more straightforward. He states that if two spouses agree to
separate from each other “desiring a lofty way of life” (metragṛgān l-dubbārā m’alliyā),
they may do so. If only one “desires to become holy” (šābē l-meqaddāšū), however, he
or she may not follow through on this wish. The patriarch offers as a proof text a
paraphrase of 1 Corinthians 7:4-5: “For the wife does not have authority over her own
body, but the husband does; likewise the husband does not have authority over his own
body, but the wife does.” Therefore, one spouse alone cannot decide to end a
marriage.

Īšō’bōkt’s rulings are also clear, but differ again from those of the Iraqi patriarchs.

As we have noted, his basic opinion is that a man may choose the continence life and thus
dissolve his marriage, but a woman may not. He recognizes as divine law (nāmōsā)
Jesus’ command that “what God has joined together, let no one separate” (Matthew 19:6
and Mark 10:9), but goes on to say that men may disregard this and leave their wives for

\[\text{SR 2: 86.}\]
\[\text{Kad metpnē had menhūn l-zuwwāgā ḥrēnā; SR 2: 88. The interpretation of “the other marriage
to which one of them turns” as betrothal to Christ (i.e., continence) is offered by Ibn al-Ṭayyib. In
his Arabic version of this ruling, he translates these grounds for marital dissolution as simply
“asceticism after which one does not return to the world [i.e., worldly things like human
marriage]” (zahāda ba’da an là ya’ud ilā l-‘ālam). See Ibn al-Ṭayyib, Fiqh 1 (text): 189.}\]
\[\text{In the Syriac text, āplā gēr had šallīṯ al pagrēh ellā bar zawgēh, “For one does not have sole
authority over one’s body; one’s spouse does.”}\]
\[\text{See rulings §17 and §18, SR 2: 122-24.}\]
the higher purpose of “love of virtue” (ḥubbā da-myattrūtā) and living “the way of life of the world to come” (huppākā d-ʿālmā da-ʿīd) – that is, a way of life without human sexuality and its reproductive ends. Īšōʾ bōkt makes an exegetical point to support this ruling. In his reading, Jesus’s statement that “Each who does not leave houses, brothers, sisters, father, mother, wife, and children for my sake is not worthy of me”\(^482\) encourages men to leave a life of reproductive sexuality if family commitments have become a hindrance (mʿawwkānā) to achieving higher virtue. In the end, a man should “love the Creator of nature more than nature, and the primary cause (ʿelltā qadmāytā) more than the secondary cause” by choosing a life of continence in devotion to Christ.\(^483\)

In equally blunt terms, Īšōʾ bōkt does not allow a wife to leave her husband for the holy life. He claims that “women are not entrusted with a matter like this,” and gives 1 Timothy 5:14 as evidence that they should focus more on attending to the community’s reproductive needs: “I would have those who are young marry, bear children, and manage their households.”\(^484\) If Jesus called men to a higher life of sexual continence, Īšōʾ bōkt reins in women’s pietistic aspirations with a pastoral statement affirming common notions of gendered household and familial duties.\(^485\) Īšōʾ bōkt does allow women who have been divorced by husbands-turned-ascetics to remarry.\(^486\)

That lay men and women might seek to live a holier life in this world, one in imitation of the eternal life to come in which humans have no need of sexuality, was a

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\(^482\) This is a translation of Īšōʾ bōkt’s text: kul lam d-lā šābēq bātā aw ahē aw ahwātā aw abā aw emmā aw a(n)ṭṭā aw bnayā meṭṭolāt(y) lā šāwē lī. This “quotation” is actually a combination of two passages, Matthew 10:37 and 19:29.

\(^483\) §II.xiii, SR 3: 60-62.

\(^484\) In the context of the epistle, this verse is addressed to young widows; Īšōʾ bōkt notes this but presents it as good instruction for all women.

\(^485\) See §II.xiv, SR 3: 62-64.

\(^486\) See §II.xix, SR 3: 68.
deeply meaningful sentiment in Syriac Christianity. In recognition of this tradition, the early ʿAbbāsid-period ecclesiastics allowed marital dissolution for those who desired to live in sanctified continence. They stipulated, however, that this either was a husband’s prerogative alone, or required the consent of both spouses.

**Murder and Death**

As noted above, Īšōʾbōkt’s grounds for the dissolution of marriage include murder (qetlā) committed by either the husband or wife. Regarding a female murderer, Īšōʾbōkt avers that “she has sundered the natural adherence and compositeness of the soul with the body” (parršat l-naqqāpūtā w-rukkbā kyānāyā d-napšā ʿam pagrā), and should therefore receive the punishment of being separated from her husband, “who to her is like the soul” (d-ītaw[hy] lāh b-dukkat napšā).487 I have been unable to ascertain whether Īšōʾbōkt might be drawing specifically on Iranian traditions for this explanation, but it is certainly in line with ancient, widespread strands of (misogynistic) Mediterranean/Middle Eastern philosophy that associate women and the feminine with the material, men and the masculine with soul; the argument is that since a female murderer has torn a soul from its body, she should be punished with the loss of her own “soul” – her husband.488 This

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488 Rooted in Platonic dualism, variations of the “male is to female as soul is to body” theme are common in the literatures of the pre-modern Mediterranean and Middle East. For examinations of the motif’s manifestations in late antique and early medieval Hellenistic, Christian, and Jewish cultures, see Brown, *Body and Society*; and Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture* (Berkeley: University of California Press, 1993), especially the introduction and first three chapters.
analogy does not apply, of course, when Ḫūʾḇōkt affirms that a woman can divorce a
murderer husband; for this he offers no explanation.489

Murder does not feature as grounds for divorce in the text of Timothy’s law book;
he includes the death (mawtā) of one spouse instead. There are a few points worthy of
comment in this regard, however. First, “murder” and “death” are obviously related
concepts; so even if Timothy’s list differs from Ḫūʾḇōkt’s on this point, it does not differ
drastically enough to undermine my suggestion that Timothy based his formulation of the
grounds of divorce on the one he found in Ḫūʾḇōkt’s law book. Second, because of the
near congruence of the two texts, it is possible that the word mawtā as it appears in
Timothy’s law book is either a corruption of qetlā or an obscure way to render that idea.
Further supporting evidence of this suggestion is found in ‘Abdīšōʾ bar Brīkā’s thirteenth
or fourteenth-century Nomocanon, which cites Timothy’s ruling on the grounds for
divorce but reads qetlā instead of mawtā.490 The language of the passage is close enough
to Timothy’s ruling as it is found in Sachau’s edition that ‘Abdīšōʾ appears to be giving
an exact quotation, but the textual discrepancies indicate that he is working off of a
manuscript tradition different from the one that has come down to us – and it apparently
included “murder,” rather than “death,” as a cause for marital dissolution.491

<table>
<thead>
<tr>
<th>Sachau’s edition</th>
<th>‘Abdīšōʾ bar Brīkā</th>
</tr>
</thead>
<tbody>
<tr>
<td>Qadmāytā mān l-meṭṭar zākūtā kad lā gabrā metpnēʾal a(n)ttā ḥrētā w-āplā a(n)ttā metpnēʾal gabrā ḥrēnā d-tartēn zānyūtā pagrāniştā w-gawrā da-tlāt zānyūtā napṣānāytā d-ītēy harrāštūtā wa-npilištā d-men alalāh b-kpuryā w-pulhānā šēdānāyā d-arbaʾ mawtā</td>
<td>Qadmāytā mān l-meṭṭar dakyūtā kad w-lā gabrā metpnē lwāt a(n)ttā ḥrētā w-lā a(n)ttā lwāt gabrā ḥrēnā d-tartēn dēn zānyūtā pagrāniştā w-gawrā da-tlāt dēn zānyūtā napṣānāytā hāy d-ītēy harrāštūtā w-kāpūrūtā d-ba-mšīhā d-arbaʾ dēn qetlā</td>
</tr>
</tbody>
</table>

489 See §II.xiv, SR 3: 62-64.
491 Compare:
It is thus reasonable to interpret Timothy’s law book as following Īšō’bōkt’s and allowing individuals to divorce spouses who commit murder. If “death” is in fact the correct reading of the text, however, we may offer a few words on what this implies. While it may seem self-evident that an individual’s death entails the end of his or her marriage, this proposition is somewhat problematic in light of the Christian theological emphasis on spouses’ singleness of flesh. If death did not undo the marital bond, widows and widowers would still be bound in marriage; construing death as a legitimate end to a worldly marriage allows the surviving partner to remarry – which, if “death” is the correct reading, accounts for why Timothy might have bothered to include it in a list of grounds for divorce at all.492

Summary

Divorce and marital dissolution in East Syrian law, as in any Christian tradition, are problematic propositions. Basing their positions on Gospel and Pauline teachings of the indissolubility of the marital bond, the early ʿAbbāsid-period ecclesiastics were generally averse to granting any lay individual the prerogative to divorce. The major exception was adultery, as stipulated in the gospel of Matthew. Beyond this, the East Syrian bishops recognized a few other legitimate grounds on which to dissolve a marriage: un-Christian religious practices, whether these constituted adoption of a new religious identity or simply recourse to local magics of which the bishops disapproved;

492 As in other Christian traditions, East Syrians encouraged widows and widowers to remain celibate as a demonstration of their piety and recognition of the bond of the flesh already established; but they did not prohibit remarriage. Instances of this position abound in the law books. See, for example, Īšō’barnūn §57, SR 2: 142.
desire to live a holy life of continence, an old tradition of Syriac Christian piety; and murder. Īšōʾ bōktʾs law book is the first East Syrian work to include these additional grounds for divorce, and their similarity to Zoroastrian doctrines suggests the possibility that he drew on regional Iranian traditions in formulating them. Timothy and Īšōʾ barnūn apparently followed Īšōʾ bōkt in expanding the grounds for divorce in East Syrian law beyond adultery, but they also altered Īšōʾ bōktʾs propositions slightly. The most notable difference is a general tendency in Īšōʾ bōkt to privilege menʾs prerogatives to divorce, whereas the Iraqi patriarchs recognize equivalent rights for husband and wife in this respect.

ʿAbbāsid Legal Contexts and Divorce in Practice

The foregoing has been a discussion of the theoretical legal order that the East Syrian bishops conceived to govern divorce among Christians. As usual, we are sorely lacking in documents that might tell us anything about actual judicial practice in this area, or give us any solid knowledge of the frequency or circumstances in which ʿAbbāsid-era East Syrians dissolved their marriages. However, even if exact answers are not close at hand, it remains worthwhile to examine the question of divorce among Christians in light of certain social practices and legal institutions characteristic of the broader caliphal society.

First of all, we might recall our discussion in chapter three of informal marriage arrangements. Simonsohn has pointed to one of Īšōʾ barnūnʾs rulings, as well as others in West Syrian sources, that suggests that some lay individuals and families made marriage
agreements among themselves without the regulatory oversight of any judicial authority, Christian or other. By virtue of being arranged outside of ecclesiastical purview, these kinds of betrothals and marriages might likely have been more readily broken, local custom permitting, than those overseen by the church. We have no further evidence, however, to suggest anything more concrete.

The other major possibility to consider is whether Christians might have gone to “the outsiders” – i.e., Muslim qādīs’ – courts to register divorces that ecclesiastical officials would have been loathe to grant. Evidence from ʿAbbāsid Iraq and Iran is predictably slight, but comparative evidence from Egypt suggests that this was certainly within the realm of the imaginable. In chapter three, we saw a number of marriage contracts and registrations of marital gifts drawn up by Muslim scribes in formally Islamic terms for ʿAbbāsid-era Egyptian Christians. Even more interesting for our purposes, however, is a relatively early document of 909 from the Fayyūm oasis that records a Christian man’s divorce of his wife. Its Muslim judicial setting is evident; it begins with the basmala, notes that the divorce enacted is a triple, irrevocable one in line with fiqh standards, and is signed by six Muslim witnesses. If the marriage contracts

493 For Simonsohn’s discussion see Common Justice, 152-53. Īšōʾ barmūn’s ruling is §29; see SR 2: 128.
494 See Khoury, Chrestomathie, 42-43. The parties are Severus (swyrh) ibn Ibshāda and Qasīdaq, daughter of George the monk (jirjḫ al-rāhib). The text does not specifically say that the parties are Christian, but it is a fair conclusion given their names (especially Severus). Qasīdaq being the daughter of a monk is an interesting note; perhaps her father was widowed and subsequently took monastic vows, perhaps he was a layman who earned the nickname al-rāhib for piety, or perhaps he was simply not a very good monk.
495 The text states that Severus “has divorced his wife… triply [and] irrevocably” (ṭallaqa ʾmrāʾ atahu… thalāthat al-batta lā rajʿa lahu ʿalayhā). The witnesses all have solidly Muslim Arabic names: Āḥmad ibn ʿAbdallāḥ, Ḥamdān ibn Muḥammad, Muḥammad ibn ʿAlī, ʿĪsā ibn ʿUmar, and ʿĪsā ibn ʿAbd al-Malik. Incidentally, this registry of divorce conforms very closely in structure to the exemplum given in the formulary manual of the contemporary Egyptian Ḥanafī Ahmad ibn Muḥammad al-Ṭāḥāwī (d. 932). The differences are mainly in terminology; for the expression of divorce, for example, Ṭāḥāwī has ṭallaqa
demonstrated that Egyptian Christians went to Muslim courts for purposes of solid record keeping for their family affairs, this divorce deed indicates that it was possible to acquire legal services from them that were fairly routine for Muslims, but that Christian bishops were much less willing to grant.\footnote{496} This Egyptian evidence tells us nothing directly of Christian practices in the eastern caliphate, of course. However, the possibility it suggests – that Christians might have made use of non-Christian judicial institutions to acquire divorces that the East Syrian law books leave totally out of the picture – arises in relation to one of Īšōʾ bōkt’s rulings as well:

When a Christian man makes a betrothal contract (neʿbed tanway da-mkūrūtā) without the mediation (meṣʿāyūtā) of priests and lay believers, [but] through a written document (ktābāt) or the mediation of the non-Christians (ḥanpē, “heathens”), and takes a Christian wife, and later he does not want to keep her, we do not compel a man like this to keep that wife by the law of Christianity, because he did not marry her through Christian law… we do not compel them [to remain married] because they have not established their pact before us.\footnote{497} Īšōʾ bōkt states here that if a Christian man contracts a marriage through non-Christian channels (the documents or mediation of the ḥanpē), ecclesiastical law has no jurisdiction; the marriage is not valid by ecclesiastical standards, and so Christian law will not prevent such a man from divorcing his wife. This suggests indeed that making use of non-Christian judicial institutions was one way that East Syrians in Īšōʾ bōkt’s

\footnote{496} Examples continue to crop up down the centuries that underscore the fact that Muslim courts offered real possibilities to Christians seeking to dissolve marriages. Ottoman-era court records in Nablus and Damascus, for example, show Christians registering annulments and divorces. See Judith E. Tucker, \textit{In the House of the Law: Gender and Islamic Law in Ottoman Syria and Palestine} (Berkeley: University of California Press, 1998), 86-87, and Najwa Al-Qattan, “Dhimmīs in the Muslim Court: Legal Autonomy and Religious Discrimination,” \textit{IJMES} 31.3 (1999): 433-34.

\footnote{497} §III.i.9, SR 3: 78.
A diocese might have been able to dissolve their marriages. Given that he was writing in the eighth century, it would seem likely that the hanpē that Īšōʾbōkt has in mind here are Muslims. This reading is complicated, however, by an ambiguous statement I have left out of the translation above, which might suggest instead that the hanpē in question are Zoroastrians. An appendix to this chapter treats in detail the difficulties of interpreting this passage; for our purposes here, it is enough to emphasize that Īšōʾbōkt’s ruling indicates at the very least that non-Christian judicial venues of whatever religion were a conceivable option for Christians in Fārs looking to dissolve their marriages.

In fact, this ruling and the Egyptian divorce deed raise some interesting questions and implications for the legal culture of the period. The eighth-ninth century East Syrian law books, as well as Muslim social thought more generally, envisioned a reality in which Christians were exclusively subject to Christian civil law. This is an oft-cited difference between eastern Christian legal tradition and the case of the Christian Roman and Byzantine Empires, where Roman civil and ecclesiastical law functioned in parallel. There, a party could theoretically enact a perfectly legitimate civil divorce and remarry; ecclesiastical law, however, would not recognize that remarriage, and would apply the requisite penitential punishments affecting the party’s social and spiritual relationship to the church. The ideal picture of discrete religious communities and legal systems in the Muslim world is different: according to the East Syrian law books, an East Syrian simply could not legitimately divorce and contract a new marriage for any reason other than the few stipulated exceptions. East Syrian law ostensibly held both the civil

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498 For a characteristic statement of this position see Selb, *Kirchenrecht* 1: 42-43.
and “spiritual” jurisdictions that were institutionally separate in Roman and Byzantine territories.

However, the reality of legal pluralism in Muslim territories was of course more complex than this ideal picture. Parallel, non-ecclesiastical judicial institutions – especially Muslim ones – were open to Christians (and others), and they indeed made use of them. How then would East Syrian ecclesiastics attempt to apply their law to a Christian who registered a marriage or divorce in a Muslim court? Īšōʿ bōkt’s ruling intimates that in such a situation, East Syrian law might begin to look more like ecclesiastical law in the late Roman world; bishops would have to decide what kind of penitential punishments the offenders deserved, and no doubt the social capital of the different ecclesiastical and lay parties involved would determine whether offenders would truly be excluded from the Eucharist and mixing with other Christians, as the law books’ rhetoric threatens.

The further implications of these points for the nature of law and judicial practice in the ʿAbbāsid Caliphate deserve a much broader and more detailed study than can be offered here. As Simonsohn and Payne have emphasized, however, the ideal picture of jurisdictions exclusive to separate religious communities should not be taken to represent the reality of practice, in which there was much greater overlap and boundary crossing. In the particular case of divorce, which ecclesiastical law declared largely out of bounds, Īšōʿ bōkt’s ruling and the Egyptian evidence suggest that Muslim and other non-ecclesiastical judicial institutions offered real opportunities to Christians seeking to dissolve marriages – and that they sometimes, at least, took advantage of them.
Finally, we should also note the possibility for Christian (and other non-Muslim) women who sought divorces to convert to Islam. Essentially all Islamic legal traditions maintain that a Muslim woman may not be married to a non-Muslim man, and so going before a qāḍī and declaring oneself Muslim seems to have been a strategy used by non-Muslim women throughout the centuries to get out of untenable marriages.\(^{500}\) We do not have any particularly specific evidence for conversion-divorces in the milieu of early Abbāsid Syria, Iraq, and Iran. But a ruling of the patriarch Yōḥannān bar Abgārē (r. 900-905) suggests that they happened or were at least a possibility that the ecclesiastical hierarchy worried about. In this ruling, Yōḥannān grudgingly permits couples that have not been able to consummate their marriages for several years to divorce “so that they do not convert (neḥnpōn, literally ‘go heathen’)” – in other words, so that they do not change religious affiliation to secure divorces unavailable to Christians.\(^{501}\)


\(^{501}\) The attribution of this ruling to Yōḥannān bar Abgārē is not entirely certain. The ruling is preserved only in ‘Abdīšō’ bar Brīkā’s fourteenth-century *Order of Ecclesiastical Regulations*, which attributes it to the “catholicos Yōḥannān.” There were a good number of East Syrian catholicoi named Yōḥannān, but Bar Abgārē is the most likely candidate because his canons are cited elsewhere in ‘Abdīšō’ s legal works (see Kaufhold, “Sources,” 303 and 311). For the Latin translation of the ruling in question see ‘Abdīšō’ bar Brīkā, *Ordo iudiciorum ecclesiasticorum*, tr. J.-M. Vosté, *Codificazione Canonica Orientale, Fonti* 2.25 (Vatican City: Typis Polyglottis Vaticanis, 1940), 170. The Syriac text of the *Ordo* remains unedited; I have been able to examine it only in the form of a facsimile edition of an 1887 manuscript catalogued by Scher as Mosul Chaldean Patriarchate 66. This facsimile has been published by a private individual as Mar Audisho Bar Brikha, *The Order of Ecclesiastical Regulations*, and has been made available for sale through www.lulu.com. For the canon in question see folios 127b-128a. For manuscript information see Addai Scher, “Notice sur les manuscrits syriaques conservés dans la bibliothèque du Patriarcat chaldéen de Mossoul,” *Revue des bibliothèques* 17 (1907): 244. Thanks are due to Salam Rassi for sharing information on manuscripts of the *Ordo* and the facsimile of the Mosul manuscript with me.
If the East Syrian law books’ normative discourse precludes divorce in most circumstances, evidence for informal marriage arrangements and recourse to Muslim or other non-Christian courts suggests that not all Christians practiced marriage or its end as the law books would have it. At least some likely took care of their affairs in venues removed from ecclesiastical oversight.

Of course, however intriguing and suggestive this evidence is, it still leaves us with no real knowledge of specifically East Syrian ecclesiastical judicial practice. Questions like what might have happened if a woman brought a complaint of adultery to a bishop must remain unanswered. However, the East Syrian law books do offer a different angle from which we can consider the possible applications of their general rules on divorce. At several points, the bishops raise or are presented with certain prevalent social problems for which marital dissolution seems an expedient solution. By examining their responses to these problems, we can get a sense both of the problems themselves and of how strictly the bishops thought that their rules for divorce should apply for individuals and communities in these situations. The most conspicuous such problem in the East Syrian law books, and one that all communities in the pre-modern Mediterranean world and Middle East confronted, was that of absent husbands.
Though a few centuries later and a few hundred miles to the west of the area of our immediate concern, the unparalleled human detail offered by the Cairo Genizah is an instructive introduction to the problems and opportunities that travel, and the oft resulting absence of a spouse, presented to families in the pre-modern Middle East. Significantly, Goitein considers the “absent husband” the most common “family problem” that surfaces in the Genizah documents. Merchants often traveled long distances and left their homes and families for long periods, but in Goitein’s description of the Egyptian society of the Genizah many others – from craftsmen to physicians to teachers – plied their trades by traveling around the local countryside and provincial towns. The Genizah is replete with documents that illustrate how Jewish families handled the absence, short or prolonged, of senior males: deeds and marriage contracts stipulating how much and what kinds of material support husbands and fathers had to leave for their families, “powers of

502 The quotation is from a dispute between the Persian Christian martyr Martha and a Zoroastrian priest. Martha states evocatively that she is betrothed to Christ, who has gone off on business but will soon return. Thanks are due to Oded Zinger for pointing me to this reference, for which see Susan Ashbrook Harvey and Sebastian P. Brock, trs., *Holy Women of the Syrian Orient*, updated edition (Berkeley: University of California Press, 1987), 70.

503 Goitein, *Mediterranean Society* 3: 189. Goitein covers “the absent husband” on pp. 189-94 and “the runaway husband” on pp. 195-205. See also the treatment in Joel L. Kraemer, “Women Speak for Themselves,” in Stefan C. Reif, ed., *The Cambridge Genizah Collections: Their Contents and Significance* (Cambridge: Cambridge University Press, 2002), 192-98. We should mention here the possibility that absent husbands may appear to be the most common problem of the Genizah society because of evidentiary bias. After all, you don’t write letters for the centuries to preserve when you’re always under the same roof as your spouse; and many other, perhaps more common, problems will not leave a legal paper trail. At the same time, the fact that absent husbands, or the specter of the possibility, show up in a wide range of documentary genres – letters, marriage contracts, conditional bills of divorce, etc. – confirms that this was indeed a common and familiar situation, if not necessarily the singularly most significant.
In addition to absent husbands, Goitein distinguishes another rough sociological category in the Genizah material: runaway husbands. If many men left their families for economic reasons – that is, to make a living, whether through the Indian spice trade by way of Yemen or peddling goods a little ways up the Nile – others took advantage of the relative ease of travel around the Islamic and Byzantine Mediterranean to get away from conjugal situations they no longer wanted. Letters and legal documents provide evidence of many such men who abandoned their wives and children because they could not afford to maintain them, defaulted on debts, or sought to leave the strife of one marriage behind for another.

Recent scholarship has nuanced Goitein’s sociological analysis, noting that runaway spouses did not always intend to abandon their families for new lives; many used separation as a strategy to renegotiate terms of marriages to which they always knew that they would have to return. The main overall impression, however, is that the potentiality for travel in the Mediterranean world meant that a spouse’s prolonged absence was a relatively familiar experience of family life, at least for particular social classes. As always, the Genizah affords us the richest lived details; but the phenomenon was by no means confined to Egyptian Jewry. It had likely been around as long as long-distance trade, and it was certainly known to the communities of early ‘Abbāsid Iraq.

If anything, in fact, travel and trade – as imagined possibility and actual practice – may have even increased in frequency and distance under the ‘Abbāsids. This period has

been dubbed a time of “hemispheric integration,” when relative political stability in a number of large empires (especially the caliphate and Tang China), combined with cheaper transportation (especially by camel), made much of the northern hemisphere from western Europe and Africa through the Middle East to East and South Asia traversable.\textsuperscript{505} In the caliphate, this meant especially that areas from Egypt and North Africa through Syria, Iraq, Arabia, Iran, and further east were fairly well integrated politically and crossed by a number of well-trodden trade routes by land and sea. This traversability of caliphal lands facilitated the emergence of important aspects of ʿAbbāsid religion and society. For example, “the search for knowledge” – travel between the many urban centers of Islamic learning – became characteristic of Muslim piety; the Jewish geonim of Babylonia corresponded with communities across the Mediterranean, and major Jewish merchant groups like the Rādhānites plied their trade from France to China; and the Church of the East expanded and consolidated its hierarchy in new eastern dioceses.\textsuperscript{506} The emergence of Arabic genres of geographical and travel writing by the likes of Yaʿqūbī (d. 897), Masʿūdī (d. 956), and Ibn Ḥawqal (fl. tenth century) further testifies to the particular possibilities of long-distance travel in the ʿAbbāsid Caliphate.\textsuperscript{507}


\textsuperscript{507} On Arabic geographical writing in the ʿAbbāsid centuries, see S. Maqbul Ahmad and F. Taeschner, “Djughrāfiyā,” \textit{EI} 2: 578-84.
If travel outside of familiar localities was within the horizons of the imaginable for at least some people (male merchants and scholars chief among them) in ʿAbbāsid lands, we might expect to find effects on married life similar to those attested in the Genizah. And though we lack documentary sources of comparable richness, the problem of the absent husband appears notably in the legal sources of the period. The Muwaṭṭaʾ of Mālik ibn Anas (d. 795) includes a “chapter on the waiting period of a woman whose husband goes missing” (bāb ʿiddat allatī tafqid zawjahā), and the topic would subsequently be covered by all the developing Islamic legal traditions. Their different interpretations were founded partly on a variety of traditions ascribed to the early caliphs, many of which provide stories of absent men and the caliphs’ attempts to deal with the resulting social problems. In one, for example, ʿUmar sends an admonishing letter to Muslim soldiers at the front lines who have left their wives with no maintenance; in another, a woman from the Shaybānī tribe seeks rulings from two successive caliphs, ʿUthmān and ʿAlī, because her missing husband has returned after she married another man; and in another, a man whom jinn had kidnapped excoriates ʿUmar for allowing his wife to marry someone else in his absence.⁵⁰⁹


⁵⁰⁹ For traditions on ʿUmar’s letter, see §12,346 and §12,347 in ʿAbd al-Razzāq al-Ṣanʿānī, al-Muṣannaf, ed. Ḥabīb al-Raḥmān al-Aʿẓamī (Johannesburg: al-Majlis al-ʿIlmī, n.d.), vol. 7: 93-94; and §19,358 in Ibn Abī Shayba, al-Muṣannaf, ed. Muḥammad al-ʿAwwāma (Beirut: Dār Qurṭuba, 2006), vol. 10: 150. For the Shaybānī woman (named either Bunayhim bint ʿUmar or Suhayma bint ʿUmayr), see ʿAbd al-Razzāq §12,325, Muṣannaf 7: 88-89; and §15,575 in al-Bayhaqī, al-Sunan al-kubrā, ed. Muḥammad ʿAbd al-Qādir ʿAṭā (Beirut: Dār al-Kutub al-ʿIlmiyya, 2003), vol. 7: 735. For the man spirited away by jinn, see ʿAbd al-Razzāq §§12,320-22, Muṣannaf 7: 86-88; Ibn Abī Shayba §16,985, Muṣannaf 9: 210; and Bayhaqī §15,570, Sunan 7: 733. ʿAbd al-Razzāq §12,322 and the Bayhaqī tradition add some interesting points on a typical genie diet: when ʿUmar asks the man what he ate with the jinn, his reply is “That over which God’s name had not been uttered. And fūl.”
In Talmudic tradition, the Babylonian rabbis dealt at length with the question of absent husbands, a problem particularly relevant for the students who left their families for extended periods of time to study in the rabbinic academies of Sura and Pumbedita. These Talmudic rulings, addressed originally to traveling Mesopotamian students in late antiquity, were the legal standards by which communal authorities in later Jewish communities tried to regulate cases of absent men.

Finally, if we come to the early ʿAbbāsid-period East Syrian legal sources, we find absent husbands well represented among the marital issues addressed by the bishops. Timothy’s law book includes five rulings on the subject. The questions that elicit Timothy’s decisions are very detailed in their descriptions of the circumstances of absence, suggesting that these were originally inquiries concerning real situations; this is further confirmed in two cases by the use of the particle of direct speech, which means that Timothy quoted these questions from an original source. Ḫūṣūs bārūn’s letter to Isaac of Qaṭar includes a response to a situation in which a man has abandoned his wife and started a new family elsewhere; this was subsequently included as a ruling in the patriarch’s law book. Additionally, Ḫūṣūs bōkt’s law book contains four rulings concerning absent husbands.

All this has been by way of introduction to make the point that travel outside of familiar localities was both imaginable and a real experience for some individuals in the ʿAbbāsid Caliphate, and it affected marital life in a particular way. The potentialities for

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510 See the study in Boyarin, *Carnal Israel*, 134-66.
511 For an argument on the inadequacy of these rulings to deal with the problems created by absent husbands in the Genizah community, see Zinger, “Long Distance Marriage,” 9-10.
512 The rulings are §§29, 31-33, and 71 in *SR* 2: 74-82 and 104. §29 and §32 include the particle of direct speech *lam*.
513 See §12 in MS Mingana Syriac 587, folios 367a-b; and §78 in *SR* 2: 152.
514 §§II.xv, II.xix, and III.viii-ix. See *SR* 3: 64-68 and 84.
travel in western Asia, combined with pre-modern systems of communication that allowed information to travel no faster than a messenger could walk or ride a camel, meant that many families experienced the prolonged absence, abandonment, or disappearance of spouses, usually husbands. We will now move to examine how the East Syrian ecclesiastics of early ʿAbbāsid Iraq and Iran sought to address such situations.

Absent Husbands in Syriac Legal Sources

In approaching the social problems caused by traveling, absent, and missing husbands, the East Syrian bishops did not start from scratch. They brought to bear on such cases their particular rules for divorce discussed in the first part of this chapter. In what follows, we will examine how the bishops applied their laws for divorce to devise rulings on absent husbands, and how they presented these rulings rhetorically in the law books. In doing so, we will be interested to see what the rulings reveal in the way of conceptions of ecclesiastical power and its relationship to lay communities.

To begin, we will examine the ecclesiastics’ rulings by organizing them according to a few social categories, not unlike Goitein’s, that they suggest: missing husbands, missing grooms, and runaway husbands. This approach, however, requires a few words of caution. Goitein used the categories of absent and runaway husbands as heuristic tools to sort out the lived experiences described in the Genizah material. The Genizah sources were by and large generated by the people who experienced spousal absence themselves (or at least by scribes working on their behalf): letters, contracts regulating obligations between family members, and the like. In the case of the East Syrian legal works, we
have instead only the responses of communal authorities, rulings that sought to define the
bounds of acceptable action for other people who actually lived the experiences of absent
spouses. As such, we would do well to remember that sociological categories are not
necessarily the operative ones in the reasoning of the texts themselves. At the same time,
the texts offer no particularly clear legal categories on which to base a discussion (in
contrast to Islamic law, for example, which has more differentiated concepts of “absent”
[ghāʾib] and “lost” [mafaqūd] men). As such, sociological categories remain the most
convenient heuristic tool to evoke the social realities to which the bishops tried to apply
legal boundaries. However, we need to keep in mind that our categories should not
obscure the legal distinctions that the texts make, and at the same time that lived
experience was likely more variegated than the categories can suggest.

Missing Husbands

We can take “missing husbands” to denote men in fully consummated marriages
who have been gone for years without their wives receiving any maintenance (Syriac
tursāyā or nepqātā) or word of whether they are alive. It is unknown whether they have
died, been taken captive, absconded and been living elsewhere, or are simply delayed.
Timothy’s law book raises the issue of missing husbands in two questions, §31 and §32
(the latter is almost certainly quoted from an earlier source, likely an inquiry sent to the
patriarch by a lower ecclesiastic):

Again, a man takes a wife and remains with her for some amount of time, then
goes off to work somewhere else. He is [there] for three or four years and sends
no maintenance to his wife. In another instance, a man takes a wife and goes to a
far off place (atrā rahīqā) for five years and sends her no letter, nothing that
brings her news of him, nor maintenance. She wants to marry another man, but she has not been let loose (lā eštaryat) from that [first] one. What is the woman’s answer?  

If a man is [gone] for seven or ten years, there is no news of him and it is not known whether he is alive or dead, and his wife marries [another] man, but the [first] man returns after a long time and wants his wife, what happens to them?

Both questions convey the sense that considering the missing man’s marriage dissolved and allowing the wife to remarry might be the most expedient solution to the scenario. Timothy’s answer, however, is unequivocal: a man may have obligations to his wife, but a consummated marriage cannot be undone by a husband’s disappearance; only sure news of his death can release the woman from the marital bond. This position is illustrated clearly by Timothy’s response to §32: if a missing husband returns after his wife has “remarried,” she and her new partner are considered to have married unlawfully (lā nāmōsā īṭ) and committed adultery, and should therefore be anathematized. With no news of the first husband’s death, the marriage cannot be considered dissolved.

From a certain angle one might consider this an inflexible position on a difficult social situation, but it is, of course, consistent with Timothy’s general rules on divorce, and broadly indicative of a concern on his part to maintain the internal consistency of his legal system (comparable to what we saw in his extension of kin-marriage prohibitions to cover first cousins in chapter four). Timothy is very explicit that a marriage can only be dissolved in cases of adultery, apostasy, (mutual) desire for holy continence, or murder/death. In the case of a missing husband, none of these conditions have been fulfilled with any certain knowledge, and so the wife is still bound to him and may not remarry. This is a stark example of Timothy’s law book attempting to inscribe the

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515 §31, SR 2: 78.
516 §32, SR 2: 80.
teachings of the patriarch’s lettered Christian tradition in lay practice. Regardless of the potential difficulties for a grass widow and her children, Christians’ marital bonds were indissoluble except for a few specific reasons. Timothy allows no special pleading in the case of a missing man.  

This contrasts with one of Īšō’bōkt’s rulings, which affirms that a woman left without maintenance by her husband for seven years may seek an ecclesiastical dispensation (puqdānā w-dīnā ʾē[d]tānāyā) for divorce.\footnote{517} This is, of course, an exception to the metropolitan’s grounds on which a woman can divorce her husband (sorcery and murder). We will discuss the implications of this seemingly more pragmatic position below.\footnote{518}

\footnote{517}§III.ix, \textit{SR} 3: 84. Īšō’bōkt discusses this dispensation in the case of a husband who is known to be alive but is absent and providing no maintenance; but the ruling would just as well apply for a husband who has disappeared. This position parallels a certain ruling in the Syro-Roman Law Book, which stipulates that if a man leaves his wife for seven years and fails to provide maintenance and imperial tribute (tursāyā w-madātā l-malkā), she may leave the marriage; see §134 in \textit{SRRB} 2: 190. Despite the similarity, it is unlikely that Īšō’bōkt drew on this ruling for his law book, as his text exhibits no direct knowledge of the Syro-Roman Law Book or other Roman legal traditions. See note 449 above.

\footnote{518}Īšō’bōkt and Timothy’s rulings on missing husbands are the first of their kind in legal texts written by East Syrians. A few precedents are found Roman sources received into Syriac. One is the Syro-Roman Law Book ruling mentioned in the previous note, the full stipulations of which are: a woman left without maintenance for seven years may divorce her husband; if he is known to be a prisoner in a foreign land, she should wait ten years; and if he is absent but has provided maintenance she should wait fifteen years if they have children, seven if they do not. No relevant rulings appear in the synods of the Roman Empire, but I have found one precedent in patristic writings received into Syriac. Among the canons of Basil of Caesarea in his three letters to Amphilochius, one stipulates that “A woman who, when her husband has gone away and disappeared, marries another before she is sure of his death commits adultery” (hāy d-kad šannī gabrāh w-ab’ed qādām d-tetpīs metṭol mawtēh la-hrēnā tehwē gāyrā; this is canon §31 of letter 199 in the conventional numbering of Basil’s oeuvre). See Dīlēh kad dīlēh lwāṭēh kad lwāṭēh d-Amphilokiyos Episqopā d-Iqoniyon eggartā ḥrētā metṭol qānōnē (Of the Same [Basil] to the Same Amphilochius, Bishop of Iconium, Another Letter Concerning Canons), MS Mardin Church of the Forty Martyrs 310, folio 126a. On Syriac translations of Basil’s many writings, see Paul J. Fedwick, “The Translations of the Works of Basil before 1400,” in Fedwick, ed., \textit{Basil of Caesarea: Christian, Humanist, Ascetic} (Toronto: Pontifical Institute of Mediaeval Studies, 1979), vol. 2: 444-455.
Timothy’s rulings §31 and §32 deal with missing husbands – men who are in fully consummated marriages. §29, on the other hand, concerns a man who has betrothed a woman but not yet consummated the marriage (this question, like §32, was likely sent to Timothy by a lower ecclesiastic and subsequently added to the law book):

A man was betrothed to a woman, left on business (ezal l-taggurtā) for three or four years, and has not returned. Her father, grandfather, or brothers say, “We cannot keep our [betrothal] contract (tanway) longer than this time, fearing for our daughter. We want to give her [in marriage] to another.”

As discussed in chapter three, East Syrian (like Jewish and Muslim) law is characterized by a form of marriage commonly termed “inchoate”: most of the rights and obligations of the husband and wife obtain from the enactment of the betrothal contract, although the full legal status of marriage is in effect only with consummation and cohabitation of the wife with the husband. Because of the betrothal contract’s legal force, Timothy generally treats dissolution of betrothal like divorce: it is only allowed “for the cause of adultery, bodily or spiritual.” In the case of a missing groom, however, Timothy allows an exception. His ruling depends on whether the groom has been providing maintenance for his betrothed during the time of his absence. If he has, the contract is in force and the woman remains legally bound to her betrothed. If, however, she has been supporting herself or has received maintenance from her father’s estate (bēt abūh), she must hold to the betrothal contract for three years; after that, she may marry another as she wishes.

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519 §29, SR 2: 74. The woman’s “father and grandfather” here are my translation of abāhēh, more literally “her direct paternal ascendants.”
520 §41, SR 2: 88.
This looks too to be something of a pragmatic, though arbitrary, accommodation to circumstances, as it is an exception to the law book’s general prohibition on dissolving contracted unions. In this case, however, the couple have not had sex and therefore have not become one flesh in the theological sense; Timothy thus has the space to allow a dissolution after giving the groom some time to show up and put his affairs in order. Why he decides that three years is the appropriate period to give the groom is unclear, but it is likely that he drew this ruling from Īšō’bōkt’s law book. In its third treatise, Īšō’bōkt poses the question, “Concerning a woman whose husband goes to another place: how long should she wait [for him to return]?” His answer is that “If she is betrothed, and has not come to [full] union with her husband, she should wait for three years.” As discussed earlier, Timothy was familiar with Īšō’bōkt’s law book and had it translated from Middle Persian to Syriac; it is as likely a source as any of Timothy’s ruling on the missing groom. Īšō’bōkt’s ruling remains equally pragmatic and discretionary.

Runaway Husbands

Goitein’s analytical category of the “runaway husband” is a useful description of the problem addressed in the following rulings. In these cases, we are dealing with men who are known to be alive but have left their wives without maintenance or have begun new families elsewhere. Timothy’s question §33 depicts the issue well:

Again, someone is [resident] in some city from which he does not hail and marries a woman from among the locals (men nāš bar mdī[ntā]). He stays with her for some time, then goes elsewhere for business and sends no maintenance to

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521 §III.ix, SR 3: 84.
522 It could conceivably be local custom or related to Sasanian judicial practice, but I have found no parallels in Zoroastrian sources that might substantiate this.
his wife. The woman’s father writes to her husband in order that he send maintenance to her. He does not, and informs him through word of mouth (šlah lēh b-melltā d-pūmā), “I consider your daughter divorced, and I am not married to her” (šbīqā lī ba[r]tāk w-layt lī šawtāpūtā lwāṭāh). He goes elsewhere and no news of him is heard. The father wants to marry [his daughter] to another man.⁵²³

Timothy’s answer maintains that in spite of the lack of maintenance payments, the bond of marriage remains fundamentally indissoluble; the wayward husband should be sought out and compelled to return to his wife. If he refuses, however, he shall no longer be considered a Christian (“he shall be a stranger to the catholic church,” nehwē nukrāyā l-ʾē[d]tā qatoliqā); in such a case, the marriage is dissolved and the wife may remarry if she chooses.

Īšō’barnūn essentially affirms Timothy’s position. His ruling §78, based on his response to question §12 from Isaac of Qaṭar concerning a man who leaves his wife and begins a new family elsewhere, states that:

If a man takes a wife in the place where he is, and then goes somewhere else and takes another wife, and his affair is revealed, he shall be excommunicated (netmahrum) from the church and suspended (netklē) from receiving the holy mysteries. If a husband does not take a wife, but keeps ecclesiastical law (nāṭar nāmōsāʾ ē[d]tānāyā), and his wife marries another man, she shall be banned and go out [from the community].⁵²⁴

Īšō’barnūn thus exhibits equally little tolerance for men (and women) who scorn the ecclesiastics’ conception of indissoluble and exclusive Christian marriage. Married people who abandon their spouses are no longer considered Christians because they have transgressed Christian law; their marriages are therefore dissolved and their faultless spouses may remarry (the patriarch makes this last point clear in his response to Isaac of Qaṭar).⁵²⁵

⁵²³ §33, SR 2: 80.
⁵²⁴ SR 2: 152.
⁵²⁵ “The wife is allowed to marry whomever she wants”; MS Mingana Syriac 587, folios 367a-b.
In this matter, Īšōʿ bōkt differs again from the Iraqi patriarchs. If we recall that he does not consider a husband’s infidelity to constitute grounds for divorce, even a husband who abandons his wife to start a new family does not commit adultery. We might thus infer that Īšōʿ bōkt would not anathematize such a man on his refusal to return to his first wife. But although he prescribes no punishment for a runaway husband, the metropolitan does make the provision (noted above) that a woman may request the dissolution of her marriage after seven years of receiving no maintenance. Notably, he adds that even if an absent husband provides maintenance for his wife, if he is absent for ten years she may leave the marriage.

*Rhetoric and Regulation, Law and Space*

The above, then, are the results the bishops reach when they apply their legal regimes on divorce to cases of absent husbands. If we now consider a bit more closely how the different ecclesiastics’ positions compare to each other, as well as the mechanisms they conceive to enforce their rulings, we can arrive at a better picture of how they understood the role of the ecclesiastical hierarchy and its laws in regulating the marital lives of lay East Syrians. In particular, a comparison of Timothy and Īšōʿ bōkt’s rulings and rhetorical strategies reveals a fundamental difference in how their law books portray the church’s powers and its relationship to lay East Syrians in the caliphate and elsewhere.526

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526 In what follows, I will generally leave aside Īšōʿ barnūn, as his law book has only a few relevant rulings and they all confirm Timothy’s positions.
As noted earlier, a useful way to approach the stipulations in the law books is to look at the grounds for divorce – adultery/apostasy/continence/murder – as Timothy and Ḫūṣūṣ būḥādūr’s general rules on the subject, which they take into consideration to issue rulings on the specific cases of absent husbands (cases occasioned by a wife’s desire for divorce). A cursory glance at the differences between the texts reveals Timothy’s application of the rules of divorce to be stricter and more “formalist,” Ḫūṣūṣ būḥādūr’s more “pragmatic.”⁵²⁷ Both bishops allow an abandoned betrothed woman to free herself from her contracted union after three years (and, as noted earlier, the likeliest assumption is that Timothy adopted this ruling from Ḫūṣūṣ būḥādūr). Beyond this, however, Timothy takes the fundamental Christian teachings of indissoluble marriage and his own rules for divorce to quite strictly inform the incapacity of an abandoned woman to divorce her missing or negligent husband. Only with sure news of his death, or his demonstrated apostasy through transgression of Christian law (by, for example, marrying a second wife), might her marriage be dissolved. Ḫūṣūṣ būḥādūr, on the other hand, ultimately allows the dissolution of marriages to missing or runaway husbands even when his own rather strict criteria for legitimate divorce have not been fulfilled. He gives no specific justifications, and seems only to offer discretionary decisions of expedience.

Timothy’s insistence on adhering to Christian rules of divorce in these instances accords with his general concern to maintain his legal system’s overall consistency, as was evident also in his analogical extension of kinship prohibitions to include first cousins. If we examine the rhetorical strategies of legal enforcement that the two

⁵²⁷ This should not be taken to imply that Timothy has any relation to the modern formalist school in American legal studies. “Formalist” here is rather a heuristic term to indicate that Timothy’s application of the rules of divorce to the cases of absent husbands admits of no great discretion or consideration of social expedience beyond the content of the rules themselves.
ecclesiastics promote, we can see that this stricter emphasis on following the rules is also rooted in a particular conception of the church’s power and capabilities in its dealings with lay people.

Timothy’s responses to the absent husband cases present a notion of an ecclesiastical hierarchy with the means and influence to regulate lay behavior anywhere East Syrians may be found. In the case of a missing husband, we have seen that Timothy requires sure knowledge of death or apostasy to dissolve the marriage. His response goes on, however, to offer a bit of encouragement for women stuck in such a situation:

> It is not right that [the wife of a missing husband] turn toward another marriage until she knows exactly whether her husband is living or dead. For the matter is not hidden, not [even] if he is among the Indians or Chinese. Bishops, metropolitans, and even patriarchs investigate and correspond [concerning] the matter. Anywhere the man may be, he is compelled by the strictures (thūmē) of the Word of God and the canons until he returns to his wife or sends her maintenance, as is right.\(^{528}\)

The text’s tone here recedes a bit from the apparent severity of the ruling that women must remain in marriages to missing husbands. A missing husband, Timothy suggests, is in fact not even a problem likely to arise, because when someone goes missing, the East Syrian hierarchy, a network stretching as far as India and China, will always be able to find either news of his death or the man himself, and then lay God’s law before him: “return to your wife, or leave the community.”

Timothy maintains the same bold claim in his ruling on a runaway husband who is known to be alive, but provides no maintenance to his wife and sends word that he is not planning to come back:

> The matter shall be investigated, and the man’s whereabouts shall be sought. The bishop of the wife’s city shall correspond with the bishop who has jurisdiction (\(uḥdānā\)) where the man is, and he shall be anathematized until he returns to his wife.\(^{528}\)

\(^{528}\) §31, SR 2: 78-80.
wife. *There is no region of jurisdiction in which we do not have a bishop or metropolitan.* If the man dares to stand in dispute against both the canons and strictures and his directors and advisors (*matršănē w-mallpănē ḏīlēh*), he shall be a stranger to the catholic church as one who transgresses the commandment of Our Lord, for he left (*šbag*) his wife without the cause of adultery.\(^{529}\)

Here again, we see Timothy’s vision of the Church of the East working like a well-oiled machine, with ecclesiastical manpower present in every corner of the world ready either to return a wayward husband to the straight and narrow or to anathematize him and allow his wife to get on with her life.

Timothy’s responses here display a kind of two-tiered rhetorical strategy. One level addresses the general audience of the rulings. It extols the capabilities of the East Syrian hierarchy in confronting the social problem of missing husbands, and maintains that the great extent of the church’s power ensures that this will never remain a problem for long. The church has the observatory power to track down stray men, and the admonitory powers to either return them to or remove them from the fold. On the second tier, Timothy’s responses direct the threat of this latter power against those who would disobey Christian law as articulated by the patriarch. Disobey if you will, it claims, but the church will not hesitate to exclude you from the salvific mysteries for the rest of your life.

Thus, Timothy’s strict, formalist adherence to Christian law in the cases of absent husbands is couched in a high, admonitory rhetoric that asserts the church’s fundamental power to enforce its rulings through a combination of investigation, admonishment, threat, and anathema. Now, we unfortunately have no immediately contemporary court records or similar sources to tell us how these instruments may actually have been wielded in relevant scenarios. If we recall Gregory of Kaškar and the polygynous lay elite

\(^{529}\) §33, *SR* 2: 80-82. Italics mine.
of late antique Nisibis or Timothy’s dealings with the Khūzistānīs and their close-kin marriages, we might imagine ecclesiastics employing the threat of anathema, other admonitory rhetoric, and temporary exclusion from the Eucharist against negligent husbands in some cases in order to reach settlements and restore the equilibrium of social forces. Whether bishops always had the leverage to wield the ban as strictly and summarily as Timothy’s rhetoric depicts, however, is more questionable.\(^{530}\)

A less enthusiastic appraisal of ecclesiastical power is apparent in Īšōʾbōkt’s rulings. The metropolitan, as noted above, offers a way out to wives of runaway husbands, an exception to his stated conditions for legitimate divorce. A wife must wait seven years if she has received no maintenance, and ten if she has received it; then

> the leaders of the church shall write to her husband, wherever he may be; and when they decide that there is no way to correct [the situation], after this she shall be able to leave her husband and marry another man through an ecclesiastical dispensation and ruling (\(puqḍānā \; w-dīnā \; ēḏḏi tānāyā\)).\(^{531}\)

Īšōʾbōkt is describing ecclesiastical tools similar to those of Timothy: the clergy should write to and admonish an absent husband to try to get him to come back to his wife. This response, however, displays none of the confidence in ecclesiastical power that

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\(^{530}\) Evidence from other historical settings indicates that the use of anathema could often depend on considerations of human and material resources. In el-Leithy’s study of Coptic conversion to Islam in late Mamlūk and early Ottoman Egypt, for example, the author finds a reluctance on the part of Coptic ecclesiastics to publically anathematize lay notables who practiced polygyny out of fear of their powers to retaliate or convert, which would deprive the community of wealthy and influential members. This was a period of demographic decline for the Coptic community, mainly because of high rates of conversion to Islam; keeping resources within the communal fold thus outweighed the imperative to enforce ecclesiastical law. See “Coptic Culture,” 382-92. By contrast, however, scholarship tends to see the early ʿAbbāsid period as one of general flourishing and expansion on the part of the Church of the East, so we might imagine clerics in that setting having a bit more latitude to employ the ban. In any case, it is probably reasonable to presume in most settings that the more powerful (in social or economic terms) the individual, the less likely the ecclesiastics would be to actually anathematize him. In this respect we might recall the story from chapter five of the rich physician Yūḥannā ibn Māsawayh, who was only asked to give up his rank as deacon – not to face anathema – for keeping concubines.\(^{531}\)

\[^{531}\]§III.ix, \(SR\) 3: 84.
Timothy’s does; the bishops may simply not succeed, in which case a solution of social expediency allowing the woman to divorce and remarry outweighs the strict application of Īšō’bōkt’s own rules for Christian divorce. Notably, this obtains even in the case of an absent husband who still pays support; although she has to wait for ten years, Īšō’bōkt gives a wife stuck in such a situation an escape hatch. This is in direct contrast to Timothy’s rulings, which maintain that a man paying maintenance, even if absent, fulfills the duties of the marriage bond.

Nor is this the only example of Īšō’bōkt’s greater leniency in his rulings on marriage and divorce. We might take, for example, an exception he offers in the case of a husband’s impotence. If a man is unable to consummate a marriage due to his “natural defects” (mūmē kyānāyē), a wife who stays with him will be “praised for [her] fortitude (metqallsā ba-mḥamsnānūtā) in hope for her husband’s [future] healing.” However, she only has to remain in the marriage for a year; afterward, she should wait one year in widowhood “hoping for her husband’s healing” (ʿal sabrā d-āsyūtā d-baʿlāh), and is then free to leave the marriage.\(^\text{532}\) This exception is in contrast to Timothy, who does not

\(^{532}\) §§III.vi.1-2, SR 3: 82. We should note that Īšō’bōkt potentially contradicts this ruling in §II.x. This is a short treatise on the differences between Old Testament and Christian law in response to the question, “Why were the predecessors able to divorce their wives, while we are not able?” In his response, Īšō’bōkt notes that many people think that the Christian ban on divorce is harsh, especially in cases where, “because of sterility (ʿaqrūtā) or sickness (kurhānā)… a woman is unable to sleep with her husband, [and] he remains deprived of sons.” Īšō’bōkt replies that this is harsh, but it is equally harsh “that, when a man is taken hold by similar infirmities (mūmē), a wife is compelled to bear this affliction (ulṣānā).” Accordingly, even if a woman cannot bear children because of her husband’s natural physical defects, she must remain married to him. Now, we might take such defects to include impotence. However, this is only an inference, and thus §II.x is not necessarily contradictory to the permission of marital dissolution for inability to consummate in §§III.vi.1-2. Additionally, the discussion of the difference between Old Testament and Christian law is part of Īšō’bōkt’s second treatise, which is generally rhetorical and focused on expounding larger, conceptual points. The permission for a woman to divorce an impotent husband is found in treatise three, which is devoted to specific laws on marriage and divorce. Mentioning physical defects in the expository treatise is thus more an illustrative tool, while we
allow a wife to leave a husband even if he has been unable to consummate his marriage for twenty years.\textsuperscript{533}

Perhaps the starkest example in Īšō’bōkt’s law book of “pragmatic” legislation that takes into account the limits of ecclesiastical power is its rules for a valid betrothal ritual. As we saw in chapter three, all three early ‘Abbāsid-era law books set out fairly specific conditions for betrothal, drawing on an earlier canon from the synod of George in 676. Īšō’bōkt, however, adds a whole list of acceptable exceptions to the ecclesiastical betrothal ceremony: if no priests are available to bless the union, two or three lay witnesses will do; if no lay people are around, a man and a woman can simply present themselves as husband and wife to priests or communal leaders at a later point, and their marriage will be considered valid; if a man sleeps with his slave and later claims that she is his wife, she will be recognized as such.\textsuperscript{534}

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\textsuperscript{533} Timothy’s question §72 presents the following problem: “A man takes a wife and is with her for twenty years while never once sleeping with her (kad lā qreb lāh). He says, ‘I have an illness and I am unable to sleep with my wife.’ She is not steadfast and seeks [another] marriage.” Timothy’s reply is that the woman may in no way leave her husband. See \textit{SR} 2: 82-84. Īšō’barnūn does not mention impotence specifically, but does state in §127, “If a woman was married and it was unknown that she was infertile (ʿqartā), and afterwards the matter was revealed, the husband is not permitted to let her loose (nešrēh), nor is she to loose herself from her husband if he is sterile (ʿaqār).” \textit{SR} 2: 174.

\textsuperscript{534} §III.i.1-5, \textit{SR} 3: 74-76. §1 requires “the giving of a ring through the mediation of priests and the rest of the sons of the covenant” (mattlā d-ʾezqtā b-meṣʿāyūlā d-kāhnē w-šarkā da-bnay qaʾmā). §2 allows for two or three lay believers to bless a marriage in the absence of priests. §3 stipulates that if no Christians are to be found, a man may subsequently “stand before priests and believers and make a covenant and say, ‘This woman is my wife,’ [and] the union and covenant shall be considered sound” (qaʾ em gabrā qdām kāhnē wa-mhaymnē wa-mqīm qaʾmā w-ʾāmar d-hādē a[n]ṭā a[n]ṭ[yy] [h]ī hay savtāpūtā wa-qaʾmā šarrīrē metḥašbīn). §4 stipulates that if a man sleeps with his slave woman, he can subsequently acknowledge her as his wife (in which case she becomes free). Finally, §5 allows a free man and woman who have had no betrothal ceremony to acknowledge each other as husband and wife, as long as communal leaders and the woman’s kin “consider that the man is fit for her” (ḥāzēn d-zādeq haw gabrā l-hay a[n]ṭā).
We can see from Īšōḇōkt’s various exceptions to his stated rules on divorce (and, in the last case, betrothal) that the distinction between Timothy’s stricter formalism and the metropolitan’s apparent pragmatic leniency is shaped by different presentations of the reach of ecclesiastical power. Both bishops’ rulings, on untenable marriages and the betrothal ritual in addition to absent husbands, were occasioned by very real social circumstances. As learned ecclesiastics, both were averse to allowing any easy dissolution of marriage, contrary as that would be to Christian teachings on the nature of the marital bond. Timothy, however, maintains a generally strict application of these rules to the kinds of cases outlined above, from absent to impotent husbands. His rulings are couched in a rhetorical language that presents ecclesiastical power as able to ensure that no awkward problems might arise. So, bishops throughout the known world will always be able to track down absent husbands and reconcile neglectful men to their wives, while priests will always be available to witness a betrothal ceremony. If anyone should ignore these stipulations and step beyond the bounds of Christian law, bishops will use their admonitory power to bring them back within the fold, or will not hesitate to remove them from the community. On the other hand, Īšōḇōkt’s “escape hatches” – for abandoned wives, untenable marriages, and the betrothal ritual – are suggestive of a lack of ecclesiastical resources, influence, and manpower of which Timothy’s rhetoric will not admit. There may not be enough priests in a particular locale to officiate a betrothal; bishops may not be able to find a runaway husband or convince him to support his neglected wife. In these cases, Īšōḇōkt offers expedient ways around his own strictly conditioned Christian laws, and makes no mention of using the anathema (which, after all, would theoretically deprive the community of even more human resources).
Īšō’bēkt’s exceptional rulings reflect a reality in which ecclesiastical influence could never penetrate into lay life the way that Timothy’s law book presents it. Evidence of this reality is diffuse but present throughout the contemporary sources. There were many far-flung communities in the early ‘Abbāsid Caliphate underserved by ordained priests; Christians might often have found themselves in lands where no bishops or even other fellow believers were around; and at times whole communities might resist ecclesiastical rulings and yet go unpunished by anathema. Jacob of Edessa’s *responsa*, for example, attest to underserved Christian communities seeking the spiritual services of any priest they could find, regardless of sectarian affiliation; “the doctrinal purity of priests was a luxury available only to those who had an abundance of clergy from which to choose.”535 A century later, Makarios of Ḥīra raises similar problems involving a lack of available priests in his questions to Īšō’barnūn:

If a Christian happens to be in the lands of the unbelievers where there are no Christians and no church, and he does not know when to begin the [Lenten] fast or finish, what should he do?... If someone is fasting somewhere where there is no Eucharist, and he ends his fast but cannot receive the Eucharist, and it is not easy to leave these places for a whole year, what should he do?... If a Nestorian is somewhere where there is no [East Syrian] church, may [he] receive communion in a church of the Melkites or Severians [West Syrians] to end [his] fast?536

Timothy’s own letters further indicate that some areas of the eastern provinces (Khūzistān, Fārs, and beyond) may have been particularly underserved, as the patriarch encountered a number of problems with local ecclesiastics deserting their posts and others balking at appointments there.537 His admonitory epistles to Khūzistān, which we

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536 §§44, 45, and 47, respectively; see MS Mingana Syriac 586, folios 438b-439a.
537 See the discussion in William G. Young, *Patriarch, Shah and Caliph* (Rawalpindi, Pakistan: Christian Study Centre, 1974), 147. The particular incidents alluded to are the appointment of a metropolitan for Sarbāz in Sijistān who worries about the possibility of getting by in that distant...
encountered in chapter four, also suggest that the ecclesiastical prerogative of anathema may not have been wielded as easily as the text of the law book presents it. In contrast to the sharper rhetoric of the law book, the letters exhort by example of Christian law, but stop short of threatening the ban.

Taken together, these points suggest that Īšōʾbōkt’s rulings, in offering “escape hatches” from marriages to missing men (among other exceptions), were articulated in light of local conditions in the church’s eastern provinces, where the lack of ecclesiastical manpower meant that strict application of certain laws may have simply been impossible. This is in stark contrast to the rhetorical strategy of Timothy’s law book, which presents an image of an ecclesiastical hierarchy spread throughout the geographical space of the caliphate and able to exercise a great degree of influence on lay people through its powers of investigation, admonition, and anathema. The two law books exemplify the difference between a more locally oriented perspective attuned to the problems of resource shortages, and a patriarchal one resident in a metropole looking to present a more idealized vision of the relationship between church and community.

Finally, the differences between Timothy and Īšōʾbōkt’s rulings return us to the themes that began our discussion of absent husbands: expanding travel and trade. Travel in the Mediterranean and western Asia both entailed and was facilitated by a general conception of regional geography as traversable. This condition – the possibility of travel in search of work, learning, etc. – made the “absent husband” a relatively familiar, though perhaps not entirely common, feature of family life. At the same time, it constitutes the

area, suggesting a lack of ecclesiastical infrastructure; the desertion of three bishops and abbots in Khūzistān; and the general difficulty of finding willing churchmen to fill positions in that province. The relevant letters are numbers 6, 13, and 52, summaries of which can be found in Bidawid, *Lettres*, 23, 39-40, and 54-55.
imaginative context of Timothy’s conception of near omnipresent ecclesiastical power as a means to deal with that very problem. The law book’s vision of the ecclesiastical hierarchy at work in the world is one in which a network of bishops stretching as far from Iraq as China, Tibet, and India are linked together and coordinate resources (under the ultimate authority of the Baghdad patriarchate) so as to solve problems and ensure obedience to Christian norms. This sense of the geographic prevalence, almost ubiquity, of ecclesiastical power is underpinned by a notion that information can be conveyed and human resources coordinated in a way that effectively collapses those wide distances. The traversable known world offers opportunities, challenges, and problems to lay marital life; it also, in Timothy’s presentation, provides the leaders of the community with the means by which to deal with those issues.

And if to this point we have stressed the more rhetorical, less “realistic” aspect of Timothy’s discourse of expansive ecclesiastical power, we should emphasize that it is not merely fanciful. Rather, the patriarch’s vision of ecclesiastical power is informed by his own experience of contact across the great distances of the ʿAbbāsid Caliphate and beyond, a kind of contact that rendered those distances imaginatively traversable. Timothy is well known in the East Syrian sources for appointing new metropolitans in locales as diverse as Rayy, Tibet, and Turkic Central Asia, the population of which he also claimed credit for converting.⁵³⁸ We have already mentioned his epistolary efforts to regulate what he viewed as deviant practices in Khūzistān. And although essentially all of

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⁵³⁸ See the review of Timothy’s activities in Central, East, and South Asia in Young, *Patriarch, Shah and Caliph*, 152-55. Timothy announces the new metropolitans for the Turks and Tibetans in his letter 47, in which he also mentions sending new bishops for Shahrazūr, Rādhān, Rayy, Gurgān, Balad, Dāsān, and Daylam; see *Die Briefe* 42-58 1: 86-87. The conversion of the Turks and their Khāqān is also mentioned in the Arabic chronicle of the East Syrian patriarchs; see Gismondi, *Akhbār* 1: 73. The appointment of Habbībā to the new metropolitan seat of Rayy is found in Timothy’s letter 21; see *Epistulae* 1: 131.
Timothy’s extant letters are addressed to correspondents in Iraq and western Iran, Ibn al-Ṭayyib’s legal compendium preserves citations from two or three different letters that Timothy sent to Christian communities on India’s Malabar Coast.\textsuperscript{539}

All this exemplifies how a patriarch like Timothy might put the resources of the Church of the East to work, through correspondence and delegation of responsibilities to trusted subordinates, across great geographical distances. Such work had the effect of collapsing those distances imaginatively, and encouraged the notion that it was possible to instantiate uniform ecclesiastical and lay practice across them. It is this conception of the geographic reach of effective ecclesiastical power that informs Timothy’s solutions to the problems of absent husbands – problems arising in that same imagined geographical space, the busily travelled lands of the ʿAbbāsid Middle East.

\textit{Absent Husbands in Other Legal Traditions}

Timothy’s particular notions of ecclesiastical power and the obligations of Christian spouses went a long way toward developing a specifically East Syrian conception of absent husbands as a legal problem. As we have earlier emphasized, however, the East Syrians were far from being the only community in the ʿAbbāsid

\textsuperscript{539} See Ibn al-Ṭayyib, \textit{Fiqh} 2 (text): 119. The preserved sections of these letters focus on bringing certain ecclesiastical practices into line with Timothy’s centralizing preferences. They admonish the recipients that it is the Baghdad patriarch’s prerogative to choose their metropolitan; instruct them on how to ordain their priests, bishops, and metropolitan; and assert the patriarch’s primacy. The citations seem to be drawn from two different letters: the admonition concerning the patriarch’s prerogative comes from “Timothy’s letter to the people of India (\textit{risāla… ilā ahl al-Hind}),” while the other two points are attributed to “his letter to an archon, chief layman (\textit{arkun mutaqaddim al-muʾminīn}) in India.” Another citation from “his letter to India” concerning a deacon who apostasizes and then returns to the fold can be found on p. 149; it is unclear whether this is from one of the same two letters or a third.
Caliphate to confront this issue. In this section, we will briefly consider some perspectives from which other religious traditions dealt with the widespread social phenomenon of absent husbands. By doing so, we can better situate the legislative endeavors of the East Syrian bishops in the broader context of the legal cultures of ʿAbbāsid Iraq and Iran.

**Rabbinic Law**

In contrast to Christians and Muslims, rabbinic Jews of the ʿAbbāsid period had laws for divorce and absent husbands of somewhat greater vintage, dating to the redaction of the Talmuds. In fact, missing, absent, and deserting husbands are well known for giving rise to one of the thorniest issues in rabbinic family law throughout the centuries. The Mishnah and Talmud had affirmed that a marriage could only be dissolved by the husband issuing a *get*, or bill of divorce. When husbands disappeared or abandoned their families without leaving a *get*, Jewish wives became ‘*agunot*, “anchored” to their husbands and unable to remarry.⁵⁴⁰ Later rabbis of the medieval period attempted to alleviate the social hardships of such situations by relaxing the criteria according to which a missing man’s death might be affirmed or presumed, and the Genizah attests to other common methods, such as a man leaving a conditional bill of divorce.

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divorce before he travels in case he should disappear. But given the structure of rabbinic divorce law, the prospect of the problem remained.

As far as I have been able to tell, there has yet to be a detailed study of the problems of missing husbands and 'agunot as they arise in and are addressed by the geonic responsa, which are roughly contemporary with the East Syrian law books. This would be an invaluable view into the scope and dynamics of the phenomenon of absent husbands, as well as the methods (if any) that 'Abbāsid-era Jewish rabbis in Iraq employed to lessen the impact of halakhic strictures on abandoned wives. Unfortunately, such a study is beyond the scope of this dissertation. We might note, however, the great degree to which the legal status of wives of missing husbands in the East Syrian law books resembles that of 'agunot in their general incapacity to remarry. If the experiences of Jewish communities across the centuries are any indication, East Syrian wives of missing husbands likely faced greater social hardship than Timothy’s law book would admit.

Missing Husbands in Formative Fiqh Discourse

If ‘Abbāsid rabbis looked to a somewhat more established canon of legal opinions in the Talmud, Muslim fiqhāʾ were engaged in an earlier stage of developing and ordering their traditions of positive law, much like the East Syrian bishops. And like their contemporaries, Muslim jurists also wrestled with the problem of missing husbands. In what follows, we will examine the formative fiqh discourse on the subject; and we will

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541 See Goitein, Mediterranean Society 3: 189-90.
see that two interpretive strands developed that parallel those of Īsōʾ bōkt and Timothy, one discretionary and “pragmatic,” the other more formalist.

The discretionary opinion in formative Islamic law states that if a man has disappeared, his whereabouts remain unknown, and no news is heard of him for four full years, his wife may wait an ‘idda of four months and ten days and then remarry. In Islamic law, the ‘idda is the period of time that a divorced or widowed woman must wait to ensure she is not pregnant before she can lawfully remarry. Schacht, *Origins*, 211. The Mālikī sources emphasize that only a governing authority may actually dissolve a missing man’s marriage after the four-year period, which lends credence to the notion that this fiqh opinion was rooted in administrative practice. The *Mudawwana* states variably that a woman must “bring her case to the governing authority” (rafaʿ at amrahā ilā ‘l-sulṭān), that she may only marry with “permission from the governing authority” (al-i ḏār min al-sulṭān), and that she may not initiate the four-year waiting period “without the decree of the governing authority” (bi-ghayr amr al-sulṭān). Saḥnūn ibn Saʿīd al-Tanūkḥī, *al-Mudawwana al-kubrā* (Beirut: Dār al-Kutub al-ʿIlmiyya, 1994), vol. 2: 30. Also worth mentioning is a lone Baṣraan tradition that attributes the “four years” opinion to the Umayyad caliph ʿUmar II ibn ʿAbd al-ʿAzīz; see Balādḥurī, *Ansāb* 7: 102.

Already in Mālik’s *Muwaṭṭa*’, however, we find signs of the disputes to which this ruling gave rise. What happens if the missing man returns after the four years are up? What if his wife has remarried? What is the status of the new marriage? Mālik states that his circle’s practice (*al-amr ‘indanā*) is that if the woman has remarried, whether her new marriage has been consummated or not, it remains valid and the first husband cannot take her back.\(^{545}\) However, another opinion that circulated very widely cites the third caliph ‘Umar ibn al-Khaṭṭāb to the effect that if the first husband returns, he should be given a

\(^{545}\) Mālik, *Muwaṭṭa*’, 336. Mālik makes his point by considering the case of a man who divorces and then reclaims his wife while away from her, but only news of the divorce and not its revocation reaches her; she subsequently remarries. In such a case, ‘Umar ruled (according to Mālik) that the woman was to stay with the second husband whether or not the marriage had been consummated. Mālik sees a parallel between this case and that of the missing husband who returns to find his wife remarried; he concludes that the best ruling in both cases is that the wife remain with the new husband. However, other than Mālik’s mention of it I have been unable to find any traditions in which ‘Umar (or anyone else) affirms the second husband’s right over the first. Indeed, several traditions have ‘Umar giving the prerogative to the first husband in cases of disappearance (see the following note), or when his wife has been mistakenly informed of his death and remarried; see §606 in Abū Yūsuf, *Kitāb al-āthār*, ed. Abū al-Wafā’ al-Afghānī (Hyderabad: Lajnat Iḥyā’ al-Ma’ārif al-Nu’maniyya, 1936/7), 131-32, and Ibn Abī Shayba §16,989, *Muṣannaf* 9: 211.
choice between reuniting with his wife and taking back her marriage portion.\textsuperscript{546} The Mālikīs eventually softened Mālik’s initial position: the standard school doctrine became that if the second marriage is consummated before the first husband’s return, the wife stays with the second; if it is unconsummated she returns to the first.\textsuperscript{547}

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\footnote{\textsuperscript{546} Widely circulated traditions in which ‘Umar expresses this takḥyīr (“offering a choice”) position were no doubt a response to the awkward situations created by the return of missing husbands, as well as a refutation of Mālik’s position (as Schacht suggests). A common Başrān version transmitted through Ibn Abī Laylā features a story in which the missing man escapes from some jinn who had kidnapped him. See ‘Abd al-Razzāq §12,322, \textit{Muṣannafāt}: 87, and Bayhaqī §§15,570-571, \textit{Sunan}: 7: 733-34. Other Başrān versions through Ibn Abī Laylā are ‘Abd al-Razzāq §12,321, \textit{Muṣannafāt}: 86; Ibn Abī Shayba §16,987, \textit{Muṣannafāt}: 9: 210; and Ibn Ḥazm, \textit{Muḥallā}: 9: 317. A Kūfīn transmission through the Meccan Mujāhīd ibn Jabr is ‘Abd al-Razzāq §12,320, \textit{Muṣannafāt}: 7:6. A Meccan transmission is §1,274 in Ibn Ḥanbal, \textit{Masāʾ il al-imām Aḥmad ibn Ḥanbal riwāyat ibnīhi ‘Abd Allāh ibn Aḥmad}, ed. Zuhayr al-Shāwīsh (Beirut: al-Maktab al-Islāmī, 1981), 346. Medina transmissions are Ibn Abī Shayba §16,985 and §16,984, \textit{Muṣannafāt}: 9: 210 and 212. Another Medina- Başrān transmission has ‘Uthmān confirming ‘Umar’s ruling: ‘Abd al-Razzāq §12,317, \textit{Muṣannafāt}: 7: 85. Ibn Abī Shayba §16,988, \textit{Muṣannafāt}: 9: 211, and Bayhaqī §15,571, \textit{Sunan}: 7:734 (which specifies that the new husband owes the first the ṣadāq he should choose it). Additionally, we find several expressions of the takḥyīr position attributed to authorities besides ‘Umar. For three versions attributed to Ḥasan al- Başrī, see Ibn Ḥazm, \textit{Muḥallā}: 9: 320. For an attribution to the Meccan authority ‘Aṭā‘ ibn Abī Rabāh, see ‘Abd al-Razzāq §12,327, \textit{Muṣannafāt}: 7: 89. For an attribution to the Syrian Makhlūḥ al-Shāmī with an Egyptian ḯnād, see Ibn Ḥazm, \textit{Muḥallā}: 9: 321. The Ibāḍīs also came to favor this position (which, combined with the attributions to Ḥasan al-Baṣrī and other Başrān transmissions, suggests that this doctrine predominated in Başrā); see Bisyānī, \textit{Mukhtarāt} 217 and an early expression in Abū Ghānim, \textit{Mudawwana}: 2: 285 (although the latter also includes an expression of Mālik’s opinion – according to which the new husband remains with the first husband – attributed to the Ibāḍī authority ‘Abd Allāh ibn ‘Abd al-Azīz). Additionally, there are a few transmissions through the Başrān Abū ‘l-Malīḥ of a convoluted story in which both the “four years” and takḥyīr positions are ascribed to ‘Alī ibn Abī Ṭalīb; see ‘Abd al-Razzāq §12,325, \textit{Muṣannafāt}: 7: 88, Bayhaqī §§15,574-575, \textit{Sunan}: 7: 735, and Ibn Ḥazm, \textit{Muḥallā}: 9: 320. However, since the Kūfīs and Ḥanafīs came to reject the Medina-Mālikī positions (as we will see below), these ‘Alī traditions are not likely to have been accepted in Kūfān circles; they likely represent counterproofs that attempt to muster the Kūfīs’ own authorities against their doctrine. The ḩqā sources generally treat them as such by ignoring them, and Bayhaqī calls them da‘īf (although Ibn Ḥazm calls his version sa‘īḥ). In the same category appears to be a tradition ascribed to the Kūfān Masrūq ibn al-Ajdā’ in which he states that ‘Umar’s affirmation of the takḥyīr position caused him to change his mind from the Kūfān opinion (Bayhaqī §15,574, \textit{Sunan}: 7: 734).}
\footnote{\textsuperscript{547} This position is based on Ibn Qāsim’s statement in the \textit{Mudawwana} that Mālik changed to it some time after expressing the first opinion as found in the \textit{Muwaṭṭa}’ (Saḥnūn, \textit{Mudawwana}: 2: 29). Subsequent Mālikī tradition continued with this doctrine; see, for example, the fourteenth-century \textit{mukhtarāt} of Khalīl and its sixteenth-century commentary, al-Ḥaṭṭāb al-Rū` aynī, \textit{Mawāhib al-jallī li-sharī` mukhtarāt Khalīl}, ed. Zakariyyā’ Umayrāt (Beirut: Dār al-Kutub al-‘Ilmiyya, 1995), vol. 5: 499. This position also has one early Ibāḍī exponent, Ḥātim ibn Manṣūr, but the Ibāḍīs generally favored the takḥyīr position. See Abū Ghānim, \textit{Mudawwana}: 2: 285.}}
These opinions, however, proved too indeterminate and problematic for some jurists in Kūfa, who developed a more “formalist” position on missing husbands. Buttressed by traditions ascribed to Kūfan authorities, this opinion is associated with Abū Ḥanīfa (d. 767) and his circle and is given its most cogent early expression in Shaybānī’s (d. 805) *Proof Refuting the Medinans (al-Ḥujja ‘alā ahl al-Madīna).* \(^{548}\) Relating Abū Ḥanīfa’s opinion that a woman whose husband has disappeared (*al-mafqūd*) may not remarry until she receives information (*khabar*) that he has died or divorced her, Shaybānī’s critique of the Medinans asserts a more rigorous logic that sees no room for the discretionary “four years” ruling. A marriage is dissolved by divorce or a spouse’s death, and a woman becomes remarriageable after waiting the appropriate ‘*idda*. If a

woman’s husband has disappeared, she has not been divorced, nor is there any certain knowledge of his death; she is therefore still married and cannot marry anyone else. Furthermore, if a missing husband returns after his wife has “remarried,” the new marriage is automatically invalidated (furriqa baynahumā), as the woman was never legitimately marriageable in the first place (the second husband still owes her a fair marriage portion if the union was consummated, since an act of sexual intercourse requires either a hadd punishment or a marriage portion payment).

This is the “formalist” answer to the Medinan opinion ascribed to ʿUmar that gives the returned husband the choice between his wife and the marriage payment.

In his process of critiquing, filtering, and proposing correctives to the legal traditions of Medina and Iraq, Shāfiʿī (d. 820) adopted the more rigorous Kūfan position of the Ḥanafīs. However, he also opened a new way for a missing husband’s wife out of her legal predicament by affirming that a wife whose husband cannot or does not supply her with proper maintenance be given the option of dissolving her marriage (the

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549 Shaybānī, Hujja 4: 49-60.
550 As such, it is not surprising to find that traditions affirming a missing husband’s unequivocal “right” to his wife should he return and find her remarried are attested in Iraq and not elsewhere. Attributions to ʿAli with Kūfan isnāds are Bayhaqī §15,563, Sunan 7: 731, Siyāghī, Rawd 4: 428, and Zayd ibn ʿAlī, Musnad al-imām Zayd (Beirut: Dār al-Kutub al-ʿIlmiyya, n.d.), 294. A Başran and a Kūfan- Başran attribution to ʿAlī are both included in Bayhaqī §15,562, Sunan 7: 731. A Başran transmission attributed to the Kūfan al-Shaʿbī is Ibn Abī Shayba §16,992, Muṣṣanaf 9: 212; Bayhaqī §15,563 notes that the other Kūfan authorities Ibrāhīm al-Nakhaʿī and al-Ḥakam ibn ʿUtayba held the same opinion (qawl). Additionally, Kūfan traditions on missing husbands of remarried wives parallel those on the related case of wives who have been mistakenly informed of their husbands’ death (or, we would assume, divorce) and remarried. So, we find opinions attributed to ʿAlī that if a wife has been informed of her husband’s death and remarried, but her original husband returns, he remains her husband and the second “marriage” is rendered invalid and dissolved. See Ibn Abī Shayba §16,989, Muṣṣanaf 9: 211 and Abū Yūsuf §606, Āthār 131-32. Similar opinions are also found in Imāmī traditions; see Kulaynī §§107.1-5, Kāfī 977-78.
551 See the chapter on “The wife of a missing husband” (imraʾ at al-maqād), Muḥammad ibn Idrīs al-Shāfiʿī, al-Umm, ed. Rifʿat Fawzī ʿAbd al-Muṭṭalib (al-Manṣūra: Dār al-Wafāʾ, 2008), vol. 6: 608-613.
Mālikīs recognized the same position).\footnote{See the “Chapter on a man [who] cannot support his wife” (bāh al-raju lā yajid mā yunfaq ʿalā māraʾatih), Shāfiʿī, Umm 6: 235-38. For the early Mālikī statement of this position, see Saḥnūn, Mudawwana 2: 180-84. Shāfiʿī is much more specific than the Mudawwana about the amount of time (three days in most cases) that a woman is expected to go without maintenance before she can choose to separate from her husband.} The Ḥanafīs held that lack of maintenance was not sufficient grounds for a wife to petition for marital dissolution;\footnote{See Shaybānī, Ḥujja 3: 451-68.} however, a standard Ḥanafī position in later fatwā collections was to recommend that wives of missing or negligent husbands go to judges belonging to the other legal schools to receive a more favorable ruling.\footnote{On this practice in Ottoman Syria and Palestine, see Tucker, *House of the Law*, 82-84. Colin Imber’s review of Tucker notes that this opinion is attested as early as the twelfth-century Ḥanafī fatwā collection of Qāḍīkhān (British Journal of Middle Eastern Studies 26.2 [1999]: 310-11).}

Thus, in spite of rather strict views on the options available to wives of missing husbands, Islamic legal traditions eventually developed mechanisms through which to offset the social hardships the situation engendered. The early discourse on the issue in the formative fiqh sources of the ʿAbbāsid period, however, saw two legal interpretations that parallel the developing tradition of East Syrian family law (a situation not unlike our earlier discussion of the use of analogical reason and traditional sources in the East Syrian dispute over cousin marriage). Missing husbands posed particular social problems for which allowing somewhat discretionary power to judges to dissolve marriages was a reasonable approach. So, we see Īšōʿbōktʾs opinion and the Medinan-Mālikī position on the subject allowing for a time frame after which a missing man’s death can be assumed and his wife can be allowed to remarry. More formalist jurists like Timothy and the Ḥanafīs (his fellow Iraqis), however, moved away from these earlier opinions, conditioned as they were by local consideration in Fārs and the regional traditions of Medina; for the formalists, the internal logic of a legal regime could not allow for
remarriage if there was no certainty that the first marriage had ended (by the husband’s death, apostasy, or, for the Ḥanafīs, divorce).

Once again, we have no indications that Muslims and East Syrians looked to each other’s legal traditions to inform their own. But as both grappled with the same social and legal problems in their efforts to forge their respective traditions, the East Syrians again differed over proper analytical methods in a manner parallel to contemporary developments in Islamic legal thought. This parallelism is indicative once more of the degree to which the East Syrian bishops’ legal activities, even when their intellectual circles were largely distinct from those of Muslims, were very much in step with broader processes characteristic of the consolidation of religious legal traditions in the ʿAbbāsid Middle East.

**Summary**

The ʿAbbāsid Caliphate was well-trodden territory. Long established trade routes, combined with a measure of relative political stability, meant that travel beyond immediately familiar locales was within the horizons of the imaginable for certain classes of people, especially men. This reality had a particular effect on families in those classes: many experienced, with a certain frequency (though not ubiquity), the prolonged absence of a spouse or parent, which could turn into outright disappearance when news of whereabouts or well-being ceased to find its way home.

Missing, absent, and deserting husbands created situations of social hardship for the families they left behind, and legal quandaries for the elites of the caliphate’s various
religious communities. What was to happen to a missing man’s wife? Could he be presumed dead and she be allowed to remarry? What if he returned? A stricter tendency that allowed the dissolution of marriages only with surer knowledge of death (or divorce or apostasy) was common to Christian, Muslim, and Jewish legal traditions, although each also proposed certain mechanisms or alternative opinions that might lessen the difficulties of wives trapped in marriages to missing husbands. The shift to a stricter formalist interpretation on the parts of some East Syrian and Muslim jurists, including Timothy, the Ḥanafīs, and Shāfīʿī, exemplify the working out of parallel problems of legal analysis as Christians and Muslims both made efforts to consolidate their religious legal traditions.

Among the East Syrians, Īšōʿbōkt’s rulings exhibit a greater flexibility in allowing the dissolution of marriages between women and missing or negligent husbands (in a manner parallel to Mālik and his Medinan tradition). Timothy, on the other hand, asserted the stringent view, which followed from a strict adherence on his part to Christian laws of divorce that allowed for the dissolution of the marital bond only in very specific circumstances. He couched this position, however, in an optimistic rhetoric that proclaimed the church’s ability to regulate the affairs of its flock throughout the lands of the caliphate in such a way that it could prevent abandoned wives’ prolonged hardship. In doing so, the patriarch once again sought to inscribe Christian teachings in lay marital practice and encourage recognition of the ecclesiastical hierarchy’s judicial authority. But to what degree lay people followed his plan, and whether abandoned wives actually lived by his strictures, remain much less certain questions.
An understanding of the marital bond between husband and wife as affirmed by God and therefore fundamentally indissoluble was deeply rooted in Christian tradition. It was also particularly distinctive in view of the other religious and legal cultures of the late antique and Islamic Middle East (with the partial exception of Zoroastrianism). As such, the theological odiousness and unlawfulness of divorce received great emphasis in the East Syrian law books as the bishops sought to impress upon lay people their notion of a Christian marriage that could not be readily dissolved like that of the Muslims or Jews. In a setting where a variety of judicial institutions and avenues made it possible for individuals, especially males, to end marriages, the East Syrian bishops consolidated a legal tradition that inscribed those distinctively Christian teachings in its rules for the conduct and maintenance of marital life.

At the same time, Christian concerns were not the only ones that conditioned the East Syrian law books’ treatment of divorce. Īšō’bōkt expanded the grounds for divorce beyond the traditional adultery to include other offenses like sorcery and murder; in doing so he likely drew from local Iranian traditions, similar iterations of which are also evident in legal and theological attitudes to divorce found in Zoroastrian writings. Timothy and Īšō’barnūn subsequently affirmed these other grounds for divorce as part of East Syrian tradition (without, of course, any suggestion of their likely genealogy). Furthermore, we find a certain tension in the law books when the bishops bring their legal orders to bear on the social problem of absent and missing husbands. Where Īšō’bōkt offers more discretionary rulings, suggestive again of the local contexts of his home
diocese of Fārs, that allow some leeway for women to get out of marriages to missing men, Timothy maintains a more formalist perspective that affirms the indissolubility of Christian marriages without certain knowledge of a spouse’s death or apostasy. The difference between Īsōʿbōkt and Timothy’s approaches is comparable to a disagreement in Islamic law between the more discretionary perspective on the problem of absent husbands of Mālik ibn Anas and his school, rooted in the local practice of Medina, and the more formalist one of later Ḥanafī jurists and Shāfīʿī. This parallel between East Syrian and Islamic law points again to a common intellectual context in the early ʿAbbāsid Middle East, as East Syrian jurist bishops, in line with their Muslim contemporaries, negotiated between local traditions and the more stringent, systematizing imperatives of articulating a religious law.
Appendix: Interpreting Īšōʿ bōkt’s Ruling §III.i.9

As noted in chapter six, Īšōʿ bōkt’s ruling §III.i.9 contains a Syriac sentence that is difficult to interpret but key to a precise understanding of the passage as a whole.555 In what follows, I will evaluate two possible translations of it and their implications for the passage’s overall meaning.

The sentence in question reads: “ḥā gēr w-āp hānōn ḥanpē lā pāqdīn d-šalīḥ d-nešboq a(n)ṭēh kul emat(y) d-ṣābē.” It is possible to read this sentence as either a declarative statement or a negative interrogative (Syriac has “no special syntactical or formal method of indicating direct questions” that would definitively signal one or the other).556 Translating the sentence as a declarative, we would have: “Those ḥanpē also do not stipulate that [a man] may leave his wife whenever he wants.” As a negative interrogative, we would have: “Those ḥanpē, do they not also stipulate that [a man] may leave his wife whenever he wants?” Depending on the translation, the sentence takes one of two opposite meanings: according to the former the ḥanpē do not allow a man to leave his wife whenever he wants, according to the latter they do. This has major bearing on who, exactly, the ḥanpē under discussion are.

Let us consider the declarative version in context first (the indeterminate sentence is underlined):

When a Christian man makes a betrothal contract without the mediation of priests and lay believers, [but] through a written document or the mediation of the ḥanpē, and takes a Christian wife, and later he does not want to keep her, we do not compel a man like this to keep that wife by the law of Christianity, because he did not marry her through Christian law. [Incidentally], those ḥanpē also do not (āp… lā pāqdīn) stipulate that [a man] may leave his wife whenever he wants; also, we

555 For the passage see SR 3: 78.
556 Nöldeke, Compendious Syriac Grammar, 267, §331.
do not (āplā) compel them [to remain married] because they have not established their pact before us.

Several linguistic factors indicate that this is the better reading of the two. The syntax, in which the verb (pāqdīn) immediately follows the negating particle (lā), is suggestive of a basic declarative statement.\(^{557}\) Also, the usage of āplā (“also do not”) in both the problem sentence and the one following suggests a grammatical parallelism between the two, or that the latter is building an additional idea off of the former. The latter is clearly declarative, which suggests that the former should be as well.

If we accept this reading, however, interpretation becomes problematic. Īšōʾbōkt’s overall point in this passage is that there is nothing to stand in the way of men dissolving marriages contracted under the purview of the ḥanpē; why then would he insert this statement that the ḥanpē actually do limit men’s power to divorce? Furthermore, the dual usage of āplā seems to indicate a parallel meaning shared by the two sentences; but the sense of the latter (“men can divorce wives”) is actually contrary to that of the former (“men sometimes cannot divorce wives”). The only way to make sense of the passage seems to be to read the problem sentence as “incidental” to the overall idea – as an aside, which I have indicated in the translation above.\(^{558}\)

This reading is awkward, but it is at least possible. If we take it to be correct, what bearing does it have on the identity of the ḥanpē? If these ḥanpē say that a man may not “leave his wife whenever he wants,” Īšōʾbōkt would not seem to be talking about Muslims; as far as we know, essentially all traditions of Islamic law allow men to initiate divorces at their discretion. As we have seen, however, Zoroastrian tradition only allows

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\(^{557}\) See Nöldeke, *Compendious Syriac Grammar*, 262, §328, item A.

\(^{558}\) This is how Sachau renders it in his German translation: he qualifies the sentence in question with übrigens, “incidentally.” See *SR* 3: 79. Simonsohn reads the same; see *Common Justice*, 150.
divorce with the wife’s consent or if she has committed a major sin. This fits much better with Īšō’bōkt’s description and suggests that the hanpē in question are Zoroastrians. It seems a bit odd that Christians might still be going to Zoroastrian courts as late as the second half of the eighth century when we believe Īšō’bōkt to have been writing; the Muslims had been in power long enough that we would expect their judicial institutions to have become predominant. But Īšō’bōkt was metropolitan of Fārs, the Zoroastrians’ heartland, so it is not inconceivable that their communal institutions might still have been prominent in that province (though not elsewhere).

Reading the problem sentence as a declarative statement thus makes the best sense of the syntax, although it renders the passage as a whole somewhat awkward. It also suggests a bit unexpectedly that Īšō’bōkt is talking about Christians going to Zoroastrian courts. With this in mind, how might we evaluate the other option for reading the problem sentence?

When a Christian man makes a betrothal contract without the mediation of priests and lay believers, [but] through a written document or the mediation of the hanpē, and takes a Christian wife, and later he does not want to keep her, we do not compel a man like this to keep that wife by the law of Christianity, because he did not marry her through Christian law. For those hanpē, do they not also (ḥā gēr w-āp hānōn hanpē lā) stipulate that [a man] may leave his wife whenever he wants? Thus, we also do not (w-āplā gēr) compel them [to remain married] because they have not established their pact before us.

Let us begin with the objections to this reading. First, rendering the problem sentence as an interrogative and the following as a declarative ignores the parallelism suggested by the dual usage of āplā. Second, the syntax commonly found in negative interrogatives is not that of the problem sentence. Negative interrogatives in Syriac typically begin with
the negating particle lā, often followed immediately by the interjectory particle hā.\textsuperscript{559} In this case, however, the sentence begins with the interjection hā, and lā stands later in the sentence immediately before the verb. This, as noted above, is standard syntax in declarative sentences (in which case hā simply adds emphasis to the subject, ḥānpē).

If these linguistic factors make the reading of a negative interrogative problematic, other aspects favor it. Primarily, its sense (“ḥānpē let men divorce wives”) fits much better with that of the overall passage and the parallel final sentence (“marriages in ḥānpē courts may be dissolved”). If we take this reading to be correct, it also indicates that the ḥānpē in question are Muslims, since they give men free reign to divorce wives. This accords with the expectation that by the late eighth century Christians would have been more likely to be going to Muslim than Zoroastrian courts. Additionally, we should remember that Īšō‘bōkt’s law book is a Syriac translation of a Middle Persian original, which could conceivably account for the syntactical confusion. Finally, the later East Syrian tradition preferred the sense suggested by the negative interrogative reading. Ibn al-Ṭayyib’s Arabic paraphrase reads unambiguously as follows:

If a believer betroths a woman without the mediation of priests, but [does so] between the two of them [alone] or through the mediation of the heathens (al-ḥunafā’), and then marries her, but afterwards does not prefer [to remain married], we do not hold him [to the marriage. This is] because he was not married through a lawful agreement (‘alā `aqd al-nāmūs) and [because] the heathens allow him that [i.e., they allow divorce] (wa-l-ḥunafā’ yubihūnahu dhālik).\textsuperscript{560}

Ibn al-Ṭayyib’s translation admits of a few possibilities. Perhaps he was working off of a Syriac text of Īšō‘bōkt’s different from the one we have that unambiguously supported

\textsuperscript{559} See item i. of the entry for hā in Sokoloff, Syriac Lexicon, 327. For an example of this standard usage see Matthew 24:2: lā hā ḥāzēn a(n)tōn hālēn kulēn, “Do you not see all these things?” For further examples of negative interrogatives beginning with lā (but lacking hā), see Nöldeke, Compendious Syriac Grammar, 266, §328, item G.

\textsuperscript{560} §9, Fiqh 1 (text): 166.
this reading. Perhaps he had the same text as we do and could only make sense of it by reading the problem sentence as a negative interrogative and rendering it as the straightforward declarative found here. If that was the case, it remains possible that Īšō‘bōkt’s text did in fact denote Zoroastrian hanpē who limit divorce, but that that possibility was obscure for Ibn al-Ṭayyib in the eleventh century; as a result, he read the passage in terms of Muslim hanpē who allow easy divorce. If we trust Ibn al-Ṭayyib’s judgment (which of course is much closer temporally than our own), however, his *Fiqh al-naṣrāniyya* supports the negative interrogative reading of the problem sentence.

Ultimately, I do not find the evidence conclusive enough to decide on either reading. Therefore, the surest sense to take from Īšō‘bōkt’s ruling §III.i.9 is that he knew some Christians to contract marriages in non-Christian courts of some kind, and because they did so it was easier to dissolve those marriages than ecclesiastically overseen ones.
Conclusions to Part II

In Part II, we examined how East Syrian bishops of the early `Abbāsid period used law to regulate marital institutions and practices common in the medieval Middle East in distinctively Christian terms. By expanding their communal tradition of family law and inscribing it in new, extensive legal texts, Īšōʾbōkt, Timothy, and Īšōʾbarsūn sought to define standards for social praxis particular to Christians that would mark lay believers off from other religious communities. Even as they did so, however, their efforts were informed in a variety of ways by the imperatives and non-Christian traditions of the wider `Abbāsid world in which they were necessarily embedded. In defining the particular legal mechanisms associated with the creation of marriage bonds, the bishops adopted into East Syrian law institutions common to the region’s many legal cultures. In legislating against polygynous practices, they responded to social environments in which Christians identified with the mores and took on the social trappings of the imperial Muslim elite. And in their dispute over cousin marriage and their differing approaches to the problem of absent husbands, the bishops played out their own East Syrian version of legal discourses characteristic more broadly of Islamic law and early `Abbāsid intellectual culture – discourses that concerned especially the authoritative sources of legal norms and formalist standards of legal interpretation in scriptured religious traditions.

In Part III, we will follow this last theme – the convergences of Syriac Christian family law with other legal traditions of the Islamic world – into later centuries. Already in the eleventh century, Ibn al-Ṭayyib’s decision to call his Arabic translation of the East Syrian legal heritage the “fiqh” of Christianity signals that Middle Eastern Christians
were coming to conceive their communal legal traditions partly in terms of Islamic models. In this vein, our primary concern in the following two chapters will be to examine the manners in which Christian family law developed after the formative early ʿAbbāsid period in relation and in response to the positive content and normative perspectives of Islamic law. In doing so, we will take up both West and East Syrian texts in order to see how the two traditions variously appropriated, accommodated, and eschewed Islamic legal norms. Our focus will fall on the major figures of West and East Syrian intellectual culture in the late thirteenth and early fourteenth centuries, Bar Hebraeus and ʿAbdīšōʿ bar Brīkā, both of whose legal writings have been recognized since the late medieval period as definitive standards for their respective communities. In particular, we will examine how and why West Syrian law, in its cumulative form of Bar Hebraeus’ *Nomocanon*, came to borrow from and extensively mirror the family law of the Shāfīʿī *madhhab*, while East Syrian law consolidated as a tradition that largely – though not exclusively – eschewed direct appropriation from the hegemonic and highly developed traditions of Islamic family law.
Part III: Syriac Christian Family Law and Islamic Legal Traditions

Chapter Seven

Bar Hebraeus, al-Ghazālī, and the West Syrian Adoption of Islamic Family Law

In this chapter, we will examine the treatment of the law of marriage in the *Nomocanon*, the legal compendium of the major thirteenth-century West Syrian writer Bar Hebraeus. Since the publication of an important article by Carlo Nallino in 1923, it has been well known that Bar Hebraeus relied heavily on the legal works of the Muslim scholar Abū Ḥāmid al-Ghazālī (d. 1111) in composing his legal treatise. Further studies of the *Nomocanon*, however, have been few and far between. In this chapter we will focus on the *Nomocanon’s* treatment of marriage law in the interest of examining the textual strategies by which Bar Hebraeus appropriated Islamic legal and ethical norms, combined them with the materials of his own tradition, and presented the resulting hybrid as authoritative for West Syrian Christians. Furthermore, we will consider Bar Hebraeus’ practice within the broader contexts of the intellectual history of the Middle East and the traditions of Middle Eastern Christian family law – and see what it tells us about the ultimate accommodation of a specifically Christian tradition to the norms of Islamic law.

*Part 1: Introductory Matters*

*West Syrian Family Law from the Ninth Century to Bar Hebraeus*

Like many of Bar Hebraeus’ works, the *Nomocanon* stands as a kind of summation of everything that had come before it in West Syrian tradition. It was
composed as a comprehensive legal compendium, and indeed it came to be regarded as authoritative by the West Syrians; no work comparable to it was composed subsequently in the pre-modern period. But before taking up the Nomocanon itself, we need to have a sense of just what that West Syrian family law tradition looked like in the centuries before Bar Hebraeus’ floruit.

In chapter one, we saw that a series of West Syrian patriarchal synods held in the eighth and ninth centuries laid down a body of foundational regulations in the area of family law. Though the West Syrian bishops involved in producing this legislation did not treat the subject in the same depth as their East Syrian contemporaries, their activities nevertheless testified to an interest in consolidating a specifically West Syrian tradition of communal law just as other religious communities in the Middle East – including East Syrians and Muslims – were doing something very similar. The family law canons of this series of synods treated especially clerical marriage, consanguine and affine relationships that impede marriage, interreligious relationships, the betrothal ceremony, marriage gifts, and penalties for adultery.

After the patriarch Dionysius II’s synod of 896, however, the following centuries saw relatively less production in the realm of family law on the part of West Syrian bishops. We know of a number of synods whose canons do not survive, but it is doubtful that that legislation – which tended to be of a fairly general nature – added a great deal of particularly new or detailed material to the corpus of West Syrian family law. Of the sources that do survive, only a few – the Kitāb al-murshid of Yahyā ibn Jarīr (fl. eleventh century), the synod of 1153 of metropolitan Yōḥannān of Mardē (modern

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562 E.g., the synods of 1064, 1166, 1169, and 1174 that we hear of in chronicles. See Kaufhold, “Sources,” 246.
Mardin), and the penitential canons of metropolitan Dionysius bar Ṣalībī (d. 1171) of Āmid (modern Diyarbakır) – treat family law.\(^{563}\) None are systematic treatises or law books of the kind that we find among the East Syrians.

There is, however, one significant exception to the West Syrians’ fairly limited treatments of family law in this period. This is a tract on the law of succession that circulated in several recensions and is essentially a Syriac translation of provisions of Islamic inheritance law.\(^{564}\) It is certainly the most extensive work of West Syrian family law before Bar Hebraeus. Though we have no real evidence for its origins or the use to which it was put in social or judicial settings, this text is notable in demonstrating that some West Syrian ecclesiastics from before Bar Hebraeus’ time had already begun to turn to the resources of Islamic law to flesh out the legal traditions of their own community.

**Bar Hebraeus, the Thirteenth Century, and the Nomocanon**

The shape of West Syrian family law thus sees a burst of synodal legislation in the early ‘Abbāsid period and much less production in the following several centuries, with the incorporation of Islamic inheritance law into the West Syrian textual corpus a

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\(^{563}\) On Yaḥyā’s work see Kaufhold, “Sources,” 254 and Graf, *Geschichte 2*: 259-62. The *Murshid* is properly a theological treatise; the section that treats lay marriage has been published in Emanuel Aydin, *Die Ehe bei den Syrisch-Orthodoxen (die Suryoye)* (Vienna, 1995), 191-230. Of Yōḥannān’s synod, canons §§26, 28, 29, and 30 offer regulations on betrothal, the wedding banquet, and clerical marriage. For the text see *SWST 2* (text): 247-50. On Dionysius’ canons see Kaufhold, “Sources,” 250 and Vööbus, *Kanonessammlungen 2*: 405-439. This text remains unedited. The first 26 canons prescribe penitential punishments for a variety of sexual transgressions; see MS British Library Oriental 4403, folios 160a-164b.

\(^{564}\) The attribution of this work is unclear, but the title of at least one version notes that the text is “according to the law of the Arabs” (*ak nāmōsā d-tayyāyē*). See *SWST 2* (text): 64-91. On the text see Kaufhold, “Sources,” 253-54 and Kaufhold, *Syrische Texte zum islamischen Recht.*
singular and noteworthy exception. This lack of much specific interest in the field of law on the part of West Syrian bishops changed, however, with the *Kitābā d-huddāyē*, commonly called the *Nomocanon*, of the thirteenth-century polymath Bar Hebraeus.\(^565\)

Bar Hebraeus is something of a towering figure in the historiography of Syriac Christianity, and he is also more broadly known in the intellectual history of the pre-Ottoman Middle East.\(^566\) His renown rests principally on the sheer breadth of his intellectual endeavors, which ranged into almost every discipline of his contemporary intellectual culture, and on his engagement with Islamic texts and traditions. Gregorios Bar Ṭibrī (known in Arabic as Abū ʿl-Faraj Ibn al-ʿIbrī and in Latinized form as Bar Hebraeus) was born in Melitene in the frontier region of northern Mesopotamia. At the time this area was one of two West Syrian population centers in the Middle East (the other being central Iraq, especially the city of Tikrīt). Bar Hebraeus spent his life traversing the shifting political boundaries of the thirteenth-century Middle East, living at various times under the Seljuqs of Rūm, Crusaders, Ayyūbids, and finally the Mongols. He was ordained a bishop in 1246 and subsequently became the West Syrian Maphrian from 1264 until his death, in which capacity he was the chief prelate of his church’s eastern dioceses, with jurisdiction principally over territories in the Jazīra, Iraq, and Iran.\(^567\)

Bar Hebraeus is often included in a trend of literary production that some scholars have taken to calling the “Syriac Renaissance,” by which they mean a period between the eleventh and early fourteenth centuries that saw a general flourishing of Syriac literary

\(^{565}\) Published as *Nomocanon/Kitābā d-huddāyē*, ed. Paulus Bedjan (Leipzig: Otto Harrassowitz, 1898).


\(^{567}\) For an overview of Bar Hebraeus’ life, see Takahashi, *Bio-Bibliography*, 1-57.
production in a variety of genres. To whatever degree we find this term useful in situating Bar Hebraeus historically, his activities were in many respects quite singular. His body of work is marked, in particular, by a kind of “encyclopedism”: that is, a concern to compile comprehensively and epitomize the relevant knowledge on a given subject. So, for example, his Hewât ĕkmêtâ (Cream of Wisdom) is a compendium of Aristotelian philosophy, while his chronicles are universal ones covering both political and ecclesiastical history. From this perspective, Bar Hebraeus’ intellectual career was marked broadly by a concern to bring all the sciences and disciplines of his intellectual world into Syriac literature in a comprehensive and systematic fashion.

A second striking aspect of Bar Hebraeus’ body of work is the degree to which he engaged with and drew from major Arabic and Persian texts of Islamic tradition. From a certain perspective, this is not altogether surprising. Aristotelian philosophy, for example, was known in the Middle East of Bar Hebraeus’ time mainly in the form of Arabic falsafa, and so it is not so incongruous that a Christian writer like Bar Hebraeus based his Cream of Wisdom on the writings of Ibn Sînâ and Naṣîr al-Dîn al-Ṭūsî. But what has stood out to scholars more is Bar Hebraeus’ use of sources more explicitly “Islamic” than falsafa, perhaps most famously Abû Ḥâmid al-Ghazâlî’s Iḥyâ’ ‘ulûm al-dîn, on which Bar Hebraeus modeled his Ethicon.

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568 For an overview of the period and the historiography and an appraisal of the term as a heuristic descriptor, see Herman Teule, “The Syriac Renaissance,” in Teule et al, eds., The Syriac Renaissance (Louvain: Peeters, 2010), 1-30.
569 On Bar Hebraeus’ efforts “to make a systematic presentation of all branches of knowledge in vogue at the time,” see Takahashi, Bio-Bibliography, 99-104 (quote on p. 100).
570 See Takahashi, Bio-Bibliography, 96-99.
571 A number of studies have been devoted to the relationship between the Ethicon and the Iḥyâ’. See my forthcoming “Al-Ghazâlî, Bar Hebraeus, and the ‘Good Wife,’” JAOS.
Bar Hebraeus’ *Nomocanon* fits squarely within these two trends: encyclopedism and engagement with Islamic sources. Regarding the former, the *Nomocanon* is a legal compendium divided into forty chapters meant to cover the entire spectrum of ecclesiastical and civil law. It is the first (and, in the pre-modern period, effectively the last) systematically arranged compendium of its kind in West Syrian tradition, and it is far and away that tradition’s most extensive legal work. As we have noted, however, West Syrian civil law (including family law, commercial law, etc.) was not a tradition that boasted of a wide range of authoritative texts and source materials. Rather, the sources of many of the provisions in the *Nomocanon*’s chapters on civil law were the legal works of Ghazālī.

**The Nomocanon and Islamic Law: Historiographical Perspectives**

The *Nomocanon*’s reliance on Ghazālī was first established in an article published by the Italian legal scholar and orientalist Carlo Alfonso Nallino in 1923.\(^{572}\) In this important article, Nallino compared the *Nomocanon*’s books on property law, criminal law, and judicial procedure to the corresponding books in Ghazālī’s *al-Wajīz*, a widely read handbook of Shāfiʿī *fiqh*, and concluded that the civil law chapters of the *Nomocanon* were based almost entirely on Ghazālī’s text. Nallino also examined the *Nomocanon*’s chapters on marriage and inheritance law and found a number of obvious similarities to Islamic law, mainly of the Shāfiʿī *madhhab* but sometimes the Ḥanafī as well. In some cases (e.g., the bride’s guardian, the minimum amount of a marriage gift),

Nallino suggested that the similarities reflected the accommodation of social practice among West Syrians to Islamic norms. In other cases (e.g., calculating an appropriate marriage gift, conduct at the wedding ceremony), Nallino determined that the close textual correspondence between the Nomocanon and the Wajīz indicated that Bar Hebraeus had translated passages more or less directly from the latter work. Finally, Nallino concluded from the Nomocanon’s close reliance on Ghazālī that the Nomocanon was largely a “literary exercise” in compiling a comprehensive legal code. It should not be interpreted as representing any practical law administered by the West Syrian church during or prior to Bar Hebraeus’ life.

Nallino’s demonstration of the Nomocanon’s reliance on Ghazālī was wholly convincing, and his article remained the only study of the Nomocanon’s relationship to Islamic law for more than eighty years. When Nallino wrote, however, several sources were unavailable to him that might have altered his conclusions somewhat. First of all, the West Syrian synodal legislation later published in Vööbus’ The Synodicon in the West Syrian Tradition was entirely unknown to European scholars of Nallino’s time; other than the sources Bar Hebraeus cites by name himself, Nallino knew the Syro-Roman Law Book as one of the only non-Islamic legal texts of which Bar Hebraeus made use. Second, Ghazālī in fact composed four legal works, of which only the Wajīz had been published when Nallino wrote. Ghazālī’s most extensive legal text is al-Basīṭ (still

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573 See “Diritto musulmano,” 231-35.
575 In this respect, Nallino’s article was written partly as a refutation of an earlier claim by I. Guidi that the Nomocanon represented a “Syriac national law.” Though he debunked this opinion, Nallino was writing at a time before the critical deconstruction of nationalist and primordialist historical narratives; he did not question the notion that medieval West Syrian communities constituted a “Syriac nation” that, by virtue of being a nation, might have a law intrinsically its own.
unpublished), an abridgment of his teacher Imām al-Ḥaramayn al-Juwaynī’s Nihāyat al-
maṭlab fī dirāyat al-madhhab; he subsequently composed two further abridgments of the
Basīṭ, al-Wasīṭ (now published) and al-Wajīz (Ghazālī’s fourth legal work, al-Khulāṣa, is
an abridgment of Abū Ibrāhīm al-Muzanī’s Mukhtasar).576 The Wajīz, therefore, is a kind
of second-order abridgment of Ghazālī’s original fiqh composition. Because of this,
Nallino recognized the possibility that Bar Hebraeus might in fact have based at least part
of the Nomocanon on one of Ghazālī’s longer works, and suggested that some passages
in the Nomocanon not taken from the Wajīz might be found in the Wasīṭ or the Basīṭ.577

Nallino’s article remained the only study of the Nomocanon’s relationship to
Islamic law until two dissertations completed in 2005.578 One, Youhanna Salamah’s
survey of the law of marriage and divorce in the Nomocanon, follows Nallino in
acknowledging the general influence of Islamic law in certain areas of Bar Hebraeus’
work. But surprisingly, it completely ignores and neglects to pursue Nallino’s more
significant finding that Bar Hebraeus’ direct reliance on Ghazālī’s texts accounts for
much of that influence.579 Father Hanna Khadra’s dissertation at the Pontifical Lateran
University, on the other hand, puts Nallino’s insights at the center of its approach. In the
version published by the University, the dissertation affirms that, as Nallino had

576 On the relationships between Ghazālī’s legal works, see Ṭāhir al-ʾAzīzm Maḥmūd al-Dīb’s
introduction to Imām al-Ḥaramayn al-Juwaynī, Nihāyat al-maṭlab fī dirāyat al-madhhab, ed. al-
577 “Diritto musulmano,” 275.
578 Aydin, Die Ehe surveys and describes much of the content of the Nomocanon’s chapter on
marriage in its study of West Syrian family law, but makes no mention of Nallino’s findings or
points of Islamic influence.
579 See Youhanna Salamah, “Séparation et divorce selon l’enseignement de Bar Hebraeus et
l’implication œcuménique” (PhD dissertation, Université Saint-Paul, 2005), 172-79.
suggested may be the case, Bar Hebraeus did in fact work off of Ghazālī’s longer texts.\footnote{580} Unfortunately, nowhere does the dissertation offer any detailed textual comparisons that actually substantiate this conclusion.\footnote{581} Moreover, the dissertation is unclear over whether Bar Hebraeus worked off of both the \emph{Wasīṭ} and the \emph{Basīṭ} or off of the \emph{Wasīṭ} alone, and even over whether Father Khadra actually examined the \emph{Basīṭ}. At times, the dissertation states that Ghazālī used both texts;\footnote{582} at others, it mentions only the \emph{Wasīṭ}.\footnote{583} At one point, it states that “… Bar Hebraeus based himself principally on Al-wasit [sic] and sometimes on Al-Basit (the more detailed), of which one can no longer find a trace as a fundamental and direct source of ‘Al Hidāyāt’ [the \emph{Nomocanon}].”\footnote{584} This would seem to suggest that Father Khadra indeed compared the texts; but if no trace of the \emph{Basīṭ} is to be found in the \emph{Nomocanon}, how can we conclude that Bar Hebraeus did indeed work off of that text? Father Khadra’s conclusions are thus suggestive and interesting, but it is unfortunate for the reader and researcher that the dissertation does not share the details of his comparison of the relevant texts.

\footnote{580}{See Hanna Khadra, “Le Nomocanon de Bar Hebraeus: son importance juridique entre les sources chrétiennes et les sources musulmanes” (PhD dissertation, Pontifical Lateran University, 2005), 9, 158, and 200.}
\footnote{581}{The dissertation does include a three-column chart that very generally shows which books of the \emph{Wasīṭ}, \emph{Wajīz}, and \emph{Nomocanon} correspond to each other, but gives no evidence for what the \emph{Wasīṭ} and the \emph{Nomocanon} contain that the \emph{Wajīz} does not. See Khadra, “Nomocanon de Bar Hebraeus,” 249-57.}
\footnote{582}{Khadra, “Nomocanon de Bar Hebraeus,” 9, 158, and 200.}
\footnote{583}{Khadra, “Nomocanon de Bar Hebraeus,” 8, 20-21, 249-57, 260-61, and 266.}
\footnote{584}{Khadra, “Nomocanon de Bar Hebraeus,” 9.}
The extant literature has thus established that Bar Hebraeus’ *Nomocanon* is heavily indebted to the legal works of Ghazâlî. From the perspective of family law, however, no studies have examined in a detailed manner the methods by which Bar Hebraeus crafted a Christian law out of Islamic sources and those of his own tradition, nor interpreted the fact of this creative appropriation in relation to the social institutions and intellectual cultures of Christians in the post-ʿAbbâsid Middle East. In the following section, we will undertake an analysis of the composition and structure of the *Nomocanon*’s chapter on marriage in relationship to Bar Hebraeus’ various textual sources, both those he cites explicitly and those he leaves unmentioned. This analysis will by necessity be both descriptive and detailed, but at its end we will be in a position to consider the important developments that the *Nomocanon* represents in the area of Christian legal traditions in the medieval Islamic Middle East. In fact, we will see that the *Nomocanon*’s chapter on marriage is based much more directly on Ghazâlî than Nallino suggested – and that Bar Hebraeus’ compilation of a specifically Christian tradition of marriage law entailed the wholesale adoption not only of a wide variety of Islamic legal institutions, doctrines, and opinions, but also of certain underlying conceptions of gender relations and social hierarchy.

Additionally, this analysis will allow us to offer some new insights on which of Ghazâlî’s legal texts Bar Hebraeus used in composing the *Nomocanon* (as this is not the main focus of the chapter, relevant observations will be found mainly in the footnotes). In preparing this chapter I compared the texts of the *Nomocanon*, the *Wasîṭ*, and the
Wajīz; Exceedingly few manuscripts of the Basīṭ are extant today. The most complete list is that compiled by ʿAbd al-Raḥmān Badawī, Muʿallaqāt al-Ghazālī (Cairo, 1961), 17-18. Badawī’s list includes twelve manuscripts, each of which ostensibly contains at least part of the Basīṭ. India Office Library 1766, Escorial Library 1125, Istanbul Fatih 1500, Istanbul Süleymaniye 629, Istanbul Kılıç Ali 327, Damietta ʿUmūmiyya 44, Damascus al-Maktaba al-Zāhiriyya fiqh shāfīʾī 174-77 (Badawī mistakenly lists only 174-76), and Cairo Dār al-Kutub al-Miṣriyya fiqh shāfīʾī 27 and 223. My investigations so far, however, have turned up a number of problems with this list. Of the manuscripts I have examined, Escorial 1125 (which is now shelfmarked as 1130) contains a number of Ghazālī’s tracts but certainly not the Basīṭ; and Süleymaniye 629 is actually a copy of the Wajīz. I have not examined India Office 1766, but according to the collection catalog this too is a copy of the Wajīz (see Otto Loth et al, A Catalogue of the Arabic Manuscripts in the Library of the India Office [London, 1877-1940], vol. 3: 296-97). Among confirmed copies of the Basīṭ, I have been unable to examine any that include the books on family law. They are absent from Badawī’s description of the contents of the Cairo manuscripts, which I confirmed when I examined Dār al-Kutub’s holdings in summer 2012. Fatih 1500 (held at the Süleymaniye Library) contains the first part (al-mujallad al-awwal) of the Basīṭ, including books on jahāra and salāt. Kılıç Ali 327 (also held at the Süleymaniye) is labeled part three (al-juzʾ al-thālith) and includes the books of ḥiṣab. According to the catalogue of the Damascus Zāhiriyya collection, its Basīṭ manuscripts contain parts one, four, five, and six of the text (their collection shelfmarks are 2111-14; Badawī gives the sectional shelfmarks, fiqh shāfīʾī 174-77). To judge by the catalogue description, part four in MS 2112/fiqh shāfīʾī 175 includes the books of nikāḥ through nafaqāt (see Yusuf al-ʾIshsh et al, Fiḥris makhtūtāt Dār al-Kutub al-Zāhiriyya [Damascus: Maṭbūʿ āt al-Majmaʿ al-ʿIlmī al-ʿArabī bi-Dimashq, 1947-83], vol. 3 [written by ʿAbd al-Ghānī al-Duqrʾ]: 36). Presuming that the order of the books of the Basīṭ is the same as that of the Wajīz and the Wajīz, this manuscript likely contains all the books (nikāḥ, ṣadāq, liʾān, riḍāʾ, nafaqāt) relevant to our study of Bar Hebraeus’ family law and its relationship to Ghazālī. Since spring 2011, however, the uprising against the regime of Bashar al-Asad and ensuing civil war in Syria have precluded the possibility of accessing this manuscript. Regarding the Damietta manuscript, I have been unable to examine it or to identify a catalogue of the ʿUmūmiyya collection.

586 Exceedingly few manuscripts of the Basīṭ are extant today. The most complete list is that compiled by ʿAbd al-Raḥmān Badawī, Muʿallaqāt al-Ghazālī (Cairo, 1961), 17-18. Badawī’s list includes twelve manuscripts, each of which ostensibly contains at least part of the Basīṭ. India Office Library 1766, Escorial Library 1125, Istanbul Fatih 1500, Istanbul Süleymaniye 629, Istanbul Kılıç Ali 327, Damietta ʿUmūmiyya 44, Damascus al-Maktaba al-Zāhiriyya fiqh shāfīʾī 174-77 (Badawī mistakenly lists only 174-76), and Cairo Dār al-Kutub al-Miṣriyya fiqh shāfīʾī 27 and 223. My investigations so far, however, have turned up a number of problems with this list. Of the manuscripts I have examined, Escorial 1125 (which is now shelfmarked as 1130) contains a number of Ghazālī’s tracts but certainly not the Basīṭ; and Süleymaniye 629 is actually a copy of the Wajīz. I have not examined India Office 1766, but according to the collection catalog this too is a copy of the Wajīz (see Otto Loth et al, A Catalogue of the Arabic Manuscripts in the Library of the India Office [London, 1877-1940], vol. 3: 296-97). Among confirmed copies of the Basīṭ, I have been unable to examine any that include the books on family law. They are absent from Badawī’s description of the contents of the Cairo manuscripts, which I confirmed when I examined Dār al-Kutub’s holdings in summer 2012. Fatih 1500 (held at the Süleymaniye Library) contains the first part (al-mujallad al-awwal) of the Basīṭ, including books on jahāra and salāt. Kılıç Ali 327 (also held at the Süleymaniye) is labeled part three (al-juzʾ al-thālith) and includes the books of ḥiṣab. According to the catalogue of the Damascus Zāhiriyya collection, its Basīṭ manuscripts contain parts one, four, five, and six of the text (their collection shelfmarks are 2111-14; Badawī gives the sectional shelfmarks, fiqh shāfīʾī 174-77). To judge by the catalogue description, part four in MS 2112/fiqh shāfīʾī 175 includes the books of nikāḥ through nafaqāt (see Yusuf al-ʾIshsh et al, Fiḥris makhtūtāt Dār al-Kutub al-Zāhiriyya [Damascus: Maṭbūʿ āt al-Majmaʿ al-ʿIlmī al-ʿArabī bi-Dimashq, 1947-83], vol. 3 [written by ʿAbd al-Ghānī al-Duqrʾ]: 36). Presuming that the order of the books of the Basīṭ is the same as that of the Wajīz and the Wajīz, this manuscript likely contains all the books (nikāḥ, ṣadāq, liʾān, riḍāʾ, nafaqāt) relevant to our study of Bar Hebraeus’ family law and its relationship to Ghazālī. Since spring 2011, however, the uprising against the regime of Bashar al-Asad and ensuing civil war in Syria have precluded the possibility of accessing this manuscript. Regarding the Damietta manuscript, I have been unable to examine it or to identify a catalogue of the ʿUmūmiyya collection.
The *Nomocanon’s* eighth chapter (of forty total) is devoted to the law of marriage. It is divided into six sections, each of which is then divided into a series of paragraphs on particular topics. Bar Hebraeus calls each paragraph a *huddāyā*, or “[piece of] guidance.”

Before we begin to survey each section individually, a few preliminary words are in order. Chapter 8’s Syriac title is *meṭṭol mkīrūtā*, literally “on betrothal.” It will be evident in what follows that the conception of marriage that Bar Hebraeus presents in this chapter is of the inchoate variety, similar to what we saw in East Syrian law in chapter three. That is, Bar Hebraeus distinguishes two stages in the formation of a marriage bond: the betrothal (*mkīrūtā* or *mkūrē*), which brings about most of the legal effects of marriage, and full union (*šawtāpūtā*). Though Bar Hebraeus presents *mkīrūtā* as the focus of chapter 8, in idiomatic English it is more appropriate to speak of his main concern as “marriage” — since *mkīrūtā* already carries much of the legal weight of that institution.

It is also worthwhile to clarify at the outset the state of some of Bar Hebraeus’ non-Ghazālian sources. Citations of the Syro-Roman Law Book occur frequently in the *Nomocanon*. That work has been transmitted in a large number of recensions; to judge by the numbering of the canons he cites, Bar Hebraeus evidently used a recension that was closely related to the second of two versions published in Vööbus’ *Synodicon*.

As such, references in the footnotes will be given first to that recension and then to the critical edition of the “original” Syro-Roman Law Book prepared by Selb and Kaufhold.

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587 On this point see *SRRB* 1: 54-56 and 99.
Regarding East Syrian sources, Kaufhold has shown that Bar Hebraeus made use of the late ninth-century Syriac systematic legal compendium of Gabriel of Baṣra. That work seems to have been Bar Hebraeus’ primary source for legal opinions and doctrines of East Syrian provenance, though it may not have been his only one. Unfortunately, Gabriel’s chapter on marriage has been lost, so we cannot check Bar Hebraeus’ references against it. The second half of Ibn al-Ṭayyib’s Fiqh al-naṣrāniyya, however, is essentially an Arabic translation and abbreviation of Gabriel. Therefore, we will refer to Ibn al-Ṭayyib when Bar Hebraeus gives passages that appear to be drawn from Gabriel.

With these points noted, let us move on to examine the Nomocanon itself.

Section 1: Preliminaries

The Nomocanon’s reliance on Ghazālī in terms of both structure and material is evident from the beginning of its chapter on marriage. In Ghazālī’s legal texts, the kitāb al-nikāḥ is made up of five divisions (aqṣām). The first is “on preliminaries” (fi  ‘l-muqaddimāt), and Bar Hebraeus chooses a parallel title for the Nomocanon’s first section: “on matters prior to lawful betrothal” (meṭṭol  ‘ellātā d-qaḍmān la-mkīrūtā nāmāsāyta). As we will see, it indeed draws mainly from Ghazālī’s kitāb al-nikāḥ’s first division (as well as partly from the following division on the conditions of marriage).

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588 See Kaufhold, Rechtssammlung, 51-55.
589 Nomocanon, 117; Wasīṭ 5: 6; and Wajīz 2: 3.
Ghazâlî’s first preliminary matter (muqaddima) is God’s stipulations concerning marriage particular to Muḥammad (khaṣāʾīṣ rasūl Allāh); there is, of course, no corresponding section in the Nomocanon. The second, however, establishes the basic permissibility of marriage; Bar Hebraeus follows that model for his introductory paragraph to the Nomocanon’s first section.⁵⁹⁰ Here, the two authors present somewhat congruent arguments that, however, have their own pedigrees in their respective traditions. According to Ghazâlî, for “anyone who does not desire sex, withdrawal [from worldly commitments] for worship is better” than marriage.⁵⁹¹ Bar Hebraeus maintains the standard Christian line that celibacy is preferable to marriage. However, he makes reference to a host of scriptural passages and Christian canonical sources to affirm that “marriage is good and fitting for those who are conquered by bodily desire and mental passions (mezdkēn men reggat pagrā w-men ḥāʾshē ḥušbāyē).”⁵⁹² Bar Hebraeus thus does not appropriate this position directly from Ghazâlî, well grounded as it is in Christian tradition, but models the Nomocanon on Ghazâlî in making it his introductory paragraph.

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⁵⁹⁰ See Nomocanon, 117-18.
⁵⁹² Bar Hebraeus’ biblical citations are Hebrews 13:4 and 1 Corinthians 7:8-9. The canons cited are §5 of the West Syrian series of 81 pseudo-Apostolic canons and §1 and §4 of the synod of Gangra. For texts of these canons see SWST 1 (text): 59 and Schulthess, Syrischen Kanones, 55-56.
Qualities Desirable in a Bride

The following sections in both the Nomocanon (paragraph §2) and Ghazālī (continuing muqaddima 2) list qualities to be sought in brides; Bar Hebraeus takes Ghazālī as a model here.\(^{593}\) Ghazālī’s qualities are that a bride be of good lineage (ḥasība), a virgin (bikr), fertile (walūd), and not of close relation to the husband (ajnabiyya).\(^{594}\) Bar Hebraeus begins with quotations from biblical wisdom literature that warn one not to seek a wife solely for beauty, even if she is rich (Ben Sira 25:21a-b), but rather to “rejoice in the wife of your youth…” (Proverbs 5:18-19).\(^{595}\) However, Bar Hebraeus then follows Ghazālī by suggesting a bride who is a virgin (btūltā), fertile (men gensā d-yallādātā), and unrelated (d-lā ḥyānīn) to the groom. He adds that a woman who is chaste (hāy d-nakpā) is also desirable. Bar Hebraeus then supports these points with citations of Ben Sira 26:1a-b and the command to be fruitful and multiply (Genesis 1:28).

In this paragraph, then, we see one of Bar Hebraeus’ common editorial strategies. He adopts three of Ghazālī’s qualities desirable in a bride, adds a few more points of his own, and uses biblical citations to give authority to these provisions, which stem from an Islamic legal source, in his own Christian tradition.

\(^{593}\) See Nomocanon, 118.
\(^{594}\) Wasīṭ 5: 26-27 and Wajīz 2: 6 (with a slight difference in wording). The published edition of the Wasīṭ adds a fifth quality, piety (that the bride be ṣāliḥa and dhāt al-dīn), which is found in only one manuscript. I believe that this is likely a scribal interpolation taken from Ghazālī’s Iḥyāʾ ʿulūm al-dīn. The Iḥyāʾ, which Ghazālī wrote a good deal later than the Wasīṭ, includes a section on the qualities desirable in a bride in which piety features as the first quality in the list. In the Wasīṭ Ghazālī says very explicitly that there are four such qualities before listing them, so the inclusion of a fifth is obviously suspect. Some scribe, then, likely decided to amend the conspicuous absence of piety by filling it in from Ghazālī’s other writings. On the chronology of Ghazālī’s writings see George F. Hourani, “A Revised Chronology of Ghazālī’s Writings,” JAOS 104.2 (1984): 289-302. For the relevant section of the Iḥyāʾ, see Abū Ḥāmid al-Ghazālī, Iḥyāʾ ʿulūm al-dīn (Cairo: Muʾassasat al-Ḥalabī, 1967-68), vol. 2: 48-49.

\(^{595}\) All verse numberings of Syriac Ben Sira are those of Michael M. Winter, A Concordance to the Peshīṭta Version of Ben Sira (Leiden: Brill, 1976).
Seeing Prospective Brides

In paragraph §3, Bar Hebraeus continues to follow the order of Ghazālī’s texts by explicitly appropriating from the *kitāb al-nikāh*’s *muqaddima* 3 a fairly prominent *fiqh* doctrine for which Bar Hebraeus has no precedent in West Syrian tradition.\(^{596}\) This is that it is preferable (*mustahhabb* in Ghazālī, *tāb paqḥā* in Bar Hebraeus) for a groom to see his bride before they marry. Moreover, this paragraph is one of many that demonstrates Bar Hebraeus’ close textual reliance on Ghazālī, in that he includes a cluster of specific doctrines taken directly from the source text: the groom may only look at the bride’s face; her permission is not required to do so; men may look at other men and women at other women, except for private areas (Ghazālī ’awra, Bar Hebraeus *purṣāyā*);\(^{597}\) men may see women’s faces for the purpose of delivering testimony.\(^{598}\)

Other passages in paragraph §3 are the first indication in the *Nomocanon*’s chapter on marriage that Bar Hebraeus worked off of one of Ghazālī’s longer jurisprudential treatises. The *Nomocanon* and the *Wasīṭ*, but not the *Wajīz*, state that one should not look at one’s own genitals unless there is some need;\(^{599}\) that a male slave may see his mistress’ face;\(^{600}\) and that female slaves’ faces do not need to be covered.\(^{601}\) More tellingly, the *Wasīṭ* includes in its discussion of the point that men and women are

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\(^{596}\) See *Nomocanon*, 118-19.  
\(^{598}\) *Wasīṭ* 5: 37 and *Wajīz* 2: 7.  
\(^{599}\) *Wasīṭ* 5: 29. To do so is “reprehensible” (*yukrah*).  
\(^{600}\) *Wasīṭ* 5: 34.  
\(^{601}\) *Wasīṭ* 5: 35. Bar Hebraeus specifies that a female slave should not hide her face from her master (*men mārāḥ*), while Ghazālī says generally that it is permissible to see female slaves’ faces.
generally prohibited from looking at each other a statement that this applies as well for an effeminate (mukhannath), impotent (ʿinnīn), or old and decrepit man (al-shaykh al-himm). In other words, even those men who either do not feel sexual desire or are incapable of sexual activity still should not look at strange women, as a precaution (ḥasman li-l-bāb) against social discord (fitna).  

In the Nomocanon, Bar Hebraeus states that a man should never look at a strange woman “even if [he] is an old man or a eunuch” (w-āpen sābā nāš aw ēwnoksā). Bar Hebraeus justifies this with reference to the Gospel notion that any glance motivated by desire is adultery of the heart (Matthew 5:28), but given this paragraph’s general reliance on Ghazālī it is evident that he adopted this point from the Wasīṭ (or possibly the Basīṭ).  

As in paragraph §2, Bar Hebraeus also adds some Christian sources into the mix of doctrines that he has taken from Ghazālī. He cites a few sentences from the Didascalia of the Apostles and references 1 Corinthians 11:14-15 to the effect that men and women should cover themselves in the interest of modesty. And though he takes from Ghazālī the point that people of the same gender should not see each other’s private areas, he supports it with reference to the story of the drunken Noah and his good sons who cover their fathers’ nakedness (Genesis 9:20-24).

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602 Wasīṭ 5: 32-34.
603 The Wasīṭ actually includes an opinion that a “full” eunuch (mamsūḥ) lacking both penis and testicles may look at a strange women (see 5: 34), but this alone does not detract from the likelihood that Bar Hebraeus lifted the general prohibition on old and passionless men from that text.
Conditions for Marriageability

The *Nomocanon*’s paragraph §4 establishes the conditions that make a woman eligible to marry a particular man. ⁶⁰⁵ Here, Bar Hebraeus has moved on from Ghazālī’s division on preliminaries. Many of the conditions that he gives have precedents in West Syrian legal tradition, but others, as well as the overall organization of the section, are drawn from Ghazālī’s division “on the required elements and conditions [for a valid marriage]” (*fi ʾl-arkān wa-l-sharāʾiṭ*). ⁶⁰⁶ The first condition for both texts is that the bride not have concluded a marriage contract with another man (Bar Hebraeus adds a reference to Genesis 2:24). Bar Hebraeus’ second condition is that the betrothal ceremony not take place during a fasting period in which feasts are prohibited; there is no corresponding stipulation in Ghazālī. ⁶⁰⁷ The third, following Ghazālī, is that the bride not be in a waiting period that follows the end of a previous marriage (we will see later that Bar Hebraeus stipulates a waiting period different from the ʿidda of Islamic law). The fourth is that neither spouse be a slave. ⁶⁰⁸ The fifth is that there should be no relationship between bride and groom that impedes marriage, and here Bar Hebraeus gives a tripartite formulation patterned after Ghazālī’s in the *Wasīṭ* (but not in the *Wajīz*), with only the third element differing. For Ghazālī, individuals are unmarriageable because of relationship through common descent (*nasab*, i.e. consanguinity), fosterage by the same

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⁶⁰⁵ See *Nomocanon*, 119-20.
⁶⁰⁶ For Bar Hebraeus’ appropriations from Ghazālī in this paragraph, see *Wasīṭ* 5: 51-52 and *Wajīz* 5: 10.
⁶⁰⁷ Bar Hebraeus refers here to the synod of Laodicea, by which he means canon §52 that forbids marriages during Lent. See *SWST* 1 (text): 123.
⁶⁰⁸ Ghazālī, because he lists only the conditions that make the bride marriageable, specifies only that she not be a slave. Based on Quran 4:25, Islamic law allows free men to marry Muslim slaves only if they cannot afford to marry free women but fear committing sexual transgressions if they do not marry. See Spectorsky, *Women in Classical Islamic Law*, 27.
wet nurse (ridā’), or affinity as in-laws (muṣāhara). For Bar Hebraeus, the three types of kinship that prohibit marriage are those established by consanguinity (ḥyānūtā gensānāytā), wet-nurse fosterage (īneqtānāytā), and sponsorship for baptism or the wedding ceremony (šawšbīnāytā; see the discussion of section 3 for a further explanation).

Bar Hebraeus’ final four conditions making a bride eligible for marriage are not patterned after Ghazālī. These are that the bride not be a divorcée (with reference to the principle that whoever marries a divorcée commits adultery, Matthew 5:32 and Luke 16:18), not be younger than twelve, have no bodily defect, and not be of another confession (men ḫrānyay ʿubhā). Among the provisions that Bar Hebraeus adopts from Ghazālī, several have precedents in the legal texts of West Syrian tradition. Bar Hebraeus’ waiting period, for example, is stipulated in the Syro-Roman Law Book, and West Syrian patriarchs of earlier times had established degrees of blood relationship prohibiting marriage. But Bar Hebraeus makes no reference to those, and has rather taken the basic outline of his list of the conditions that establish a bride’s marriageability from Ghazālī’s fiqh.

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609 Wasīṭ 5: 51.
610 This conflicts with the minimum age stipulation of fourteen and fifteen years for brides in West Syrian synodal legislation of the ninth century. See canons §7 of the synod of Dionysius II (896) and §11 of the synod of Ignatius II (878) in SWST 2 (text): 56-57 and 60
611 Though not explicitly part of his list, Ghazālī does specify the religious affiliations that a marriageable bride cannot have, including being an apostate, a Magian, a zindīqa, or a Christian or Jew who has converted to one of those religions from the other or after the coming of Islam; see Wasīṭ 5: 51 and Wajīz 2:10. Bar Hebraeus discusses bodily defects and unlawful interconfessional marriages further in sections 5 and 3, respectively.
612 §14 in SRRB 2: 40.
613 E.g., §36 of the synod of Kyriakos (794), SWST 2 (text): 15.
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Section 2: On the Manner of Betrothal and Guardianship

The second section of the Nomocanon’s chapter on marriage treats the enactment of betrothal and the guardianship (quratorītā) of the bride. It is heavily dependent on the sections dealing with guardians (awliyāʾ, singular wali) in Ghazālī’s kitāb al-nikāḥ (as well as a few passages from the chapter on preliminaries). At first glance, this may appear surprising. Qurator is a calque of Greek kourator and Latin curator, the technical Roman legal term for the guardian charged with a fatherless female who has reached puberty but not legal majority.⁶¹⁴ The term appears frequently in the Syro-Roman Law Book, and in fact the Syriac churches had received a whole corpus of regulations of Roman provenance on guardianship of female family members from that very text. As we

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⁶¹⁴ See Eva Grubbs, Women and the Law, 23 and 44-45.
will see, however, Bar Hebraeus’ *quraṭor* has much more in common with the Islamic *wali* than the Roman *curator*.

**Betrothal Ceremony and Wedding Banquet**

Paragraph §1 describes the betrothal ceremony (*mkīrūtā*) and the wedding banquet that completes the marriage.\(^6\) Much of this is drawn from West Syrian legal tradition (and presumably custom, or Bar Hebraeus’ idea of ideal custom, as well) – for example, carrying out the ceremony in church, receiving the blessing of a priest, the giving of a ring and cross by groom to bride, the crowning of the spouses at the banquet, and the presence of sponsors of the marriage (i.e., a best man and maid of honor).\(^6\) Bar Hebraeus also references canons of the West Syrian patriarchs to the effect that sex between the couple before the wedding banquet is unlawful.\(^6\)

A few other points, however, are partly drawn from Ghazālī and adapted to Bar Hebraeus’ Christian context. First, Bar Hebraeus specifies that a valid betrothal requires a guardian (*quraṭor* or *mamkrānā*, “one who gives in betrothal”) and the presence of two witnesses (*sāhdē*). These, of course, are standard provisions of Islamic law (Bar Hebraeus adds that the presence of a priest and deacon is also required).\(^6\) Second, he asserts that

\(^6\) See *Nomocanon*, 120-22.

\(^6\) Compare, for example, canons §31 of the synod of Kyriakos, §15 of the synod of Yōḥannān III (846), §11 of the synod of Ignatius II, §7 of the synod of Dionysius II, and §28 of Yōḥannān of Mardē. See *SWST* 2 (text): 13-14, 41-42, 56-57, 60, and 248-49.

\(^6\) Bar Hebraeus attributes this to the patriarchs Kyriakos and Yōḥannān. By the former he refers to §32 of the synod of 794; see *SWST* 2 (text): 14. I have been unable to identify a canon of any patriarch Yōḥannān that states this same point.

\(^6\) We might add here that canon §31 of the synod of Kyriakos asserts the necessity of an orphaned bride having a *mamkrānā*; it also appears to mention having two men act as witnesses (*nashedʿ al pūmāḥ trēn gabrē*), though the text is unclear and may be corrupt. Whether or not he
one of the requirements for the completion of the betrothal is an exchange of formulas between the bride’s guardian and the groom. The former says, “I have betrothed so-and-so to you (amkret plānīt lāk), so-and-so, for a wife, according to apostolic canon and the law of Christ,” and the latter replies, “I have accepted (qabbitu) before God and His sanctified altar, and before these priests and witnesses.” In the Wasīṭ, Ghazālī specifies that the exchange between guardian and groom that seals the marriage contract should go as follows: “Praise be to God and prayer over the messenger of God, I have married so-and-so to you (zawwajtuka fulāna),” and “Praise be to God and prayer over the messenger of God, I have accepted (qabbitu).”\(^\text{619}\) In this case, Bar Hebraeus has drawn the basics of the exchange from Ghazālī: the point that it happens between guardian and groom is a specifically Islamic doctrine, and Bar Hebraeus’ expressions of giving and receiving (amkret plānīt lāk and qabbitu) are quite literal translations of Ghazālī’s Arabic (zawwajtuka fulāna and qabbitu). Additionally, we should note that the exact words that the guardian and groom exchange are found in the Wasīṭ but not the Wajīz; Bar Hebraeus’ translation is thus another indication that he worked off of Ghazālī’s longer legal texts.\(^\text{620}\)

Paragraph §2 discusses the restrictions on the betrothal ceremony for second, third, and fourth marriages of individuals who have been widowed or have lawfully left their first marriages.\(^\text{621}\) Bar Hebraeus’ theological tradition, going back to the Church

\(^{619}\) Wasīṭ 5: 42

\(^{620}\) Compare Wasīṭ 5: 42 and Wajīz 2: 7. Nallino noted the similarity between the provisions in this paragraph of the Nomocanon and Islamic law, and asserted that they must have been shaped under the influence of Muslim norms. He did not, however, have access to the Wasīṭ, and so did not identify Bar Hebraeus’ close textual reliance on Ghazālī. See “Diritto musulmano,” 231-33.

\(^{621}\) See Nomocanon, 122.
Fathers, tended to only fully approve of first marriages and to prescribe various penances to lay people who went into multiple consecutive marriages. Bar Hebraeus cites a number of canonical and patristic sources of these sorts in this paragraph; it bears no relation to Islamic law, which puts no restrictions of any kind on the number of sequential marriages someone might contract.

Witnesses

Paragraph §3 affirms the necessity of witnesses and the bride’s guardian to contract a betrothal, and follows with a discussion of the conditions that witnesses must meet to be acceptable. Here again we see Bar Hebraeus draw from Ghazālī. As we have noted, Bar Hebraeus’ stipulation of the requirement of two witnesses and the guardian is a standard point of Islamic law. It is also standard that the witnesses be “just” or “trustworthy [in giving testimony],” Arabic ʿadl, a legal term that Bar Hebraeus translates as Syriac kēnā. In the Wasīṭ, Ghazālī gives a list of qualities that make an individual unable to be a witness: one cannot be “young [i.e., not having reached legal

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622 The sources cited are canon §3 of the synod of Neocaesarea, §1 of Laodicea, a canon from the canonical letters of Basil the Great to Amphilochius, and the 37th Oration of Gregory Nazianzen (Bar Hebraeus also makes brief references to Rebecca and Isaac and to Tamar and Yehuda as biblical couples betrothed in good fashion). For the synodal canons, see SWST 1 (text): 101 and 115-16 (in this transmission the latter is marked as canon §2). Basil’s canon is §4 from his letter 188 to Amphilochius (according to the standard numbering of the Greek editions of Basil’s epistolary corpus); see Dilēh kad dilēh lwāt Ampilokiyos ḫālēh d-ṭaw(hy) (h)wā episdqopā d-Iqonyon ([A letter] of the same [Basil] to his Maternal Uncle Amphilochius, Bishop of Iconium), MS Mardin CFM 310, folios 113b-114a. Bar Hebraeus’ text is slightly different from that found in this manuscript. Regarding Gregory of Nazianzen (to whom Bar Hebraeus refers only as teʾologos, “the Theologian”), Bar Hebraeus gives the following quotation: “First marriage is lawful; the second is divorce; the third transgresses the law.” He attributes this passage to the Church Father’s 47th Oration; it is found in the 37th according to the standard numbering of the Greek editions. Neither of the two Syriac translations of this particular Oration has been published.

623 See Nomocanon, 122-23.
majority], non-Muslim, a slave, deaf, or licentious” \( (\text{al-}\text{ṣabī wa-l-dhimmī wa-l-raqīq wa-l-aṣamm wa-l-fāsiq}) \). He adds that there is difference of opinion on whether the blind can stand witness.\(^{624}\) Bar Hebraeus largely reproduces Ghazālī’s list: he says witnesses “should be neither young children, nor of a different confession, nor slaves, nor sorcerers, nor blind, nor licentious (\( šrīḥē \)).” Though he changes deaf to blind and adds sorcerers (of whom West Syrian legal tradition is full of condemnations), Bar Hebraeus has evidently adopted this list from Ghazālī. Additionally, we have another interesting example of the West Syrian writer coining a Syriac version of an Islamic legal term. In fiqh usage, \( fāsiq \) denotes someone who acts in contravention to \( \text{sharīʿa} \) norms to the degree that he loses the status of probity (\( \text{ʿadāla} \)) required of witnesses. As we have seen, Bar Hebraeus uses Syriac \( kēnā \) to denote the just witness, and here uses \( šrīḥā \) for \( fāsiq \).

Bar Hebraeus adds in this paragraph that the witnesses should not be relatives of the bride or groom, which may also be inspired by Ghazālī but is less evidently so; Ghazālī gives four opinions in the \( \text{Wasīṭ} \) on whether the fathers or sons of the spouses can act as witnesses (in the \( \text{Wajīz} \) he asserts definitively that they cannot).\(^{625}\) Bar Hebraeus does not specify fathers or sons, but says only that witnesses should be unrelated to the bride and groom.\(^{626}\)

Finally, we may note a few more indications from this paragraph that Bar Hebraeus used the \( \text{Wasīṭ} \) (or the \( \text{Basīṭ} \)) as his textual model. First, the list of individuals who cannot act as witnesses discussed above appears in the \( \text{Wasīṭ} \) but not the \( \text{Wajīz} \).

\(^{624}\) \( \text{Wasīṭ} \) 5: 53-55.
\(^{625}\) \( \text{Wasīṭ} \) 5: 55 and \( \text{Wajīz} \) 2: 10.
\(^{626}\) The paragraph contains a few other considerations of Bar Hebraeus’ unrelated to Islamic law. He specifies that if a priest officiates for his daughter’s betrothal and acts as her guardian, he cannot be a witness. If a priest officiates a betrothal without a guardian for the bride, he should be divested of his office.
Second, Bar Hebraeus asserts in this section that witnesses may not be women, “unless perhaps [the witnesses are] one man and two women, plus a priest.” Now, the question of the circumstances in which two women may act as witnesses in the place of one man is a familiar one in Islamic law, and as it happens Ghazālī takes it up in relation to validating marriages in the *Wasīṭ* but not in the *Wajīz*. In the opening to his discussion of witnesses in the former, he states that “[a] marriage is not contracted without the presence of two just [witnesses]; and it is not contracted through the presence of a man and two women, as opposed to (*khilāfan lī-*) [the opinion of] Abū Ḥanīfā.”⁶²⁷ Ghazālī here gives the standard Shāfiʿī position, but also mentions the contradictory Ḥanafī opinion that two women and one man may stand witness to the contracting of a marriage. In the *Wajīz*, by contrast, Ghazālī says only that “the presence of two just [witnesses] (ʿadlayn)” is required and does not mention the Ḥanafī opinion.⁶²⁸ Because Bar Hebraeus mentions the Ḥanafī position (unattributed, of course) in the *Nomocanon*, this difference between the *Wasīṭ* and the *Wajīz* suggests that Bar Hebraeus worked off of the former.

### Guardianship

Paragraphs §4 and §5 discuss the prerogatives and duties of the bride’s guardian and are once again heavily dependent on Ghazālī, especially the chapters “on the causes of guardianship” (*fī asbāb al-wilāya*) and “on the order of guardians” (*fī tartīb al-awliyāʾ*) in the *Wasīṭ*. Bar Hebraeus begins paragraph §4 with a list in order of precedence of the males who may serve as a bride’s guardian: first her father, then

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⁶²⁷ *Wasīṭ* 5: 53.
⁶²⁸ *Wajīz* 2: 10.
(paternal) grandfather, then brother, then brother’s son, then paternal uncle, then paternal uncle’s son, then maternal grandfather (qaṣṣīṣā men al-emmā), then maternal uncle, then maternal uncle’s son, then the local bishop.\footnote{Ghazālī does not consider cognate male relatives for the position of guardian, but Bar Hebraeus appears to have adopted his ordering of agnate relatives: Ghazālī also gives father, grandfather, brother, brother’s son, paternal uncle, and paternal uncle’s son (which, he notes, is the order in which male agnates receive inheritance with certain exceptions).} The bishop in Bar Hebraeus’ list is a stand-in for the judge or local authority who in Islamic law acts as a bride’s guardian in the absence of any suitable relatives.\footnote{The owner who frees a slave woman (Ghazālī muʿtiq, Bar Hebraeus ṣīrānā) acts as her guardian, and then his male agnates if he is not available. In Ghazālī the order of priority of those agnates differs from the case of a free woman’s relatives, and Bar Hebraeus reproduces that difference: the emancipator’s son has priority over the emancipator’s father. A woman’s half-brother through her father has an equal claim to guardianship as her full.}

Following this list, Bar Hebraeus adds a whole host of doctrinal points drawn from Ghazālī’s Shāfi‘ī law. A man cannot act as guardian for his mother.\footnote{Interestingly, Ghazālī only gives this list explicitly in the Wajīz; in the Wasiṭ, he discusses the father and grandfather but then states that the order of guardianship follows that of inheritance without giving an actual list. It is possible, of course, that Bar Hebraeus determined the order of guardianship based on this statement in the Wasiṭ, but it seems more likely that he had Ghazālī’s actual list in front of him. Did Bar Hebraeus work off of the Wajīz in this case? Or is this list to be found in the Wasiṭ? A firmer answer will have to wait until a close comparison of the Nomocanon and the Basīṭ can be carried out. For the passages in question, see Wajīz 2: 11 and Wasiṭ 5: 68.}

\footnote{See Wasiṭ 5: 67 and Wajīz 2: 11.} The owner who frees a slave woman (Ghazālī muʿtiq, Bar Hebraeus ṣīrānā) acts as her guardian, and then his male agnates if he is not available. In Ghazālī the order of priority of those agnates differs from the case of a free woman’s relatives, and Bar Hebraeus reproduces that difference: the emancipator’s son has priority over the emancipator’s father.\footnote{See the discussion in Wasiṭ 5: 69-70 and Wajīz 2: 11. On the priority of the muʿtiq’s son over his father, see Wasiṭ 5: 69: ibn al-muʿtiq muqaddam ‘alā abīh. Bar Hebraeus departs from Ghazālī slightly in giving priority over the former owner’s father to his grandson, so the overall order according to Bar Hebraeus is as follows: former owner, his son, his son’s son, then his father.}
brother (zaddiqā in Bar Hebraeus).\textsuperscript{634} Similarly, her father’s paternal uncle has an equal claim to that of an uncle of both her mother and father (Ghazālī makes this point in the Wasīṭ but not in the Wajīz).\textsuperscript{635}

Next, Bar Hebraeus closely reproduces Ghazālī’s Shāfi‘ī doctrines on guardians’ powers of compulsion over brides. Islamic law makes a basic distinction between a virgin (bikr) bride and one who has been previously married (thayyīb). According to the Shāfi‘īs a father or grandfather acting as guardian may compel a virgin bride to marry a particular man regardless of her wishes, even if she has reached the age of legal maturity and competence (bulūgh); this stands in contrast to a Ḥanafī opinion that not even a father or grandfather may compel a virgin bride who has come of age.\textsuperscript{636} Bar Hebraeus similarly asserts that a father may marry off his virgin (btūltā) daughter even if she does not wish it, though he makes no specifications about her age (he also does not mention her grandfather specifically, although Syriac ab can be taken to include the father and all his

\textsuperscript{634} Wasīṭ 5: 69 and Wajīz 2: 11. Ghazālī specifies that this is one of two possible opinions.

\textsuperscript{635} Wasīṭ 5: 69. This is my best interpretation of a passage in Ghazālī that is not entirely clear. According to Ghazālī, the issue at hand concerns “the paternal uncle through [both] the father and mother and the paternal uncle through [only] the father” (al-‘amm min al-ab wa-l-umm wa-l-‘amm min al-ab). We would expect ‘amm in this passage to indicate the bride’s father’s brother, but that cannot be; if it were, he would also be the bride’s mother’s brother, making her father and mother siblings – and unmarriageable to each other according Islamic law. The most sensible reading would thus seem to take ‘amm here to refer to the bride’s great-uncle, an uncle to both her mother and father (who are therefore cousins). Bar Hebraeus does not seem to have given this matter much attention, but simply to have put a brief translation into the Nomocanon: “A brother through [only] the father, and a paternal uncle (dādā), are equal (šwēn) to full (zaddiqē) brothers and paternal uncles.” Interestingly, if Bar Hebraeus also intends by dādā the great-uncle as I have interpreted Ghazālī, the bride’s parents would still be in an unlawful union if they indeed shared the same uncle: Bar Hebraeus prohibits marriages between first cousins. See Nomocanon, 126.

\textsuperscript{636} Wasīṭ 5: 63 and Wajīz 5: 11.
direct paternal ascendants).\textsuperscript{637} Bar Hebraeus Christianizes this \textit{fiqh} doctrine with a citation of 1 Corinthians 7:36.

The Shāfīʿīs further assert (again in partial contrast to the Ḥanafīs) that a father or grandfather cannot compel a previously married woman of any age to marry;\textsuperscript{638} Bar Hebraeus specifies the same, and coins a Syriac translation (\textit{mzawwagtā}) of the technical Arabic term for a previously married woman (\textit{thayyib}) in the process. He follows with more \textit{fiqh} doctrines taken from Ghazālī. If a virgin who has come of age (Syriac \textit{mṭā zabnāh}) wishes to marry, her guardian cannot prevent her; if he seeks to, a bishop (in Ghazālī a political authority, \textit{sulṭān}) shall act as her guardian in his stead.\textsuperscript{639} If bride and guardian desire different grooms, the bride’s choice takes precedence as long as he is of a suitable social standing for her.\textsuperscript{640} Here again we see Bar Hebraeus coin Syriac versions of Arabic legal terms: he translates the quality \textit{kaf'}, being of equal or suitable social station, as “equal in honor” and “equal in station” (\textit{šwē b-ṭiqāra and šwē b-nezlā}).

Regarding the prerogatives of non-paternal guardians, Bar Hebraeus paraphrases a passage from the \textit{Wasīṭ}. Compare the following:

<table>
<thead>
<tr>
<th>Wasīṭ</th>
<th>Nomocanon</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regarding agnate [guardians] like brothers, paternal uncles, and their sons, they have no power of compulsion [over the bride] in any case, but rather may marry off a virgin</td>
<td>Brothers, paternal uncles, and the sons of paternal uncles (\textit{bnay dādē}) may not marry off [a bride] except for she who has come of age (\textit{mśamlyā b-qawmtā}), by her vocal</td>
</tr>
</tbody>
</table>

\textsuperscript{637} Nallino noted the presence of this Shāfīʿī doctrine in the Nomocanon, though he did not attribute it to Bar Hebraeus’ direct reliance on Ghazālī’s works. See “Diritto musulmano,” 233-34.

\textsuperscript{638} \textit{Wasīṭ} 5: 66 and \textit{Wajīz} 5: 11.

\textsuperscript{639} \textit{Wasīṭ} 5: 67 and \textit{Wajīz} 5: 11. This point is spelled out more explicitly in the \textit{Wajīz}. In the \textit{Wasīṭ}, Ghazālī says only that the \textit{sulṭān} may act as guardian in the case of “[the natural wāli] preventing the bride from marrying” (\textit{ʿaḍlih}). It does not specify that the bride must be of mature legal status (\textit{bāligha}), as the \textit{Wajīz} does.

\textsuperscript{640} \textit{Wasīṭ} 5: 65-66 and \textit{Wajīz} 5: 11. In the \textit{Wasīṭ}, Ghazālī gives this as one of two opinions on the matter (the other favoring the guardian’s choice); in the \textit{Wajīz} he mentions only this one.
| or previously married woman [only] with [her] consent. ⁶⁴¹ | agreement if she has been previously married (mzawwagtā) and by her silence when she is asked [about her consent] if she is a virgin. |

Ghazālī in this section does not explicitly spell out the doctrines that a virgin’s silence can be interpreted as consent to a marriage, while only a previously married woman’s vocal expression counts as such; and he actually gives two opinions on the former case when it involves agnate guardians, one of which says that even a virgin’s vocal consent is required when the guardian is not her father or grandfather. But in general Bar Hebraeus reproduces the standard Islamic opinions – vocal consent for a previously married woman, silence for a virgin – and a close textual correspondence between the Ethicon and the Wasīṭ is evident in this passage. Additionally, Bar Hebraeus includes in the Nomocanon the two points that immediately follow this passage in Ghazālī. First, the same rules for non-paternal agnate guardians hold for emancipators who act as guardians for their freedwomen. Second, the bishop (sulṭān in Ghazālī) acts as guardian if no suitable consanguine relations are found, if the guardian disputes a suitable marriage, or if a suitable guardian is absent from the particular location of the bride and groom. ⁶⁴²

Taken together, these points demonstrate that paragraph §4 on the order and duties of the guardian is heavily dependent on Ghazālī’s parallel chapters. Paragraph §5 contains diverse further rules on guardianship, and again they are taken almost wholesale from Ghazālī. ⁶⁴³ They begin with a list of those qualities that make a male ineligible to act as guardian. First in both Ghazālī and the Nomocanon is the condition of slavery, and

⁶⁴¹ Wasīṭ 5: 67. This passage is not found in the Wajīz.
⁶⁴² Wasīṭ 5: 67 and Wajīz 2: 11. For the latter point, Ghazālī also adds that a sulṭān acts as guardian if the natural guardian wants to marry his ward himself (which can occur between a woman and the son of her paternal uncle).
⁶⁴³ See Nomocanon, 124-25.
here Bar Hebraeus directly translates a phrase found in the *Wasīṭ* (but not in the *Wajīz*):

“Since a slave has no authority over himself, how can he [have it] over another?”

Ghazālī’s list continues with childhood, madness, unconsciousness, imbecility, incompetence, dire illness, licentiousness (*fisq*), and difference of religion. Bar Hebraeus’ list of individuals who may not act as guardians is not entirely similar, but in structural terms the passage is still dependent on Ghazālī. Further Shāfiʿī doctrines follow. If there are multiple eligible guardians of equal rank, guardianship is given to the bride’s choice (this opinion is not found in the *Wajīz*). If she does not choose a guardian, the eldest of those eligible shall act as guardian; Ghazālī also mentions this possibility, though he says more generally that it is preferable that the “eldest and best” (*asann wa-afdal*) receive guardianship. Otherwise, the guardians should cast lots (*pessē narmōn* in Bar Hebraeus). A man may compel his female slave to marry regardless of her wishes, but not a male slave. A master does not have to marry off his female or male slaves if they request marriage. In the case of a slave girl owned by a woman, the

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644 In the *Nomocanon*, *enhā d’al napšēh lā šallīṭ aykanā la-hrēn neštallaṭ*. In the *Wasīṭ*, *fa-lā wilāya li-l-raqīq ‘alā nafsihi fa-kayfa ‘alā ghayrih; 5: 71.*

645 *Wasīṭ* 5: 71-74 and *Wajīz* 2: 12. Ghazālī further adds the guardian’s absence and *iḥrām*, the state of purity for pilgrimage.

646 Bar Hebraeus’ list includes “a child younger then 25 years, a demon-possessed person, a eunuch, one with a difficult disease, a fornicator, a licentious person (*āsōfā*), an unbeliever (*lā mhaymnā*), or a woman.” The inclusion of licentiousness on both Bar Hebraeus’ and Ghazālī’s list is particularly indicative of Bar Hebraeus’ dependence on Ghazālī.

647 *Wasīṭ* 5: 89.


649 *Wasīṭ* 5: 97 and *Wajīz* 2: 16. In the *Wasīṭ*, Ghazālī actually gives three opinions on the latter issue, but makes clear that the strongest one is that an owner may not compel his male slave to marry.

650 *Wasīṭ* 5: 97 and *Wajīz* 2: 16.
mistress’ guardian acts as guardian for the slave with the mistress’ consent. A guardian may marry off an insane woman.

Finally, paragraph §5 includes a few provisions drawn in part from the Syro-Roman Law Book that represent a particularly interesting blending of Christian and Islamic elements. According to Bar Hebraeus, “An old, previously married woman (mzawwagtā rabbitā) may marry whom she chooses, even without the command of a guardian (puqdān quraṭor), be he a father or someone else.” This is generally consonant with the Shāfiʿi opinions we have seen Bar Hebraeus profess earlier: no guardians may compel a previously married woman to marry if she does not want to, and women may choose their spouses as long as they are of suitable social standing. In this case, however, Bar Hebraeus explicitly attributes his positions to canon §57 of the Syro-Roman Law Book.

651 Wasīṭ 5: 98 and Wajīz 2: 16. In this instance again Bar Hebraeus seems to be directly translating Ghazālī’s text. Both texts read, “[As for] the slave girl [owned] by a woman, the owner’s guardian marries off [the slave] with [her owner’s] consent” (in the Wasīṭ, amat al-marʿa yuzawwijuha waliyyuhā bi-ridāḥā; in the Nomocanon, wa-l-amṯāb d-ṯnṯ quraṭor diṯār d-mārṯā mamkar b-puqdān mārṯā). Bar Hebraeus adds another of Ghazālī’s points here that when a female slave owner emancipates her slave, the emancipator’s guardian may act as guardian for the freedwoman. However, Bar Hebraeus departs from Ghazālī in granting guardianship to the freedwoman’s male relatives first; he states that only if she has no guardian will the emancipator’s guardian fulfill that role for her. See Wasīṭ 5: 70 and Wajīz 2: 11-12. Ghazālī’s contrary opinion, however, is found in a section of his text different from that on which Bar Hebraeus bases most of paragraph §5; so it seems likely that in this instance Bar Hebraeus simply was not working off of the relevant passage in Ghazālī.

652 Wasīṭ 5: 93-94 and Wajīz 2: 15. Ghazālī discusses a number of related cases. Bar Hebraeus states specifically that a guardian may marry off an insane woman who is grown (Ghazālī allows a guardian to marry a minor or major insane woman) and whose prospective groom knows of her illness. He calls her specifically a “demonically possessed woman” (daywānīṯā). The “demon” in Syriac usage often refers to epilepsy, but here it seems that Bar Hebraeus has used a Syriac idiom for demonic possession to translate Ghazālī’s junūn, which means insanity but connotes etymologically possession by jinn.

653 See SWST 2 (text): 125 and §81 in SRRB 2: 102-103. Bar Hebraeus refers to Syro-Roman provisions as the laws and canons of the “Greek emperors” (malkē yawnāyē).
Under close examination, that canon does not read as Bar Hebraeus says it does. Rather, it affirms that a woman in her majority whose father has died may marry whom she wishes without the consent (*melltā*) of her mother, brothers, or a *quraṭor*. If she has a *quraṭor* (meaning she has not reached legal majority), she requires his consent to marry. \(^{654}\) Looking back to the sense of the Roman law behind the Syro-Roman Law Book, the *curator* here is the guardian charged with overseeing the affairs of a fatherless female who has reached puberty but not yet legal majority (between the ages of 12 and 25).\(^{655}\) In the case treated by this Syro-Roman canon, the woman has reached legal majority, is therefore not under *curia*, and so may marry without the consent of a *curator*.

With these points in view, we can see that Bar Hebraeus has reinterpreted the language of this Roman-derived regulation so as to bring it closer in line with the Shāfiʿī law of Ghazālī. Bar Hebraeus does away with the condition that the woman in question is an orphan – a defining aspect of Roman *curia* – and adds that she has been previously married. Thus, the Roman *curator* whose consent is unnecessary because his orphan charge has reached legal majority becomes, as Bar Hebraeus’ *quraṭor*, a kind of Shāfiʿī *wali* whose has no powers of compulsion over his charge (who could be his daughter) by virtue of her having been previously married.

All told, Bar Hebraeus’ concept of guardianship is heavily dependent on Ghazālī. Paragraphs §4 and §5 follow the structural arrangement of Ghazālī’s texts closely, and moreover adopt a host of his specific legal opinions. In a particularly interesting case, Bar

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\(^{654}\) We should note as a caveat here that the text of canon §57 that Bar Hebraeus used might have been different from the one that has come down to us in other recensions of the Syro-Roman Law Book. The likelihood that it is actually as different as what the Nomocanon states, however, is extremely remote.

\(^{655}\) On the role of the *curator* in later Roman law, see Evans Grubbs, *Women and the Law*, 23 and 44-45.
Hebraeus rephrases and reinterprets an authoritative Christian source, the Syro-Roman Law Book, in a manner that actually brings it closer in line with the Shāfiʿī concepts that so fundamentally underlie the Nomocanon’s law of marriage.

**Suitability**

Paragraph §6, the final of the second section, concerns suitability of social station (šawyūt nezlā in Bar Hebraeus, kafāʾa in Ghazālī) between bride and groom, and is based closely on Ghazālī’s chapter on the same. Bar Hebraeus begins with the general principle, standard in Islamic legal thought, that a woman’s guardian is supposed to marry her to someone of equal or better social station. He follows with several points drawn directly from Ghazālī. If both the guardian and the bride agree on a man who is not her social equal (ghayr kufuʾ in Ghazālī, šīṭ in Bar Hebraeus), the marriage is valid.

Furthermore, compatibility is determined according to five factors: lack of bodily defects, free/slave status, lineage, righteousness, and craft or profession. Bar Hebraeus further follows Ghazālī in affirming that physical beauty and wealth are not taken into consideration to determine suitability.

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656 See Nomocanon, 125-26.
657 *Wasīṭ* 5: 83. This point does not appear in the *Wajīz*.
658 See *Wasīṭ* 5: 84-85 and *Wajīz* 2: 14. Ghazālī’s list in the *Wasīṭ* is al-tanaqqī min al-ʿuyūb al-muthbita lil-khiyār wa-l-ḥurriyya wa-l-nasab wa-l-ṣalāh fiʾl-dīn wa-l-tanaqqī min al-hiraf al-danīyya. Bar Hebraeus’ is b-lā mümtānūtā d-pagra wa-b-ḥērūtā wa-b-ṭohmā wa-b-zaddiqūtā wa-b-ummānātū. For the last case Bar Hebraeus specifies a few “base crafts” (ummānwātā šīṭātā), including mime and singing.
659 See *Wasīṭ* 5: 85-87 and *Wajīz* 2: 14. Ghazālī notes that wealth is a factor in compatibility according to a certain opinion, but this is weaker (ʿḍʿaf) than the opinion that does not take wealth into consideration.
<table>
<thead>
<tr>
<th>Nomocanon, chapter on marriage, section 2: on the manner of betrothal and guardianship</th>
<th>Wasīṭ, kitāb al-nikāḥ</th>
<th>Christian sources</th>
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<td>§1 – betrothal ceremony and wedding banquet</td>
<td>1.5 – division 1: on preliminaries – preliminary 5: on the sermon (khutba)</td>
<td>Synods of Kyriakos and Yōhannān, other West Syrian synods on betrothal*660</td>
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<td>§2 – betrothals beyond the first</td>
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<td>Synods of Neocaesarea and Laodicea, canonical letters of Basil the Great, 37th Oration of Gregory Nazianzen, Genesis 25 and 38</td>
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<td>§3 – conditions for valid witnesses</td>
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<td>§4 – order and duties of the guardian</td>
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<td>1 Corinthians 7</td>
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<td>§5 – guardian’s powers</td>
<td>2.4.1.3 – section 3: on the impediments to guardianship (sawālib al-wilāya) 2.4.1.8 – section 8: on there being a multiplicity of guardians of the same rank (ijtimāʾ al-awliyāʾ fī daraja wāhida) 2.4.2.1 – division 2 – required element 4: parties to the contract – chapter 2: on the ward (mawlī alayh)</td>
<td>Syro-Roman Law Book §57/81661</td>
</tr>
</tbody>
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* Asterisks indicate sources that Bar Hebraeus does not cite explicitly but of which he likely made use. Question marks indicate possible sources.

† On all charts in this chapter, the numbering of Syro-Roman Law Book canons is given according to SWST/SRRB.
| — section 1: on the insane ward (mawlī ‘alayhi bi-l-junūn) |
| — section 3: on the slave ward (mawlī ‘alayhi bi-l-rigg) |

| §6 – suitability |
| — section 3: Impediments to Marriage |

The third section of the Nomocanon’s chapter on marriage treats “impediments to lawful betrothal” (‘ellātā d-kālyān men mkīrūtā nāmūsāyta). It is, again, closely dependent on Ghazālī’s texts, mainly his kitāb al-nikāḥ’s division three on impediments to marriage (mawāni‘ al-nikāh).

Consanguinity

Paragraph §1 of section three follows Ghazālī in beginning with a list of four kinds of impediments to marriage, though Bar Hebraeus’ list is not precisely the same as Ghazālī’s.\(^{662}\) For Ghazālī, the four types of impediment are kinship between two individuals that make them unmarrriageable (maḥramiyya), temporary impediments related to the waiting period of a woman whose previous marriage has recently ended.

\(^{662}\) See Nomocanon, 126-27.
Bar Hebraeus retains Ghazālī’s first, third, and fourth types (ḥyānūtā, ʿabdūtā, and lā haymānūtā, respectively), but gives affine relationship between the spouses as the second (ḥyānūt ḥyānē; for Ghazālī, this is a subcategory within his first type).

Bar Hebraeus continues paragraph §1 by taking up the first type of impediment, and bases his discussion largely on Ghazālī. Ghazālī divides kinship prohibiting marriage into three further subtypes: consanguinity (nasab), milk kinship established by sharing a wet nurse (rīḍāʿ), and affinity (muṣāhara). Bar Hebraeus’ list includes four subtypes, two taken from Ghazālī and two not: consanguinity (gensānāytā), milk kinship (īneqtānāytā), baptismal sponsorship (šawšbīnāytā men maʿmūdītā), and sponsorship at marriage (šawšbīnāytā... men klīlē da-mkīrūtā). The latter two are, of course, Christian concerns not found in Islamic law (they will be explained further below).

West Syrians had established certain rules for unmarriageable consanguine relations as far back as Rabbūlā of Edessa in the fifth century, and many of those regulations overlap with Islamic ones. Bar Hebraeus thus had material to draw on from West Syrian legal tradition for this section of the Nomocanon, but his text follows the structure of Ghazālī’s section on nasab closely (with a few important distinctions). In the Wasīṭ Ghazālī begins by stating that all close relatives (aqārib) are unmarriageable with the exception of first cousins (awlād al-ʿām mām wa-l-ʿammāt wa-l-akhwāl wa-l-khālāt), and then goes through the list of those unmarriageable female relations as given in Q 4:23. Bar Hebraeus begins with his own list congruent to Ghazālī’s (mother, daughter, sister, sister’s daughter, brother’s daughter, paternal aunt, maternal aunt), except that he

664 One of the sets of Rabbūlā’s (d. 435) canons includes a prohibition on marriages between men and their nieces and aunts. See Overbeck, *S. Ephraemi Syrī*, 221.
adds first cousins (the daughters of paternal and maternal aunts and uncles) as
unmarriageable relations. These prohibitions had been established in previous West
Syrian tradition. Bar Hebraeus further follows the arrangement of Ghazāli’s text
by taking up successively and defining each relationship in his list, and specifying that,
for example, granddaughters and further descendants are included under the subcategory
of daughter, and grandmothers and ascendants under the subcategory of mother.

Bar Hebraeus’ paragraph §2 is unrelated to Ghazāli. It deals with counting the
degrees of kinship between Joseph and Isaac and their wives in the Old Testament. It
also, interestingly, takes up the matter of cousin marriage by examining the disagreement
between the East Syrian patriarchs Timothy and Īsōʾbarnūn, which we saw in chapter
four. As we have noted, Bar Hebraeus comes down on the side of prohibiting cousin
marriage. He makes no reference, however, to the penitential canons of Dionysius bar
Ṣalībī, the only earlier West Syrian source of which I am aware that forbids cousin
marriage.

665 In contrast to the East Syrians, I have found no West Syrian legal writing that explicitly states
that mothers, daughters, and sisters are unmarriageable, but we can be sure these prohibitions
were taken for granted. For canons (besides Rabbūlā) prohibiting niece/uncle and nephew/aunt
marriages, see the synod of Kyriakos §35 and §36 in SWST 2 (text): 14-15. As far as I have been
able to determine, the earliest statement in West Syrian tradition that marriage between first
cousins is unlawful comes in the penitential canons of Dionysius bar Ṣalībī. See §12, MS British
Library Oriental 4403, folios 162b-163a.
668 Worth noting here is that although Gabriel of Baṣra seems to be Bar Hebraeus’ usual source
for East Syrian legal opinions, Timothy and Īsōʾbarnūn’s rulings on cousin marriage do not
feature in Ibn al-Ṭayyib’s Arabic translation of Gabriel. It is therefore possible, perhaps probable,
that Bar Hebraeus made use of Timothy and Īsōʾbarnūn’s law books directly. There would be
nothing particularly surprising about this; we know that both law books circulated among West
Syrians, as evidenced by their inclusion in the West Syrian manuscripts Cambridge Additional
2023 and Sinai Syriac 82.
Paragraph §3 returns to Ghazâlî’s texts by taking up milk kinship.\(^{669}\) In Islamic law, nursing establishes a web of relationships between a suckled child, an otherwise unrelated wet nurse, the nurse’s blood relatives, and any other children she nurses. The notion of milk kinship is firmly rooted in Islamic legal tradition by virtue of God’s inclusion of milk mothers and milk sisters (i.e., wet nurses and other females that they nurse, wa-ummuhātukumu ‘illātī arḍa’nakum wa-akhwātukum mina ‘l-riḍāʾati) in Q 4:23’s list of unmarriageable relations. There is no precedent for a law of milk kinship in West Syrian tradition before Bar Hebraeus, who has manifestly adopted this set of doctrines from Islamic law. This raises interesting questions concerning social practice. Were ties of milk kinship recognized among Christian communities in Syria and Iraq in Bar Hebraeus’ time? The inclusion of laws on the subject in the Nomocanon suggests that they were, as we would not expect Bar Hebraeus to propagate a law that had no basis in Christian tradition if it was also unintelligible in practical terms to his audiences. The further question is how old and how common milk kinship was as a social institution in Middle Eastern Christian communities – did it predate the spread of Islam and Muslim social mores?

We will not be able to find an easy answer to this question, but we can examine how Bar Hebraeus takes up Islamic legal norms to create his Christian law of milk kinship. He does so mainly by taking a few Shâfiʿī doctrines from Ghazâlî’s full account of the institution, the kitāb al-riḍāʾ (rather than from the short passage on milk kinship in

\(^{669}\) See Nomocanon, 128-29.
the kitāb al-nikāḥ’s division on impediments, which serves as the basis for most of the rest of the Nomocanon’s third section). Bar Hebraeus begins with Shāfiʿī’s opinion (based on Quran and ḥadīth and unattributed in the Nomocanon, of course) that milk kinship is established through two years of wet nursing. He follows with an explanation of the institution that more or less parallels Ghazālī’s, though does not copy it exactly: someone who nurses a child is its mother, other children she nurses and their siblings are its siblings, her brother is its maternal uncle, and her husband is its father. Bar Hebraeus also distills a complicated discussion of Ghazālī’s into the point that milk kinship is not established if other fluids are mixed into the milk and predominate for the entire period of nursing. Finally, Bar Hebraeus states that in terms of providing testimony to prove that wet nursing has taken place and milk kinship is established, women’s testimony alone is not acceptable; rather, the testimony of two women and one man is required. This is the position of Abū Ḥanīfa mentioned by Ghazālī in the Wasīṭ but not in the Wajīz (Ghazālī’s Shāfiʿī opinion allows for the testimony of four women).

Sponsorship

After his discussion of milk kinship, Bar Hebraeus concludes paragraph §3 with an explanation of kinship established through sponsorship in baptism (ḥyānūt ṭāfādā) and

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670 Wasīṭ 6: 182. Oddly, this important condition seems to have been left out of the Wajīz.
671 Compare Nomocanon, 128-29 to Wasīṭ 6: 186 and Wajīz 2: 111.
673 Wasīṭ 6: 198. In the Wajīz, Ghazālī states only that four female witnesses are acceptable; see 2: 113. It is interesting to note that in matters of witnessing related to family law, Bar Hebraeus has preferred the Hanafī opinions mentioned by Ghazālī: one man and two women for witnessing a marriage (discussed above) and the same for establishing milk kinship.
sponsorship at the marriage ceremony (šawšbīnūt klīlē, literally “sponsorship of crowning”). In other words, a boy’s godfather or baptismal sponsor bears kinship to him as a father, and his relatives assume the corresponding relationships to the boy as well; the same holds for a girl and her godmother. So, for example, a woman may not marry her godmother’s son because he is her brother through sponsorship. These principles were well established in West Syrian legal tradition before Bar Hebraeus, and he paraphrases a canon of Jacob of Edessa in support.⁶⁷⁴ A similar principle holds for sponsorship in marriage. The best man becomes akin to the groom’s brother and the maid of honor to the bride’s sister.⁶⁷⁵ All of these rules, of course, derive from Christian practices and traditions and are unrelated to Ghazālī and Shāfīʿī law.

Affinity

Paragraphs §4 and §5 treat affinity as an impediment to marriage. As noted above, Ghazālī’s Shāfīʿī law also recognizes unmarriageable affine relations; but though the

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⁶⁷⁴ The position that Bar Hebraeus attributes to Jacob of Edessa in regards to marrying a relative through baptismal sponsorship is that “it is neither permitted nor forbidden in earlier canons (qānōnē qadmāye). But because it causes believers to sin (makšla la-mhaymnē), it is not right that one do it.” This is from a response of Jacob of Edessa to Adday (though Bar Hebraeus’ phrasing is not exactly the same as the version of that has come down to us); for the text see §71 published in Thomas Joseph Lamy, ed., Dissertatio de Syrorum fide et disciplina in re Eucharistica (Louvain: Vanlithout, 1859), 168-71. Prohibitions on marrying baptismal sponsors and their relatives are found in several other West Syrian legal sources as well. See §6 of the synod of George, §1 and §2 of the tract on unlawful marriages by Yūḥannān, and §14 in the synod of Dionysius II in SWST 2 (text): 3, 46, and 61-62. Bar Hebraeus specifies that kinship of baptismal sponsorship obtains for seven degrees, for which I have not found an earlier source.

⁶⁷⁵ Here, Bar Hebraeus specifies that kinship of marital sponsorship through the groom and best man obtains for five degrees and that through the bride and maid of honor for three. He attributes this position to Dionysius of Tellmahrē. These, however, are the specifications made in canon §14 of the synod of the slightly later patriarch Dionysius II mentioned in the preceding footnote. We might note also that that particular canon does not mention whether its subject is sponsorship through baptism or sponsorship through the wedding ceremony; though Bar Hebraeus cites it in reference to the latter, it seems more likely that it was originally addressed to the former.
Nomocanon’s discussion of the subject continues to draw inspiration from Ghazālī for the arrangement of its material, in this instance most of the substance of Bar Hebraeus’ text does not derive directly from Ghazālī. Ghazālī divides the women unmarriageable through affinity into four classes: a wife’s mother and ascendants, wife’s daughter and descendants, son’s wife and descendants, and father or grandfather’s wife. For Bar Hebraeus, West Syrian tradition already furnished rules for affinity (ḥyānūt ḥyānē in Bar Hebraeus’ terminology) as an impediment to marriage, and he collapses Ghazālī’s four classes into two: affinity between a man and his wife’s relatives (ḥyānūt mkīrtā) and that between a man and the wives of his male relatives (ḥyānūt ḥyānē gensānāyē).

Bar Hebraeus devotes paragraphs §4 and §5 to each of the two classes. He explains each primarily with reference to one of the fundamental aspects of Christian theological understandings of marriage: that man and wife become one literal flesh (ḥad besrā; cf. Genesis 2:24, Matthew 19:5-6, Mark 10:8). So, regarding affinity between a man and his wife’s relatives Bar Hebraeus explains that the sister, mother, and daughter of a man’s wife are his sister, mother, and daughter. He supports this point with a quotation from Basil the Great’s letter to Diodore of Tarsus, in which the former expounds on the point that a man may not marry his wife’s sister.

676 These classes derive from Q 4:22-23, which explicitly prohibits marriage to a wife’s mother and daughter and a son’s mother and daughter. See Wasīṭ 5: 106 and Wajīz 2: 16.
677 Earlier West Syrian sources that had prohibited marriages between affines include canon §8 of the synod of George, §§35-37 of the synod of Kyriakos, §12 of the synod of Yōhannān III, and Yōhannān’s tract on illegitimate marriages. See SWST 2 (text): 3, 14-15, 41, and 46-50.
678 See Nomocanon, 129-30.
679 This obtains again for seven degrees of relation.
680 The letter in question is number 160 in the standard numbering of Basil’s letters in the original Greek. The passage quoted by Bar Hebraeus is as follows: “That ‘you shall not enter upon any relatives to reveal their shame’ [Leviticus 18:6] encompasses and includes [this form of kinship]. For what is more related and closer (yattīr qarrīb w-baytāy) to a man than his wife? ‘For they are not two, but one flesh.’ Therefore, neither his wife’s mother, nor [her] daughter, nor her sister, nor the woman [herself] may come to marry the relatives of her husband (qarrībay ba’lāh).” A
In paragraph §5, Bar Hebraeus explains how “the divine canon of singleness of flesh” (qānōnā alāhāyā da-ḥdānāyūt besrā) bears on affinity between a man and the wives of his male relatives. The wife of a man’s son, for example, is his daughter, and similar rules apply for wives of fathers, brothers, uncles, and cousins. Bar Hebraeus supports these points further with quotations of Leviticus 18:8, 1 Corinthians 5:1, and a canon of Basil the Great.681

All told, Bar Hebraeus’ discussion of affinity does not rely on Ghazālī for its particular doctrines and opinions. All are drawn from biblical and West Syrian sources.

“Rational Causes”

To conclude his section on the various forms of kinship that impede lawful marriage, Bar Hebraeus discusses in paragraph §6 “rational causes” (ʿellātā maḥšabtānāyūtā) – i.e., explanations based on observations and reasoning but not

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Syriac translation of this letter has been published in *SWST* 2 (text): 189-94. The passage in question is found on p. 192. It is fairly different from Bar Hebraeus’ quotation, however, which looks to have come from a different translation. Bar Hebraeus’ passage containing the attribution to Basil reads as follows: “Saint Basil said, he who takes [as a wife] his brother’s wife or his paternal uncle’s wife, if they do not separate and do not repent, shall not be accepted [in the church]. However their children are taken care of (netyaṣpōn), they shall not inherit from them.” The first phrase resembles one sentence in Basil’s canon §13 of his letter 188 to Amphilochius: “He who takes [as a wife] his brother’s wife shall not be accepted before he keeps away from her.” See MS Mardin CFM 310, folio 124b. It is not clear whether Bar Hebraeus means to attribute the statement concerning the children and inheritance to Basil. In any case, Bar Hebraeus looks to have used a slightly different translation and/or to have embellished Basil’s canon.

<table>
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<tr>
<th>Bar Hebraeus, <em>Nomocanon</em>, 130</th>
<th>Basil, MS Mardin CFM 310, folio 124b</th>
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<tr>
<td><em>w-qaddīšā Baseliyos emar</em></td>
<td><em>haw d-šāqel a(n)tat ahū(wy) aw a(n)tat dādēh en lā netparšōn wa-nṭūbōn lā netqabblōn bnyḥōn dēn ayan d-hū netaṣpōn lā dēn bram nērtōn enōn</em></td>
</tr>
<tr>
<td><em>haw dēn d-šāqel a(n)tat ahū(wy) lā luqādām netqabbal qdām d-nerḥeq menāh</em></td>
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grounded in divine command or Christian textual traditions – for the prohibition of marriage between kin. None of these are taken from Ghazālī’s legal texts. They are, however, suggestive of a number of earlier sources and are therefore worth considering.

Bar Hebraeus’ first cause presents a bit of a problem because the text appears corrupt. It reads, “Desire, the motivation for procreating, is mšhyt by a related woman” (men hyântâ mšhyt hî reggtâ ‘ellat mapryânûtâ). The problem is mšhyt, which is not a recognizable Syriac word. Bedjan suggests that the text has been corrupted from mšthy’; I would suggest mšhy’ as an even likelier possibility (since in that case the final ‘ only would have been misrendered by a scribe as r). With either one, we can make sense of the sentence: “Desire, the motivation for procreating, is weakened by a related woman” (men hyântâ mšahhyâ/meštahyâ [h]y reggtâ ‘ellat mapryânûtâ). If this reading is correct, the passage’s similarity to one in Bar Hebraeus’ Ethicon is interesting. In that work, Bar Hebraeus includes a chapter on the qualities desirable in a bride; one is that she not be of close relation to her groom, and he offers an explanation that is similar in sense to, but very different in language from, the one in the Nomocanon. That passage in the Ethicon, however, is very closely based on a parallel one in Ghazālī’s Iḥyā’ ‘ulūm al-dīn, and there we find a phrase similar to Bar Hebraeus’ in the Nomocanon: “[A bride] should not be of close relation because that lessens desire” (an lâ takûn min al-qarāba al-qarîba fa-inna dhâlika yuqallil al-shahwa).

What are we to make of these similarities? Nothing certain, but some possibilities are worth mentioning. In his chronology of Bar Hebraeus’ works, Takahashi suggests that

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682 See Nomocanon, 130-31.
683 That explanation goes something like, “The [human] sense that grasps pleasure (rgeštâ madrkânîtâh d-hannî ’ûtà) most precisely grasps those graspable things that newly touch it, but those things… that it has become accustomed to [it grasps only] faintly.” Bar Hebraeus, Ethicon, seu Moralia/Ktâbâ d-iṭiqûn, ed. Paulus Bedjan. Leipzig: Otto Harrassowitz, 1898, 149.
the Nomocanon was written before the Ethicon, but we have no definite date for the
former to confirm one way or the other.\(^\text{684}\) If the Nomocanon indeed came first, one
wonders here if Bar Hebraeus was aware of and drew on Ghazālī’s language in the Iḥyā’
when he composed this section of the Nomocanon. If, on the other hand, Bar Hebraeus
wrote the Ethicon first, he may have adapted its passage on the undesirability of a bride
of close relation for inclusion in the Nomocanon. For now, these remain only
speculations, but the similarities between the texts are suggestive.

Bar Hebraeus’ second rational cause for the prohibition on kin marriages is that
kin marriage “draws man to an animal likeness” (lwāt damyūtā b ʿirtānāytā nāgdā l-
barnāšā). I know no specific source for this; but as we saw in chapter three, the idea that
marriage was instituted by God to give order to human procreation and differentiate
rational humans from animals is an old one in Syriac Christian theologies of marriage.
Bar Hebraeus’ assertion that kin marriage breaks down that barrier and makes humans
animal-like – i.e., non-rational – is suggestive of this understanding.

Bar Hebraeus’ final three rational causes all exhibit interesting parallels – in sense
but not in language – to passages in the second tract of Īšō’bōkt’s law book.

<table>
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<th>Law book of Īšō’bōkt, tract II</th>
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<tr>
<td>The third [cause] is that [kin marriage] aids ruination in that were a man able to unite (l-meštawtep/wf) with his female relative (qarrābat besrēḥ) in lawful marriage, he would also fall easily into a marriage of fornication (zuwāgā d-zānyūtā), because they would not bar him from associating with her (ba-d-lā klaw ʿenē [h]wā ʿamāh).</td>
<td>… were there no law that bars (kālē) a man from uniting (šawtūnūtā) with his mother, sister, daughter, or others like them… it is evident that because these ones are no different (lā prīšān) from other women in terms of the natural desire [that humans have for one another, reggā kyānyāytā], that which is customarily done by many women would also occur [between relatives]… when a man goes out, he would have no trust (tuklānā) that his daughter would not</td>
</tr>
</tbody>
</table>

\(^{684}\) Takahashi, Bio-Bibliography, 90-94.
The fourth is that [kin marriage] would be a cause of [much] damage (zīmyas) in that were a woman able to betroth the son of her father-in-law, if she loved this one she would strongly desire (mētya bā) the death of her husband and delight [in it]; or she would devise means (meṭṭakknā) to fulfill her goal through slander (mēkalqarsā).  

[Were kin marriage allowed], how often would those who desire (rāgīn) their sister, father’s wife, or brother’s wife easily kill their relatives (garrībayhōn) through satanic workings (ma ’bdānūtā sājānāytā) because of their [own] wantonness (sūrīthōn)?

The fifth is that the betrothal of kin nullifies (mbattlānītā) the forging of household ties between unrelated people (baytāyūt raḥhīgē), the uniting of strangers in kinship (ḥyānūt nukrāyē), the making of peace between enemies (mṣayynūt raggīzē), and the abundance of the kin group (kabhīnūt šarbtā).

So, we see many noble and powerful ones (saggīʾē men rawrbānē w-men ṣallīṭānē) who hate and are opposed to each other. But they come to have a cause and guarantee of love (ʾelltā wa- ʿrabā d-ḥubbā) [when] they take and give women in marriage to and from each other.

… after [the command to] men to be fruitful and multiply, [God] commanded that they marry strange women (nukrāyātā, i.e. unrelated ones) in order that love be multiplied and increased through their cleaving to one another (naqqīpūthōn).

The above passages in the Nomocanon all convey a similar sense to the parallel passages in Īšōʾbōkt. In particular, Bar Hebraeus’ third cause is difficult to interpret on its own, especially its final clause (ba-d-lā klaw ʿenē [h]wā ʿamāh); but if we read it alongside Īšōʾbōkt, a likely interpretation presents itself (something like, “were kin marriage allowed, relatives might find themselves engaging in extramarital sexual relationships with each other because nothing prevents their daily, casual association”). It is notable as

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685 §II.ii, SR 3: 32.
686 §II.ii, SR 3: 34.
687 §II.ii, SR 3: 30.
688 §II.iv, SR 3: 40.
well that each of Bar Hebraeus’ three points has its parallel in the same passage in Īšōʾbōkt (§II.ii, in addition to the second parallel for the fifth cause found in §II.iv).

Bar Hebraeus and Īšōʾbōkt’s language and phrasing, however, are so different that it is too much a stretch to suggest the former’s direct dependence on the latter. Their similarities thus may be entirely coincidental. There is, however, one other possibility worth noting: that Bar Hebraeus drew his last three causes from Gabriel of Baṣra, who in turn had adopted them from Īšōʾbōkt. As we have already mentioned, Gabriel’s chapter on marriage is no longer preserved. We can see from the beginning of Ibn al-Ṭayyib’s Arabic translation in his Fiqh al-naṣrāniyya that the opening of his and Gabriel’s chapter on marriage treated prohibited unions between consanguine and affine kin.690

Unfortunately, we do not have the complete section in Ibn al-Ṭayyib because the first few folios of the only manuscript witness have been lost. However, the text of Ibn al-Ṭayyib as we have it begins in the middle of a paraphrase of Īšōʾbōkt’s ruling §II.iii691 – the one that immediately follows his passage in the law book that exhibits so many parallels to Bar Hebraeus. It is thus reasonable to suggest the possibility that the immediately preceding section of Ibn al-Ṭayyib included points excerpted from Īšōʾbōkt §II.ii and that Bar Hebraeus took his final three “rational causes” from the corresponding portion of Gabriel (which, being a mediating source, might also account for the difference in language between Bar Hebraeus and Īšōʾbōkt).

This digression has shown that other than his first “rational cause,” Bar Hebraeus’ paragraph §6 is likely unrelated to Ghazālī. It does, however, show interesting hints of certain East Syrian sources.

690 See Kaufhold, Rechtssammlung, 65-70.
691 See Kaufhold, Rechtssammlung, 66, note 280.
With paragraph §7, Bar Hebraeus returns to Ghazālī’s texts for his discussion of slavery as an impediment to marriage. Here, Bar Hebraeus depends on Ghazālī to the point that he reproduces in Syriac many standard Islamic doctrines rooted in authoritative Muslim texts. Those doctrines as found in the Ṣawāṣīf are as follows. A free man may not marry his slave unless he frees her. A free man may not marry a slave belonging to another person unless he is unable to afford to marry a free woman, or fears that he will commit fornication if he does not marry. If he does marry a slave for one of these reasons, she must be Muslim and belong to a Muslim master (in the Nomocanon, be Christian and belong to a Christian master, of course). Bar Hebraeus’ statement of these opinions is particularly notable because in Islamic law they derive quite explicitly from a Quranic verse. Q 4:25 allows for a Muslim man without the means to marry a free woman to marry a Muslim slave if he fears he will commit adultery otherwise. In the Nomocanon, however, Bar Hebraeus has appropriated these points and shorn them of any apparent connection to Islamic scripture. Additionally, Bar Hebraeus reproduces in this section Ghazālī’s explanation for why a man should not marry the slave of an unbeliever: his children will be believing slaves subject to an unbelieving master.

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692 See Nomocanon, 131-32.
693 Ṣawāṣīf 5: 118 and Wajīz 2: 17. Ghazālī actually does not say that a man can marry a slave because of money trouble or because of fear he will commit fornication. Rather, he gives five conditions that must be met together: a man must not be married already to a free woman, must not be able to afford to marry a free woman, and must fear that he will fall into sexual transgression; and the prospective slave bride must be Muslim and owned by a Muslim.
694 Ṣawāṣīf 5: 120. In line with this, Bar Hebraeus alsoasserts that children born to slave mothers (and men other than their masters) are slaves. The condition that a marriageable slave woman not
Bar Hebraeus then takes a host of doctrines from two later, consecutive sections of Ghazālī’s *kitāb al-nikāḥ* that treat the marriages of female and male slaves (none of which appear to be found in the *Wajīz*). A married female slave serves her master and is given over to her husband by night, and her husband owes half her maintenance. If she spends both day and night with her husband, he owes all her maintenance. Regarding the marriage of a male slave, Bar Hebraeus asserts that his master guarantees maintenance for the slave’s wife; this is more or less a distillation of an extended discussion in Ghazālī. Finally, Bar Hebraeus asserts that if a free woman knowingly marries a slave, she is reduced to slavery (if she did not know of his status, the marriage is dissolved). Though Bar Hebraeus does not cite it explicitly, a Syro-Roman canon that calls for free women married to slaves to become slaves themselves is likely the source of this opinion; in Islamic law, marriages between free women and male slaves are invalid because of the lack of social suitability between them.

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695 *Wasīṭ*: 195.

696 *Wasīṭ*: 196. This is actually one of three possibilities mentioned by Ghazālī, the other two being that the master owes all her maintenance and that the husband owes all her maintenance.

697 *Wasīṭ*: 196.

698 *Wasīṭ*: 202-203. Ghazālī gives a number of opinions; the basic notion is that if a slave marries with his master’s permission and works and earns, his wife’s maintenance comes from his earnings (which, of course, are the property of his master). In cases where the slave cannot work, the master is supposed to provide for the necessities of his marriage.


700 Paragraph §7 also includes a set of several opinions concerning the obligations of a husband or wife to a spouse who has been taken captive. I have found no apparent source for these. It is possible that they figure in the *Basīṭ*. Ibn al-Ṭayyib has a brief mention of the problem of a captured spouse but the text does not correspond closely to Bar Hebraeus’; see §11 in *Fiqh* 2 (text): 11.
After slavery, Bar Hebraeus’ final two paragraphs treat difference of religion between spouses as the fourth type of impediment to marriage. As we have noted, this is Ghazālī’s fourth type as well (rendered as kufr; “unbelief”). As in the case of affinity, however, West Syrian tradition had dealt with this topic before Bar Hebraeus’ time; the Nomocanon thus depends only partly on Ghazālī for specifics. Paragraph §8 divides unbelievers into six categories: “pagans, Magians, Jews, Saracens (sarqāyēh, i.e. Muslims), Christians in disagreement [with us] over [the nature of] divinity, being Arians and their like, and Christians in disagreement [with us] over the unity of nature and hypostasis, alongside the followers of Julian of Halicarnassus (haggāgāyēh).” Christians who disagree with the West Syrians over Christ’s nature is a reference principally to the Melkites and East Syrians, who do not share the West Syrians’ Miaphysite Christology. Essentially, Bar Hebraeus says that a believing man may not marry women of the first five types unless they are first baptized and accept the West Syrians’ creed (mettalmdān, literally “made pupils [of the creed]”). Women of the last category must accept the creed to be marriageable, but they do not have to be baptized. In similar terms, believing men may not marry off women of their family to non-Miaphysites and non-Christians. In fact, Bar Hebraeus says that it is worse to give women in marriage to non-Miaphysite men than it is for men to marry non-Miaphysites.\footnote{See Nomocanon, 132-34. Julian was a sixth-century Miaphysite theologian whose doctrines on the incorruptibility of Christ’s pre-resurrection body were deemed heretical by the Miaphysite tradition to which the West Syrian Church would lay claim. See M. P. Penn, “Julian of Halicarnassus,” GEDSH, 236.}

\footnote{That Christian men cannot marry non-Christian women is, as far as I can tell, a novel point of Bar Hebraeus’ in view of earlier West Syrian legal sources. Those sources are full, however, of
Bar Hebraeus then specifies that believers are allowed to marry “Copts, Ethiopians, Nubians, and Armenians” because they differ from the West Syrians only in “customs” (ʿyādere), not in creed. As is evident, Bar Hebraeus’ positions in this paragraph are argued on the basis of established Christian doctrine and West Syrian legal tradition and have nothing to do with Ghazālī. In fact, it is one of Bar Hebraeus’ more notable departures from Islamic law that he does not allow men to marry non-Christians; all Islamic legal traditions allow Muslim men to marry free Christian and Jewish women (and those of a few other communities). 703

In paragraph §9, the final of the third section, Bar Hebraeus turns again to Ghazālī to pick up a few specific doctrines concerning difference of religion as an impediment to marriage. 704 These concern cases in which individuals convert to Christianity while being in marriages unlawful by Christian standards, such as polygynous unions or unions between men and their brothers’ wives (the examples that Bar Hebraeus gives). Islamic law recognizes a range of lawful marriages different than those of Bar Hebraeus’ West Syrian Christianity, the most conspicuous difference being polygamy. But Bar Hebraeus still adapts Ghazālī’s rulings on the unlawful marriages of converts to his own concerns.

In the Wasīṭ, Ghazālī discusses the case of a man who converts to Islam while being


703 In this vein, Bar Hebraeus concludes paragraph §8 with a passage that explains away the implications of 1 Corinthians 7:14: “An unbelieving husband is sanctified through a believing wife, and an unbelieving woman is sanctified through a believing husband.” He argues that this applied in the Apostles’ time to couples of whom one spouse converted to Christianity, but that the Apostles never commanded believers to marry unbelievers (he quotes also 1 Corinthians 7:16).

704 See Nomocanon, 133.
married to two sisters, which is unlawful according to sharʿī norms. According to Abū Ḥanīfa, such a man remains married to his chronologically prior wife, and the second marriage is nullified. Ghazālī rejects this opinion and asserts that the convert gets to choose which wife he keeps.\footnote{See Wasīṭ 5: 132-33.} Later, Ghazālī affirms the same prerogative of choice for a convert with more than four wives: he gets to keep four of his choosing.\footnote{Wasīṭ 5: 141 and Wajīz 2: 20-21.} Bar Hebraeus includes but reconfigures these opinions in the Nomocanon. In the case of a convert to Christianity with multiple wives, Bar Hebraeus follows Ghazālī in giving the man the choice of which one to keep (he can only keep one as opposed to the Muslim’s four, of course). “Others” (ḥrānē), Bar Hebraeus tells us, say that the man remains married to his first wife. Bar Hebraeus’ “others” here looks to be an oblique reference to Abū Ḥanīfa in the Wasīṭ (Ghazālī does not mention the Ḥanafī opinion in the Wajīz). The Nomocanon’s dependence on Ghazālī is thus again in evidence in its characteristic reproduction of one of Ghazālī’s clusters of legal opinions.

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<sup>707</sup> Actually the synod of 896 of the slightly later patriarch Dionysius II.
Section 3: on changing religion (tabdīl al-dīn) – part 1: on the ruling of the marriages of unbelievers concerning [their] validity and invalidity (ḥukm ankiḥat al-kuffār fī ’l-ṣiḥḥa wa-l-fasād) and part 2: on an unbeliever converting to Islam with multiple wives (fī an yūsūlm al-kāfir ʿalā adad min al-niswa)

Section 4: Marriage Gifts

Bar Hebraeus’ fourth section in the chapter on marriage treats principally the marriage gifts exchanged between bride, groom, and their respective families, as well as the banquet that finalizes a couple’s union. In terms of structure, Bar Hebraeus follows the order of the Ghazālī’s book on the marriage gift (kitāb al-ṣadāq), which also ends with a section on the wedding feast (walīma). However, Bar Hebraeus had much legal material on which to draw in West Syrian tradition concerning marriage gifts, including synodal legislation of the eighth-ninth centuries and, especially, the Syro-Roman Law Book; and so the fourth section is generally less reliant on the specific doctrines of Ghazālī’s texts than the first three. In what follows, we will see how Bar Hebraeus synthesizes his Christian and Islamic sources on the subject.
Marriage Gifts: Definitions

In paragraph §1, which bears no connection to Ghazālī, Bar Hebraeus defines four kinds of marriage gifts.\textsuperscript{708} The \emph{pernūtā} is the dowry that the bride brings from her natal household (\textit{bēt mārēyḥ}) to that of her husband and is recorded in the marriage contract (\textit{ba-ktībtā}). The \emph{dōrā} is the gift that the groom gives or pledges (\textit{mqrreb} or \textit{meštawdē}) to the bride and is also specified in the contract. \emph{Zebdē} are the accouterments and vessels that the bride’s parents give to her and \emph{šadkē} are accouterments, vessels, food, and drink that the groom sends to the bride over the course of their betrothal; neither of these two is recorded in the contract.

The relationship of these institutions to earlier West Syrian legal tradition on the one hand and social practice on the other is curious and raises some interesting questions. Regarding marriage gifts in legal texts, we saw in chapter three that early ʿAbbāsid-era East Syrian law included many regulations for the \emph{pernūtā} and the \emph{mahrā}, the Semitic name (cognate with Arabic \textit{mahr} and Hebrew \textit{mohar}) for Bar Hebraeus’ \emph{dōrā}. As far as I am able to see only a single canon of West Syrian synodal legislation treats marriage gifts, and it mentions the \emph{mahrā} only.\textsuperscript{709} The Syro-Roman Law Book, however, includes many rulings on the \emph{dōrā} and \emph{pernūtā} (from Greek \textit{dorea} and \textit{pherne}), the definitions of which basically correspond to Bar Hebraeus’ usage; that text thus appears to be the inspiration for the terms, at least, that Bar Hebraeus employs in the \textit{Nomocanon} to denote marriage gifts from groom to bride and from bride’s household to bride. I have found no precedent in legal texts for either \emph{zebdē} or \emph{šadkē}; both, however, appear in the Bible. In

\textsuperscript{708} See \textit{Nomocanon}, 134-35.
\textsuperscript{709} Synod of Kyriakos §33, \textit{SWST} 2 (text): 14.
the Peshiṣṭa of Genesis 30:20, Leah says that God has furnished her with a good “dowry,” zebdē (Hebrew zebeth), in reference to the sons she has borne. Ṣadkē appears in Ben Sira 11:7b (quoted by Bar Hebraeus in the Ethicon), which encourages men to scrutinize their prospective brides: “Investigate first, and then make (ʿbed) ṣadkē. And until you decide, do not marry.”⁷¹⁰ Neither biblical passage specifies the meaning that Bar Hebraeus imputes to the two terms.

What might we say, then, about the relationship between the four marriage gifts described by Bar Hebraeus and social praxis in contemporary West Syrian communities? Given the ubiquitous presence of similar systems of marital gift-giving in the cultures of the Middle East it is likely that institutions resembling the dōrā/mahrā and pernīṭā were customary among at least some, and perhaps many, West Syrians. The kinds of gift-giving denoted by zebdē and ṣadkē may well have been customary also, but Bar Hebraeus’ usage of those terms seems to be novel in view of Syriac literary traditions. In fact, I would suggest that Bar Hebraeus’ four-part scheme of marriage gifts may well be something of a literary construct. Though it no doubt resembled social practice in many respects, Bar Hebraeus seems to have identified terms relevant to marital gift-giving in several of his traditions’ authoritative texts – dōrā and pernīṭā in the Syro-Roman Law Book, zebdē in Genesis, and Ṣadkē in Ben Sira – and then, in the interest of comprehensiveness, sought to include them all in the Nomocanon.

After defining his four types of marriage gifts Bar Hebraeus takes up in paragraph §2 the question of what the actual substance of those gifts might be.⁷¹¹ In doing so, he follows the order of Ghazālī’s kitāb al-ṣadāq, which begins with the same issue; his

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⁷¹⁰ See Bar Hebraeus, Ethicon, 148.
⁷¹¹ See Nomocanon, 135-36.
discussion proves to be a mixture of Ghazālī and Christian sources. First, Bar Hebraeus offers a definition of the dōrā and pernītā – “anything that can be bought or sold” (kul-
meddem d-mezdben w-mezdabban) – that corresponds to the first half of Ghazālī’s
definition of ṣadāq. Then he cites material from Syriac sources, including a Syro-
Roman canon that details types of property (jewelry, slaves, real estate, livestock) that a
wife might receive as part of her pernītā and opinions of Timothy and Īšō’barnūn on the
matter.

Bar Hebraeus then adds the second half of Ghazālī’s definition of a valid marriage
gift: usufruct of a hirable or rentable property. So, according to Bar Hebraeus, one
might stipulate usufruct of the labor of a slave (agar pulḥān ʿabdā) or the fruits of a
garden (pēray ganntā) as dōrā or pernītā. As an example Bar Hebraeus cites the fact that
Jacob worked for fourteen years in order to wed Leah and Rachel (Genesis 29:14-30).
Bar Hebraeus then closes paragraph §2 by asserting that it is not acceptable for a man to
promise to teach a craft as a wedding gift “because the usufructory value of this is not
specified in amount or kind” (ba-d-lā mettaḥḥam agrā d-ak hānā ba-kmāyūtā āplā b-
aynāyūtā). This appears to be a misreading of the same passage in the Wasīṭ that Bar
Hebraeus has made use of throughout this paragraph. Ghazālī states that teaching (taʿlīm)

712 I.e., “any ownable object the sale of which is licit” (kull ʿayn mamlūka yasīḥḥ bayʿuhā). Wasīṭ
5: 215. This is not found in the Wajīz.
713 For the Syro-Roman canon see §88 in SWST 2 (text): 135 and §108 in SRRB 2: 160-63.
Regarding Timothy and Īšō’barnūn, Bar Hebraeus states that they do not allow the stipulation of
immovable properties – “lands or buildings,” arʿātā aw bāṭē – as marriage gifts. In Ibn al-Ṭayyib,
we find a paragraph that cites Timothy and Īšō’barnūn on the proper amounts for marriage gifts
that includes the phrase, “and the rich… should not stipulate land or buildings for their daughters”
(wa-l-aghniyā ... lā yaktubūna ardan wa-dūran li-banātihim). Thus Bar Hebraeus likely knew
this opinion from Gabriel of Baṣra. See §12 in Fiqh 2 (text): 6. Gabriel’s source for this opinion is
likely Īšō’barnūn §43, which states that “lands, vineyards, and things like these” (ar ʿātā den w-
karmē wa-d-ak hālēn) may not be stipulated as mahrā. See SR 2: 134. To my knowledge,
Timothy’s law book does not mention this restriction.
714 In the Wasīṭ, “usufruct [of a property] with monetary value the renting out of which is licit”
(manfāʿa mutaqawwima taṣīḥḥ al-ijāra ʿalayhā). See Wasīṭ 5: 215. This is not found in the Wajīz.
the Quran is an acceptable form of usufructory marriage gift, of which he notes “the amount and kind are not specified for a marriage gift” (fa-lā yataʾayyan li-l-ṣadāq miqdār wa-lā jins). In Islamic law the requirement of specification of amount and kind holds for property given as marriage gifts; usufruct cannot be delimited in that sense.

So, Bar Hebraeus has clearly translated the criteria of amount and kind from Ghazālī but looks to have applied them to a case of usufruct for which Ghazālī would in fact say that they are not necessary conditions.

**Amounts**

In paragraph §3, Bar Hebraeus continues to follow the arrangement of Ghazālī’s texts by taking up the issue of the amounts that marriage gifts should be. Most of the specific opinions are drawn from Syriac sources, though Bar Hebraeus begins with the principle that modest sums are preferable (“the laws praise less over more”), which Ghazālī also gives in the Wasīṭ (“leaving aside extravagance [tark al-mughālāh] in the marriage gift is preferable”). Bar Hebraeus then specifies amounts for marriage gifts taken from canon §33 of the West Syrian synod of the patriarch Kyriakos, as well as other opinions from the Syro-Roman Law Book and the East Syrian patriarchs.

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717 Thanks are due to Professor Hossein Modarressi for explaining to me usufruct as marriage gift in Islamic law.
718 See Nomocanon, 136.
719 Wasīṭ 5: 216.
720 Kyriakos’ canon actually mentions the mahrā only, not the pernīṭā. It sets the highest value at 1,500 zūzē (silver coinage, Arabic darāhim, singular dirham) and a middle value at 1,000. See
The next several paragraphs concern the various powers of husbands and wives to dispose of the four kinds of marriage gifts that Bar Hebraeus specifies in paragraph §1. He draws largely on the Syro-Roman Law Book here and takes only a small amount from Ghazālī, and the differences between Roman and Islamic law render his discussion a bit uncertain at times. It will therefore be helpful to lay out few aspects of the two legal traditions on which Bar Hebraeus draws. In Islamic law, the *mahr* is the only marriage gift recognized as an institution distinct from (though sharing some characteristics with) a regular debt or gift; and because women may own property just like men in Islamic law, 

SWST 2 (text): 14. Bar Hebraeus cites the “easterners” (*madnhāyē*) as setting the highest value at 400 dirhams and one dinār (gold coin), a middle value at 300 dirhams, and the lowest at 100. These are the exact amounts attributed to “Timothy, Ḥūṣain, and the catholicoi of the East” in Ibn al-Ṭayyib; Bar Hebraeus must therefore be citing from Gabriel of Baṣra. See §12 in *Fiqh* 2 (text): 12. Bar Hebraeus also attributes to Timothy and Ḥūṣain the opinion that a *pernītā* should be half the value of a *dŏrā*. He has drawn this from the same passage in Gabriel; Ibn al-Ṭayyib has, “The value of a dowry (jihāz) for someone whose *mahr* is 100 is 50 dirhams” (although Timothy §62 actually says that a *pernītā* should be equal to a *mahr*; see SR 2: 100). From the Syro-Roman Law Book, Bar Hebraeus states that it is the custom of “the West *(maʿrbā)*, that is Constantinople,” that *dŏrā* and *pernītā* be equal; for this, see §50 in SWST 2 (text): 120-21 and §87a in SRRB 2: 108-115. Bar Hebraeus also mentions 2 Chronicles 9:21 on the topic of gold and silver, though how it relates to marriage gifts is not entirely evident. Finally, he mentions one more unattributed opinion that deserves consideration: “others (ḥrānē) have said that it is not right for a *pernītā* or *dŏrā* to be less than a whole number, i.e. ten (meyānā mšamlyā āwkēt ʿesrā).” A few things stand out here. Bar Hebraeus frequently attributes differing or contradictory opinions that he takes from Ghazālī to anonymous “others.” Ten *dirhams* is well-known as the minimum amount of a *mahr* according to the Ḥanafīs, a position they arrive at by analogy to the minimum value of stolen goods that necessitates the *ḥadd* punishment for theft. In the *Wasīṭ* (but not the *Wajīz*), Shāfiʿī mentions this Ḥanafī opinion (aqallu *l-ṣādaq niṣāb al-sariqa*) and attributes it to Abū Ḥanīfa, but does not actually say “ten *dirhams*” (see 5: 215). So when Bar Hebraeus says that “others” set the minimum value of a marriage gift at ten is he in fact thinking of the Ḥanafī opinion mentioned in the *Wasīṭ*? Does he therefore know its specific value from elsewhere? Might the *Basiṭ* actually spell out the ten *dirhams* (which would indicate that that was Bar Hebraeus’ source text)? Is the correspondence to the Ḥanafī opinion simply a coincidence? A resolution must wait for a comparison of the Nomocanon and the *Basiṭ*. Nallino also noted the similarity of this opinion of Bar Hebraeus’ to that of the Ḥanafīs; see “Diritto musulmano,” 233-35.
husbands have no direct power over their wives’ mahr. In the Roman legal tradition of the Syro-Roman Law Book, female property ownership is not as straightforward. As long as a woman’s father or husband lives, she is considered to be under the authority of one or the other, and her powers to dispose of her property are limited. In drawing on these traditions, Bar Hebraeus leans more toward the rights of men to limit women’s powers over their property, but his discussions in the Nomocanon remain something of an amalgamation.

Paragraph §4 begins with the doctrine that if a man has not handed over to his wife the dōrā that he contractually stipulated for her, its delivery is due at the death of one spouse or at their “lawful separation” (puršānā nāmōsāyā). This is generally in line with Islamic law, although Ghazālī’s texts never spell it out explicitly. In the rest of the paragraph, however, Bar Hebraeus gives a number of very un-Islamic doctrines. The inspiration for these looks to be the Syro-Roman Law Book, though not every one of Bar Hebraeus’ points has an obvious parallel in that text. First, a wife may not dispose of any of her marriage gifts without her husband’s permission, except through a testamentary bequest (diyatēqē). This runs counter to women’s rights of property ownership in Islamic law, but reflects the Roman principles of patria potestas (“paternal

721 On women’s rights of property ownership, usufruct, and disposal, which are essentially the same as those of men, see Tucker, Women, Family, and Gender, 135-49.
722 See Nomocanon, 136-37.
723 Ghazālī does affirm that “the [obligation to fulfill] the entire mahr is confirmed only with consummation or the death of one of the spouses” (wa-lā yataqarrar kamāl al-mahr illā bi-l-waṭʾ aw mawt aḥad al-zawjayn). This, however, concerns the conditions in which the full value of the marriage gift becomes an obligation on the husband, not the conditions in which it must be delivered into the wife’s possession. See Waṣḥī 5: 226 and Wajīz 2: 31. The Syro-Roman Law Book includes a variety of differing opinions on these matters. Some canons allow a woman to take half her dōrā upon her husband’s death, e.g. §54 and §88 in SWST 2 (text): 124 and 135 and §87a and §108 in SRRB 2: 108-115 and 160-63. Another, however, gives a widow the entire dōrā; see §46 in SWST 2 (text): 116-17 and §115 in SRRB 2: 168-71. §54/87a also includes rules for the conditions that determine the varying portions of marriage gifts that wife and husband retain in case of divorce.
power”) and manus (“marital subordination”). According to these, a woman whose father lives or who is married is under the guardianship of either her father or husband, and so does not have the right to own and dispose of property.\footnote{724}{On the forms of male legal power over women in Roman law, see Evans Grubbs, \textit{Women and the Law}, 20-23. On a man’s usufruct rights to his wife’s dowry during the marriage, see pp. 95-97.} One matter-of-fact Syro-Roman canon, for example, states that “when a woman’s father dies, and then, if her husband dies, she has authority over (meštalṭā b-) her pernītā.”\footnote{725}{§68 in \textit{SWST} 2 (text): 128 and §18 in \textit{SRRB} 2: 42-43.} Bar Hebraeus’ allowance for the disposition of marriage gifts by testament without a husband’s permission appears to be inspired by another Syro-Roman canon, which specifies that a wife may give away her pernītā by testament once her father and grandfather have died; it says nothing of her husband having any powers of restriction.\footnote{726}{§67 in \textit{SWST} 2 (text): 127-28 and §16 in \textit{SRRB} 2: 40-43. Bar Hebraeus adds here opinions attributed to “others” that a woman can receive authority to dispose of her pernītā and zebdē from her father, and her dōrā and šadkē from her husband. I know of no obvious source for these opinions, but they generally fit in with Bar Hebraeus’ Syro-Roman inspired discussion of the restrictions placed on women’s rights of ownership and disposition of property.} In both of these cases, Bar Hebraeus has extended the Syro-Roman provisions, which mention only pernītā, to cover all four of his types of marriage gifts.

Next, Bar Hebraeus gives another explicitly Syro-Roman doctrine (though he does not mention the source): if a bride’s father does not deliver the pernītā that he stipulated for his daughter, then after five years the husband loses any right to claim it as a debt.\footnote{727}{§56 in \textit{SWST} 2 (text): 125 and §111 in \textit{SRRB} 2: 164-65.} Bar Hebraeus ends the paragraph by affirming that “without [his] wife’s will and decision (šebyānāh d-a[n]ttā wa-psāqāh), the husband has no authority over her pernītā, dōrā, or anything else that is hers.” This is not drawn from the Syro-Roman Law.
Book in any obvious way, and is an interesting tempering on Bar Hebraeus’ part of the
powers he affords husbands over their wives’ property.

Paragraph §5 further concerns the husband’s authority over his wife’s marriage
gifts. It is drawn from canons §84 and §88 (according to Bar Hebraeus’ numbering) of
the Syro-Roman Law Book, as Bar Hebraeus himself states. Essentially, he argues that
since husbands have a kind of custodial authority over their wives’ marriage gifts, they
do not have to recompense any damages or losses to those gifts as long as they traded
with or used them in good faith (the exception is the cash dōra, the full value of which
husbands always owe). This is not a verbatim quotation from the two Syro-Roman
canons, but appears to be inspired by their provisions that any slaves or livestock that are
part of a woman’s pernītā and die do not have to be recompensed at the marriage’s
dissolution. Bar Hebraeus then adds more opinions from the same canons on how
different types of property given as marriage gifts should be divided up at marital
dissolution.

In paragraph §6, Bar Hebraeus again draws on the Syro-Roman Law Book in
affirming that in places where it is not customary to stipulate marriage gifts contractually,
marriages and children that issue from them should still be considered lawful. He adds,

728 See Nomocanon, 137-38.
729 See §84 and §88 in SWST 2 (text): 132-33 and 135; and §119 and §108 in SRRB 2: 160-63 and
172-75.
730 Bar Hebraeus’ term for “custodial authority” here is epitropūtā. Epitropā, from Greek
epitropos, occurs in the Syro-Roman Law Book usually as a translation of what would be Latin
tutor. In Roman law, the tutor was a guardian of fatherless children who had not yet reached
puberty. Another type of tutor served as a guardian for fatherless women before they married, but
this institution apparently died out in the first centuries CE as the curator effectively took the
tutor’s place. See Evans Grubbs, Women and the Law, 23-25 and 34-37. In any case, we have
here another example of Bar Hebraeus reconfiguring the Roman legal language of the Syro-
Roman Law Book in new contexts.
however, that šadkē, “even if it is just a ring that is blessed,” is required for a betrothal. This seems to be Bar Hebraeus’ own addition in the interest of ensuring that a priestly benediction is always part of a Christian marriage.

Paragraph §7 is the last that concerns the disposition of marriage gifts, and it contains another interesting example of Bar Hebraeus blending Syro-Roman and Islamic provisions.\(^{732}\) Despite his earlier affirmation that a wife may not dispose of her marriage gifts without her husband’s permission, Bar Hebraeus here states that if a woman fears that her gifts (of all four kinds) will be lost or damaged if they remain under her husband’s control, she may take them and “deliver them over to whom she will” (tašlem l-man d-šābyā). If he refuses to give her the gifts, she may refuse him sex until he does so (teklē napšāh men šawtāpūtēh); once he does, “she may not keep herself from him, unless if she is a minor, ill, menstruating, pregnant, or wants to receive the life-giving mysteries.” This very clearly mirrors the Shāfiʿī doctrine that a wife can refuse consummation until her husband delivers her marriage gift, to which Ghazālī devotes a discussion in the kitāb al-ṣadāq.\(^{733}\) In Islamic law, however, the condition that permits refusal of sex is the non-fulfillment of an obligation (paying the marriage gift); Bar Hebraeus, on the other hand, has taken the “refusal of sex” doctrine and applied it to a context in which the marriage gifts have been delivered but are essentially under the husband’s control (a situation he allows for in paragraph §5, based on the Syro-Roman

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733 See Wasiṭ 5: 223-25 and Wajīz 2: 30-31. Ghazālī gives several opinions on the matter, but his operative one is that once a woman has consented to consummation, she may not go back to refusing sex even if her husband continues to withhold delivery of the ṣadāq. According to Abū Ḥanīfa, however, a wife may refuse sex after consummation for as long as her husband fails to deliver on his debt.
Law Book). He thus takes an Islamic legal opinion from Ghazālī and alters it so that it accords with other provisions he has drawn from Christian legal sources.

We might also note that Bar Hebraeus gives a few other circumstances in which a wife can refuse sex to her husband, including when she is a minor, is ill, is menstruating, is pregnant, is preparing to receive the Eucharist, or on the days of the week on which abstinence is prescribed for married couples (for which Bar Hebraeus quotes 1 Corinthians 7:5). In Islamic law it is unlawful, of course, for a man to consummate a marriage with a minor or to have sex with his wife while she is menstruating. Generally, however, Bar Hebraeus’ list of exceptions looks to be drawn from Christian concerns.  

Invalid Marriage Gifts and the Fair Marriage Gift (Mahr al-Mithl)

In paragraph §8, Bar Hebraeus returns to Ghazālī’s texts and takes a number of opinions from the Wasīṭ’s chapters on “the invalid marriage gift” (al-ṣadāq al-fāsid) and the mahr al-mithl. In discussing the former, Ghazālī takes up a series of seven cases in which some factor makes a stipulated marriage gift invalid. Bar Hebraeus draws from the discussion of the sixth and seventh cases. In the sixth, if the parties to a marriage agree on two marriage gifts, one amount openly and the other privately, only the publicized

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734 Bar Hebraeus closes the paragraph by stating that if a wife refuses sex for any other reason, “she may be forced” (ba-qṭīrā tetdbar), i.e. forced into sex (or possibly “disciplined forcefully”). Though I have found no passage in which Ghazālī endorses what we would call marital rape in such terms, this too exemplifies the generally Islamic framework of the Nomocanon’s law of marriage. In Islamic law, wives are obligated to be sexually available to their husbands at all times with few exceptions.

735 See Nomocanon, 139-40. Nallino noted the similarities in this paragraph to Islamic law; see “Diritto musulmano,” 235-36.
amount stands as an obligation; Bar Hebraeus repeats this. Bar Hebraeus follows up with Ghazâlî’s discussion of the seventh case, but takes a position slightly different from that of his model text. According to Ghazâlî, if a bride tells her guardian’s delegate (wakîl) to marry her for a mahr of a specific amount and he agrees to one for less, the marriage is invalid; according to Bar Hebraeus, it is valid but the bride’s guardian owes the bride the deficit of the marriage gift she requested. We might add that Bar Hebraeus mirrors the style of the Wasît in this section in that both offer quotations from a hypothetical bride. In Ghazâlî the bride says, “Marry me for 1,000” (zawwînî bi-alf); in the Nomocanon, “betroth me to one who offers 100 dinars” (amkarayn[y] l-man d-mâ’ dênârê mqarreb).

Bar Hebraeus continues to draw from Ghazâlî’s discussion of the seventh case as it concerns the mahr al-mîthl. In Islamic law, the mahr al-mîthl is the minimum marriage gift a bride should receive based on considerations of what women similar (mithl) to her – in family and social standing – receive. In general terms, marriages can be contracted for less, but if there is some flaw in the contract or the gift the mahr al-mîthl becomes a point of reference for the bride’s claims against the husband. In the Wasît Ghazâlî asserts that if a bride tells her delegate simply to marry her and he does so for less than her mahr al-mîthl, the contract is invalid. Likewise, Bar Hebraeus affirms that a guardian given the same instructions cannot marry his charge for less than the “dôrâ of women like her” (dôrâ da-bnâï pehmâh). This “dôrâ of women like her,” we might add,

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736 Wasît 5: 235 and Wajîz 2: 32. For Ghazâlî this is a matter of “secrecy and publicization” (al-sîr wa-l-’alâniya). “Openly” and “secretly” are zâhiran and bâînan in Ghazâlî, galyâ ‘ît and kasyâ ‘ît in Bar Hebraeus.
737 Wasît 5: 235 and Wajîz 2: 32.
738 On the mahr al-mîthl, see Tucker, Women, Family, and Gender, 48-49.
is another case of Bar Hebraeus coining a Syriac version of an Islamic legal term. Bar Hebraeus then jumps ahead to draw from Ghazālī’s chapter on “determining (taʿarruf) the mahr al-mithl.” He does not copy its exact language, but repeats the same basic principle that paternal lineage (nasab) is determinate: a mahr al-mithl is determined by consideration of the mahr(s) that the bride’s agnate female relatives have received. In other words, according to Ghazālī, one should look at the mahrs of the bride’s paternal aunts and the paternal aunts of her father. Bar Hebraeus says one should consider the dōrās of the bride’s sisters, paternal aunts, and those aunts’ daughters, but not cognate female relatives because they are “of a strange seed” (men zarʿā enōn nukrāyā).

The Wedding Banquet

The final two paragraphs of the fourth section treat the wedding banquet (meštūtā). They draw heavily from Ghazālī’s discussion of the walīma, though a basic difference obtains in that Bar Hebraeus presents the banquet as something of a necessary legal step for the finalization of the marriage (though even this is not entirely clear), while in Shāfiʿī fiqh the banquet is well-established prophetic sunna but has no specifically legal effect.

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741 Ghazālī goes on to enumerate several characteristics, such as beauty, chastity, and good character, that should be taken into consideration in determining a bride’s likeness to her relatives and her appropriate mahr al-mithl. Bar Hebraeus’ text gives a similar list, mentioning beauty, age, virginity, chastity, mental state, craft, wealth, and status as villager or urbanite, but appears to affirm that these qualities should not be taken into consideration for determining the dōrā da-bnāt pēhmāh. The syntax here is unclear, however, which raises the possibility of some kind of textual corruption; perhaps in the original text Bar Hebraeus took a position similar to Ghazālī’s.
Paragraph §9 begins with a definition of the wedding banquet and then takes up the issue of whether invitees must attend. Bar Hebraeus likewise affirms that “it is not right (lā zādeq) that he who is invited [to a wedding banquet] not go.” Where Ghazālī’s position is based on hadīth, Bar Hebraeus refers to Jesus’ attendance at the wedding in Cana (John 2:1-11) as evidence that invitees should accept. Ghazālī follows his discussion of the obligatoriness of attendance with a series of four excuses for which one might decline, which Bar Hebraeus reproduces very closely.

First, if forbidden things (munkarāt in Ghazālī) are present, one should decline the invitation. If one knows that one’s presence will cause the wicked things to abate, one should go. Second, if there are forbidden images (pictures of living things for Ghazālī, “graven images or pagan things,” šūrātā piatrāyātā aw šarbē ḥanpāyē, for Bar Hebraeus) adorning the place in which the banquet is held, one should decline to attend. However, if the images are on carpets and are trodden underfoot attendance is fine. Third, if profligate persons (al-arādhil wa-l-safala in Ghazālī, āsōṭīn in Bar Hebraeus) are present, one should not attend (though Bar Hebraeus adds another opinion that attendance is

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742 See Nomocanon, 140-41. Nallino notes the close correspondence between this paragraph and passages in the Wajīz in “Diritto musulmano,” 236-37.
743 Bar Hebraeus adds a short list of abominable things, including “wicked spectacles, dancing, prostitutes, mimes, and singers” (ḥezwānē škīrē [w-]reqdē w-repsē w-zānyātā w-mimsē w-zammārē) and as a proof text mentions a canon of the council of Laodicea, by which he means §53. See SWST 1 (text): 124.
744 See Wajīz 5: 275-76 and Wajīz 2: 38.
745 Wajīz 5: 276 and Wajīz 2: 38.
746 Wajīz 5: 277 and Wajīz 2: 38. For Ghazālī, images of animals are acceptable if they are “on the floor and what is underfoot” (ʿalā l-farsh wa-mā tahta l-aqalām); for Bar Hebraeus, “on the floor furnishings that are trodden upon” (ba-prāsē d-mettdišin).
permissible in this case because Christ ate with tax collectors).\footnote{Wasīṭ 5: 278 and Wajīz 2: 38. The relevant Gospel passages are Mark 2:15-17, Matthew 9:9-13, and Luke 5:27-32.} Fourth, Ghazālī states that fasting is not an adequate excuse to decline an invitation to a wedding banquet. Bar Hebraeus departs from Ghazālī here by asserting that if a banquet falls during a major fast one should decline. He also adds a point from a canon of Neocaesaria that a priest should not attend the banquet for someone’s second (consecutive) marriage, though Bar Hebraeus adds that such marriages are still lawful (with reference to a canon of Laodicea, in this case §1).\footnote{Bar Hebraeus states that the canon of Neocaesaria is §4, though it appears as §7 in most recensions. See Schulthess, Syrischen Kanones, 47. For the Laodicea canon see p. 86.}

Bar Hebraeus ends paragraph §9 with a few more points that are different from Ghazālī but are clearly derivative of the Wasīṭ (or possibly the Basīṭ) in structure. After discussing the fourth excuse for not attending a wedding banquet, Ghazālī adds that attendance is only obligatory for those whom the host intends to invite specifically and individually. As an example, he states that if the host says to his slave/servant (ghulām), “invite whomever you want” (id‘u man shi‘ta), those he invites do not have to attend.\footnote{Wasīṭ 5: 278.}

Bar Hebraeus clearly read this passage, but he uses the mention of the servant to reconfigure it in terms of Jesus’ parable of the great banquet. According to Bar Hebraeus, Others say that when the holder of a banquet (mārē meštūṭā) invites [you], it is not right to agree, nor when a servant (mnīḥānā) [does so]. But they do not know that the Lord grows angry against those who are invited by slaves but do not go [which is exactly what the offenders do in Matthew 22:1-14 and Luke 14:15-24].

Here, Bar Hebraeus leaves aside the actual legal point of Ghazālī’s text (the lack of specification of the invitee effects the permissibility of declining, not the fact that a ghulām delivered the invitation); but he has clearly read the passage and has reworked its
mention of the ghulām’s invitation in order to assert his own biblically supported doctrine that one should not decline the invitations of slaves. We should add here that the ghulām’s invitation is not found in the Wajīz.\footnote{Compare Wasīṭ 5: 278 to bāb al-walīma wa-l-nathr in Wajīz 2: 38-40.}

Finally, paragraph §10 of the fourth section is closely based on the last section of Ghazālī’s kitāb al-ṣadāq, “on scattering sugar and walnuts” (fī nathr al-sukkar wa-l-jawz).\footnote{Yōḥannān of Mardē’s canon §28 mentions that wedding banquets should not be too extravagant. See SWST 2 (text): 248.} Bar Hebraeus begins with a few points that have no immediately apparent source: a man should not hold a banquet beyond his means, guests should neither take the chief seat nor drink too much, and guests should send gifts before the day of the banquet.\footnote{See Nomocanon, 141-42.} Following that, however, Bar Hebraeus cleaves closely to Ghazālī’s text. The Wasīṭ offers a few traditions according to which the prophet encouraged the custom of scattering walnuts, almonds, and dates for guests to pick up at weddings (Ghazālī discusses a few different opinions on whether it is preferable to carry on with this custom or not; in any case, it is permissible).\footnote{See Wasīṭ 5: 280-81 and Wajīz 2: 38-39.} Following his model text, Bar Hebraeus states that at weddings people should scatter sugar, walnuts, almonds, or dates (those who do the scattering are bādōrē in Syriac). Ghazālī continues with a discussion of the precise legal conditions in which a guest might claim his nut, several of which Bar Hebraeus reproduces: anything that falls on the ground is fair game for the guests; guests should not steal pieces that have already been claimed by others; but if something falls from a guest’s lap, someone else may claim it.

Bar Hebraeus closes with a somewhat garbled rendering of an analogy offered by Ghazālī to explain these rules, but one that exemplifies his close textual reliance on the
Wasīṭ (or Basīṭ). Ghazālī considers the laws of hunting (ṣayd) and ownership of the kill to apply to the claimants of scattered nuts at a wedding, and so explains that a nut that has fallen from one person who caught it accidentally is fair game for another guest “just as if a bird built a nest in his home, then flew away. But if the prey falls into a trap and then escapes [i.e., someone purposely takes hold of a nut in his lap and then drops it accidentally], the apparent ruling is that [the hunter’s] ownership [of the prey] continues.”754 In the Nomocanon, Bar Hebraeus translates this passage thus: “A bird that makes a nest in a person’s house belongs to the one who hunts it when it flies away. But that which escapes from a trap belongs to the owner of the trap, and not to each who hunts, unless it falls into the trap of another.” Though the last phrase contradicts the main point that prey is specifically the property of the original trapper, Bar Hebraeus has obviously translated this passage from Ghazālī. It is therefore another clear indication of Bar Hebraeus’ reliance on Ghazālī’s longer legal works: the analogy of the hunted bird does not feature in the Wajīz.

As a final note, we should mention that this paragraph raises some interesting questions about customary practices at wedding banquets among Christians in Bar Hebraeus’ time. He has very clearly lifted the discussion of scattering small goods from Ghazālī’s text, but it would seem a strange suggestion if similar practices were not already familiar to Bar Hebraeus’ Christian audience. As I am not aware of any other instructive contemporary sources, however, the origins and familiarity of these practices must remain uncertain.

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754 Wasīṭ 5: 281.
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⁷⁵⁵ The text of the *Wasīṯ* does not actually give this the chapter heading of *al-bāb al-sādis* in the *kitāb al-ṣadāq*, but it is clearly included within it.
Bar Hebraeus’ fifth section treats divorce or, more precisely, the dissolution of the marriage bond and the “separating” (puršānā) of the spouses. In the entirety of the Nomocanon’s chapter on marriage this section, unsurprisingly, bears the smallest relationship to Ghazālī’s texts. Islamic law allows a husband the right to divorce his wife at his choosing and also gives a wife the ability to seek the dissolution of her marriage in certain circumstances.756 Essentially all Christian traditions, on the other hand, had long placed considerable restrictions on any dissolution of the marriage bond during the life of both spouses. This is suggested even in the title Bar Hebraeus chooses for the section. Puršānā, literally “separation” and one of several possible Syriac words for divorce, is from the same root (p-r-š) used in one of the Gospels’ most important teachings on divorce: “Whatever God has joined, let no man separate (nparrēš)” (Peshīṭta Matthew 19:6/Mark 10:9). Thus, already in the section’s title Bar Hebraeus evokes the notion that the dissolution of marriage is no neutral act, but rather has significant theological implications that prohibit it in most circumstances. In light of such differences between Christian and Muslim understandings of divorce, Bar Hebraeus does not rely on

756 For an overview see Tucker, Women, Family, and Gender, 86-104.
Ghazālī’s *kitāb al-ṭalāq* in this section at all. He does, however adopt some legal opinions from other sections of Ghazālī’s legal texts.

*Marital Dissolution and Christian Tradition*

In paragraph §1, Bar Hebraeus lays out the Christian case for why dissolution of the marriage bond is restricted to certain circumstances.\(^{757}\) He cites Genesis 2:24, Proverbs 19:14, and Matthew 19:6/Mark 10:9 to underscore that God Himself is involved in confirming the marital bond and that therefore it can be undone only for specific reasons. Bar Hebraeus divides these reasons into two categories, “natural” (*kyānāyatā*) and “lawful” or “law-related” (*nāmōsāyatā*). Under the former category falls death of one of the spouses; under the latter fall the other seven, including adultery (*zānyūtā*) on the part of the wife, sorcery (*ḥarrāšūtā*), apostasy (*lā haymānūtā*), relation by a prohibited degree of kinship (*ḥyānūtā kālōytā*), choosing the monastic life (*dayrāyūtā*), the slave-status of one spouse (*ʿabdūtā*), and physical defects that prevent consummation (*mūmē kālyay men šawtāpūtā*). As we will see, essentially all but the last of these are grounded in Christian tradition; only on the issue of physical defects does Bar Hebraeus draw from Ghazālī. Bar Hebraeus closes paragraph §1 with an alternate list of offenses for which spouses may divorce each other, all of which come from the Syro-Roman Law Book; these, however, do not figure prominently in the rest of the section.\(^{758}\)

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\(^{757}\) See *Nomocanon*, 142-43.

\(^{758}\) These stipulations are that a man can divorce his wife and divest her of her *pernītā* if she spends the night in a house not her own or “goes to a theater to see inappropriate things”; and that a wife can divorce her husband if he strikes her as he would a slave, takes a concubine, commits adultery, steals, or practices sorcery. These lists correspond exactly to the stipulations of two
In paragraph §2, Bar Hebraeus treats the disposition of marriage gifts when a marriage ends with one of the spouses’ deaths.\footnote{759}{Its provisions are based partly on the Syro-Roman Law Book. First, Bar Hebraeus cites canon §54 to the effect that if a groom dies after betrothal but before the marriage is concluded with the wedding banquet, the bride receives half of the marriage gifts promised her by the groom (excluding food and drink) while the rest returns to his heirs.\footnote{760}{Bar Hebraeus then adds several more conditions, none of which he attributes directly to the Syro-Roman Law Book. When a husband dies after the marriage has been finalized, all marriage gifts belong to his widow. If the wife dies before her husband, the marriage gifts are likewise considered to have belonged to her, and her widower inherits from her. If the bride dies before consummation, the dōrā returns fully to the husband but he receives nothing from the pernītā. None of these are found explicitly in the Syro-Roman Law Book, though the first canons in the Syro-Roman Law Book. See §85 and §86 in \textit{SWST} 2 (text): 133-34 and §§120a-b in \textit{SRRB} 2: 174-77.\footnote{759}{See \textit{Nomocanon}, 143-44.\footnote{760}{For this canon, see §54 in \textit{SWST} 2 (text): 124 and §84 in \textit{SRRB} 2: 104-107. This canon actually specifies that the bride keeps half of the marriage portion “if the girl has had a bridal chamber (gnōnā) and her betrothed saw her and kissed her”; otherwise, the groom’s family takes back the entire marriage portion. The Constantinian constitution on which this canon is based apparently recognized betrothals sealed by an exchange of kisses and a certain amount of interaction between bride and groom as binding enough to necessitate splitting the marriage gift. For Bar Hebraeus, however, it is unlawful (lā qānōnāytā) for a bride and groom to kiss before the full conclusion of the marriage at the banquet; he therefore simply takes the “halving” opinion from the Syro-Roman Law Book and says that “we cannot make a similar decision in the case of [the groom] seeing and kissing [the bride]” (wa-l-hāy d-en ḥzāh w-naṣqāh lā mašwēnan l-tuhḥāmā). On Constantine’s constitution, see Evans Grubbs, \textit{Law and Family}, 170-71.}}
two bear parallels to some Syro-Roman provisions.\footnote{For the provision that a wife takes her entire dōrā and pernītā at her husband’s death, see §46 in SWST 2 (text): 116-17 and §115 in SRRB 2: 168-71. Other Syro-Roman canons allow a widow her entire pernītā but only half the dōrā; see §54 and §88 in SWST 2 (text): 124 and 135 and §87a and §108 in SRRB 2: 108-115 and 160-63. §88/108 gives the entire dōrā and pernītā to the husband in safekeeping till it can be passed on to the woman’s children. §54/87a gives a widower the entire dōrā and half the pernītā.} In any case, they do not look to be drawn from Ghazālī. The last opinion is especially un-Islamic: according to all four Sunnī schools of law, when either spouse in a contracted marriage dies before consummation the wife (or her heirs) receives her full marriage gift.\footnote{See Ramaḍān, al-Mawsūʿa al-kuwaytiyya 2: 452. Ghazālī affirms that the debt of the full marriage gift is confirmed “by consummation or the death of one of the spouses” (bi-l-waṭʾ aw mawt aḥad al-zawjayn). See Wasīṭ 5: 226.}

There is, however, a certain parallel in Islamic law to Bar Hebraeus’ provisions in this section: if a man divorces his wife before consummation, he owes her half the stipulated marriage gift.\footnote{See Wasīṭ 5: 247-48 and Wajīz 2: 34.} And in paragraph §3, Bar Hebraeus applies a host of opinions stemming from this doctrine to cases in which halving the marriage gift is necessitated by the groom’s death before consummation.\footnote{See Nomocanon, 144-45.} They are drawn from Ghazālī’s chapter on “splitting the marriage gift” (tashaṭṭur al-ṣadāq). In it, Ghazālī addresses a series of cases of non-cash marriage gifts and how they should be split: date palms (nakhīl), a pregnant slave (jāriya hamīl), jewelry (ḥaly) that the woman has had reforged, wine that becomes vinegar (khamr and khall), a debt (dayn), and learning the Quran.\footnote{Wasīṭ 5: 251-55 and Wajīz 2: 35.} Bar Hebraeus has clearly modeled his discussion on this series of Ghazālī’s: he takes up in turn vineyards (singular karmā), a pregnant slave (amtā d-baṭnā), bracelets (aqlānē aw qulbē) that have been broken and reforged, wine-cum-vinegar (ḥamrā and ḥallā), and a debt (ḥawbtā).\footnote{Concerning the debt, Bar Hebraeus throws in a point adapted from the Syro-Roman Law Book that a wife does not owe half the value of animals that she had been given as a marriage gift and which then died. See §88 in SWST 2 (text): 135 and §108 in SRRB 2: 160-63.}
Bar Hebraeus’ discussion of each category is also, unsurprisingly, based closely on Ghazālī, though he does not always take up all of Ghazālī’s opinions exactly. We can compare the two treatments of the first category as an example:

<table>
<thead>
<tr>
<th>Nomocanon</th>
<th>Wasīṭ</th>
</tr>
</thead>
<tbody>
<tr>
<td>When the groom offers a vineyard to the bride and dies before the banquet, when the fruits have not ripened (kad lā bṣel[w] pērē) they are the bride’s. And the groom’s people may not force her to harvest (qṭānā) before the ripening (bšālā). Regarding trees (īlānē), half are hers and half are theirs. And in this case a judgment is given with difficulty concerning how much it is right that she spend on irrigation (ṣeqyā) and how much they spend. For she and they do not spend equally, because the fruits are hers specifically but the trees are in common. And if they do not irrigate, the fruits suck the moisture of the trees (pērē l-raftibūt īlānē māṣṣīn) and the trees are damaged.</td>
<td>If he stipulates date palms (nakhir) for her, they bear fruit (athmarat) while in her possession, and he divorces her before harvesting (judhādh), he forfeits in this case [his] half; the fruits remain hers, while the trees (ashjār) are shared. If he leaves aside irrigating (ṣaqy), the fruits and trees are harmed because the fruit sucks up the moisture of the tree (li- ’mitsāṣ al-thamara ruṭūbat al-shajara). If he does irrigate, the fruits and trees benefit. But the entirety is not shared until they share in irrigating, so it is not possible to divide in this case unless through the allowance or agreement of one of the sides. If he wants to take half of the trees and charge her with cutting the fruits immediately, he may not do that because it is her right to keep the fruit until the harvest…</td>
</tr>
</tbody>
</table>

Bar Hebraeus closes paragraph §3 by considering what to do if a wife has sold or given away the marriage gift. This is based on a later passage in Ghazālī’s chapter on *tashaṭṭur al-ṣadāq*. Ghazālī says that if the woman’s ownership of the gift has ceased “due to sale, gifting, or emancipating [a slave] (bayʿ aw hiba aw ’itq), returning [the gift] is prevented and [half its] value is confirmed [as an obligation of bride to groom].” Similarly, Bar Hebraeus says that “if she sold (zabbnat) or gifted (šakknat) something that was offered to her [as a marriage gift]… she returns [to her husbands’ heirs] half of the value (dmayā) that she received.” Bar Hebraeus continues to follow Ghazālī in

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767 Wasīṭ 5: 251.
discussing what obligations obtain if the gift has been rented or pledged as security (*rahn aw ijāra* in Ghazālī, *awgrat aw šakknat* in Bar Hebraeus).

In all, Bar Hebraeus’ two paragraphs on the disposition of marriage gifts on a spouse’s death are another characteristic mixing of Christian and Islamic sources. In paragraph §2 he adapts a number of provisions from the Syro-Roman Law Book, while in paragraph §3 he applies passages from Ghazālī on cases of divorce before consummation to his own concern with death before consummation.

*Adultery as Grounds for Divorce*

Paragraphs §§4-7 treat adultery as grounds for divorce, and here Bar Hebraeus departs fully from Islamic law (according to which anyone in a consummated marriage whose adultery has been proven should be stoned to death). In paragraph §4 Bar Hebraeus affirms that only adultery on the part of a wife – not a husband – constitutes sufficient grounds for marital dissolution and in so doing looks back to traditions common to Roman law and the Bible. As we saw in chapter six, the “double standard” in both Roman law and the law of the Hebrew Bible – according to which only extramarital sex engaged in by a married woman is considered adultery – is well known. On the face of it, the “Mathhean exception” of Matthew 5:32 maintains the same gendered definition of adultery, though many later Christian traditions expanded the idea to

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768 See *Wasīṭ* 5: 257 and *Wajīz* 2: 36.
770 See note 450.
encompass men’s sexual transgressions in addition to those of women.\textsuperscript{771} In any case, Bar Hebraeus cleaves to the Roman-biblical definition and in support cites from the canonical letters of Basil the Great (which defer to custom in allowing male fornicators to remain with their wives while calling for female adulteresses to be cast out of marriage).\textsuperscript{772} He also mentions a Syro-Roman canon to the effect that wives may not accuse their husbands of wrongdoing.\textsuperscript{773}

Bar Hebraeus closes paragraph §4 by enumerating a few reasons why a wife’s adultery is graver, and therefore appropriate grounds for divorce, in comparison to that of a husband. The passage is very similar to one in Īšō‘bōkt’s law book; I would suggest that Bar Hebraeus has drawn it from Gabriel of Baṣra. In fact, this part of paragraph §4 as well as most of paragraphs §5 and §6 look to be based on two consecutive paragraphs in Gabriel, the ultimate source of which is Īšō‘bōkt. As we have mentioned, the chapter on the law of marriage in Gabriel’s compendium no longer survives, but we can compare the relevant corresponding passages from Ibn al-Ṭayyib.

At the end of the Nomocanon’s paragraph §4, we have the following:

\textsuperscript{771} Timothy and Īšō‘barnūn are a good example, on which see chapter six.

\textsuperscript{772} Bar Hebraeus cites two canons from Basil’s canonical letters to Amphiloctius, §9 and §21 in the standard numbering. For Syriac versions very close (but not exactly the same) to Bar Hebraeus’ quotations, see §9 and §5 in MS Mardin CFM 310, ff. 115b-116a and 123b-124a.

\textsuperscript{773} §69 according to Bar Hebraeus’ numbering and in \textit{SWST} 2 (text): 128, equivalent to §23 in \textit{SRRB} 2: 46-47. The canon states that “the laws do not (\textit{lā}) allow women to accuse their husbands of wicked things done by them,” but the text of the \textit{Nomocanon} in Bedjan’s edition lacks the \textit{lā} noted in the quotation and so reads that the laws \textit{do} allow wives to do this. By the sense of the passage and comparison to the other instances of the text of the canon, however, Bar Hebraeus’ passage clearly requires the \textit{lā}.
<table>
<thead>
<tr>
<th>Ïšō’bōkt §II.xii&lt;sup&gt;774&lt;/sup&gt;</th>
<th>Fiqh al-naṣrāniyya, on divorce (fī ʿl-ṭalāq), §4&lt;sup&gt;775&lt;/sup&gt;</th>
<th>Nomocanon</th>
</tr>
</thead>
<tbody>
<tr>
<td>… defects, harm, and injustice (mūmē w-nekyānē wa-ṭlumyē) occur more (yatīr) from the adultery (gāwrā) of a woman than that of a man.</td>
<td>… the offspring of an adulterous man (zānī) is not attached to the lineage (yunsab ilā) of the woman, does not receive inheritance (mīrāth), and does not grow up with [her]. But the offspring of a woman are attached to the lineage of the man, receive inheritance, and are raised among them (yuqām bihim).</td>
<td>We know three causes for this particularity [i.e., that women’s adultery causes divorce but men’s does not]. One is [that] the dishonor of a woman in adultery (metparsyānūtā d-a(n)ttā b-zānyūtā) is, because of pregnancy (bāṭnā), greater (yatīr) than [that] of a man. Two is the fact that the children of an adulterous man do not mix (lā methallīn) with the children of his lawful wife and do not inherit with them. But the children of an adulterous wife mix with the children of her lawful husband and inherit with them unjustly (lā kēnā ʿī).</td>
</tr>
<tr>
<td>… when a man commits adultery with another woman, the children that are born from her do not receive sonship (brūtā) and inheritance (palgūtā and yartūtā) from his lawful wife… When a woman commits adultery, however, those who are born from her receive sonship, maintenance, and inheritance… For a woman, [when] a son is sired by a man she has no doubt (puššākā) whether the child is born by her or another woman. When a man’s wife commits adultery, however, he does not know whether those who are born from her are his children or other men’s.</td>
<td>And there is no doubt (lā yaqaʿ fihi shakk) that the offspring of an adulterous woman (zāniya) are of her. But there is a doubt concerning the sons of an adulterous man; are they of him or of another?&lt;sup&gt;776&lt;/sup&gt;</td>
<td>Three is the fact that children of adulterous men are suspected (d-masbrānūtā) [to be so], while the children of adulterous women are [known] exactly (d-ḥattītūtā) [to be so].</td>
</tr>
</tbody>
</table>

Bar Hebraeus’ first cause here does not have an obvious parallel in Ibn al-Ṭayyib, but there may well have been one in Gabriel’s original Syriac. All in all the passages are

<sup>774</sup> SR 3: 58-60.<br>775 Ibn al-Ṭayyib, Fiqh 2 (text): 9.<br>776 Note that Ibn al-Ṭayyib and Bar Hebraeus (and presumably Gabriel) have reversed the sense of the passage in Ïšō’bōkt.
similar enough to suggest that Bar Hebraeus drew these from the Syriac text that underlies Ibn al-Ṭayyib’s paragraph.

This conclusion is further confirmed when we see that the Nomocanon’s following paragraph (§5) is itself based on the following paragraph in Ibn al-Ṭayyib (also §5). The topic here is how adultery is proven:

<table>
<thead>
<tr>
<th>İşō’bökṭ §II.xv 778</th>
<th>Fiqh al-naṣrāniyya, on divorce, §5779</th>
<th>Nomocanon</th>
</tr>
</thead>
<tbody>
<tr>
<td>In what way is adultery known?...</td>
<td>Proof of sexual transgression (fuṣūr) is from three things: a woman’s pregnancy when her husband is in a far-off land for a long time, or through fornication and dishonor (mparsayūtā) that occurs openly (galyā īt) many times, or through truthful witnesses not fewer than two or three who testify by the sign of the fear of God.</td>
<td>Four things confirm a woman’s adultery.</td>
</tr>
<tr>
<td></td>
<td>her constant and open adultery (taẓāḥuriḥā bi-l-zinā’),</td>
<td>One is if she becomes pregnant (ṭebṭan) when her husband is distant (kad raḥḥiq ba’lāh), or is near but has not had sex with her. Two is if she is dishonored (tetparsē) by adultery openly (galyā ‘īt) with one or with many [men]. Three is if she confesses with her [own] tongue that she has committed adultery. Four is if six just witnesses testify against her, men and not women. Because the testimony is against two persons [six witnesses are needed], all of them having seen her at the same time with a stranger under a cloak in a wicked display.780</td>
</tr>
<tr>
<td>780 Bar Hebraeus’ paragraph §5 continues with a number of other opinions on witnessing adultery for which I have found no apparent source. They read as follows: “The testimony of women is accepted when she who is accused is a virgin. Therefore, when six just (kēnē) men testify that she has committed adultery and twelve just women testify that she is a virgin, the testimony of the women nullifies that of the men because it is possible that adulterous sex was not committed even</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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The similarities between these passages are even more evident than those in the previous section. The only appreciable difference is that Bar Hebraeus has added confession as another proof of adultery. We also have an indication here that Bar Hebraeus indeed accessed Īšōʾbōkt’s material through Gabriel rather than working off of the original text: he gives the “double load” of six witnesses found in Gabriel/Ibn al-Ṭayyib rather than the two or three of Īšōʾbōkt.\footnote{We might add that Bar Hebraeus’ assertion that all witnesses to adultery must simultaneously see the act is suggestive of Islamic standards for proving \textit{zinā’}, but in this section he does not appear to take anything directly from Ghazālī.} We might add that Bar Hebraeus’ assertion that all witnesses to adultery must simultaneously see the act is suggestive of Islamic standards for proving \textit{zinā’}, but in this section he does not appear to take anything directly from Ghazālī.\footnote{We might add that Bar Hebraeus’ assertion that all witnesses to adultery must simultaneously see the act is suggestive of Islamic standards for proving \textit{zinā’}, but in this section he does not appear to take anything directly from Ghazālī.}

Once again, the \textit{Nomocanon}’s following paragraph (§6) is quite clearly parallel to the following passage in Ibn al-Ṭayyib/Gabriel (the latter half of paragraph §5), which again goes back to Īšōʾbōkt.\footnote{The shared passage describes a ritual cursing to be carried out upon a woman who has been accused of adultery but against whom there are no witnesses. Īšōʾbōkt has adapted it from a procedure described in Numbers 5:11-31. In short, the procedure involves a priest reciting curses and admonitions before the altar against a woman accused of adultery. If she later takes sick, she is considered to have been guilty; if she does not, she is innocent. Parts of the passages are as follows (italics indicate quotations from the text of Numbers):}

\begin{quote}
if she was seen in a wicked manner. Others say that female testimony does not nullify that of men, but that she [may have] committed adultery even if she is a virgin because the arteries that were broken have been joined through conjuring. But the first opinion is correct.”
\end{quote}

\footnote{Īšōʾbōkt’s requirement of two or three witnesses is likely based on a number of biblical passages that require the same for various accusations of wrongdoing. See, for example, Deuteronomy 17:6 and 19:5, Matthew 18:16, and 2 Corinthians 13:1.}

\footnote{Bar Hebraeus also includes in paragraph §5 a number of exceptions – cases in which a wife’s adultery does not result in marital dissolution. These are if she has not reached the age of fourteen, if she is raped, if she is not in control of her faculties because of demonic possession or sorcery, or if she suffers from a heavy sleep (with reference to Lot and his daughters, Genesis 19:30-38). No other source is apparent for these opinions; they are likely Bar Hebraeus’ additions.}

\footnote{See \textit{Nomocanon}, 147-48.}
<table>
<thead>
<tr>
<th>İśō’bōkt §II.xv</th>
<th>Fiqh al-naṣrāniyya, on divorce, §5</th>
<th>Nomocanon</th>
</tr>
</thead>
<tbody>
<tr>
<td>The wife shall approach our bitter testing waters (mayyā marrīrē bāhrē). These are the oaths and curses (māwmtātā w-lāwfātā) that, by the Word of God, the priest declares upon her: “If you have committed this abomination (tanjūtā), may such-and-such (hākanā w-hākanā) come to you from God. And if you are innocent of this sin, and that thing does not befall you, may you be made holy (tēthsēn) by the Word of God.”</td>
<td>If there are no signs of the accusation (da`wā) upon the woman and no one testifies against her, she shall swear an oath and receive curses (la’ānāt) from the priests in the church of God and by the Gospel, to the effect that the priest shall say to her, “If you have done this, may such-and-such (kadhā wa-kadhā) happen to you; and if you have been truthful, [may] you [be] well (salīma).”</td>
<td>When the spirit of jealousy comes over a woman’s husband (tēē <code>al ba</code>lāh d-afnīttā rūḥā da-ṭānān) and he suspects that she has committed adultery… the man shall bring the woman before the altar. And a priest shall take water in one of the vessels of the altar and throw in it a little dust from the base of the altar, and pray an appropriate prayer over the water. And he shall say to the woman, “If you have committed adultery, and a man other than your husband has slept with you, may the Lord give you curses (lawtātā), and may this holy testing water take your womb and your belly and putrefy your innards. And if you have not committed adultery and have not been defiled, may you be made holy (mḥasyā) by this water.” And if… after forty days, a rottenness of dropsy does not take hold, the wicked suspicion of adultery is lifted from her…</td>
</tr>
</tbody>
</table>

In this case, Bar Hebraeus’ version is much closer to the biblical text than the other two.

Overall, however, the structural correspondence between the Nomocanon’s paragraphs §§4-6 and Ibn al-Ṭayyib’s §§4-5 remains striking. Therefore, however much Bar Hebraeus may have looked back to the original texts (whether the Bible or perhaps even

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784 SR 3: 64-66.
Īšōʿbōkt, though that is unlikely), Gabriel of Baṣra was almost certainly his original source for this section.

Paragraph §7, the last to deal with adultery, continues with matters of suspicion and accusation but moves away from Īšōʿbōkt and Gabriel of Baṣra.\textsuperscript{786} In fact, here Bar Hebraeus returns to Ghazālī to take a few clusters of doctrines concerning denial of paternity from the latter’s kitāb al-liʿān. In Islamic law, liʿān is an oath-taking procedure (comparable in certain respects to that of Numbers 5) by which a man without sufficient proof of his wife’s adultery denies paternity of her child.\textsuperscript{787} Bar Hebraeus’ reliance on Ghazālī is evident in most of the paragraph. First, Bar Hebraeus states that a man can no longer deny paternity of (metnakrāyū, literally “be estranged [from]”) a child born to his wife if he does not do so within its first three days of life. The specification of three days as a “statute of limitations” is an opinion given by Ghazālī.\textsuperscript{788} Bar Hebraeus adds, however, that a husband may still deny paternity after the three days if he can prove that he has not had sex with his wife for seven months before the child’s birth. This is suggestive of the principle, alluded to several times in the kitāb al-liʿān, that one may presume that a child born no fewer than six months after a man and wife’s union has issued from that union – i.e., six months is the shortest possible period of a full pregnancy.\textsuperscript{789} Bar Hebraeus’ reliance on Ghazālī is apparent in that he takes six months as the baseline of proof that an accusatory husband must meet – he may deny paternity if

\textsuperscript{786} See Nomocanon, 148.
\textsuperscript{787} On liʿān in Islamic law see Spectorsky, Women in Classical Islamic Law, 128-31.
\textsuperscript{788} Wa-laʾllahu yataqaddar bi-thalāthat ayyām. See Wasīṭ 6: 112 and Wajīz 2: 97. Ghazālī mentions a few other opinions, including that a man must deny paternity immediately and that he may do so at any point while he remains suspicious.
\textsuperscript{789} See, for example, Wasīṭ 6: 83, where Ghazālī states that a man may deny paternity through liʿān if he is certain that his wife bore a child “less than six months from the time of consummation” (qabla sittat ashhur min waqt al-watʿ). Other examples can be found at Wasīṭ 6: 109-110. See also mentions at Wajīz 2: 92 and 96.
he can prove that he has not been with his wife for seven months (i.e., a period longer than six months).

Bar Hebraeus closes paragraph §7 by affirming that a man may not deny paternity simply because his child has a different skin tone – if he is white (ḥewwārā) and his child is black (ukkāmā), for example. This parallels a passage in the kitāb al-lī ʿān in which Ghazālī mentions precisely the same case: “a father who is mostly white and child who is mostly black” (al-āb fī ghāyat al-bayāḍ wa-l-walad fī ghāyat al-sawād). Bar Hebraeus, however, supports his point by reference to the story of Jacob breeding differently colored goats and sheep out of Laban’s flocks (Genesis 30:25-43).

Sorcery as Grounds for Divorce

Paragraphs §§8-9 discuss “sorcery” (ḥarrāšūtā) as grounds for marital dissolution. Here, Bar Hebraeus draws wholly on Christian sources; fiqh does not take up this topic, and so Ghazālī has supplied no source material for the Nomocanon as far as I am able to see. Bar Hebraeus begins paragraph §8 by specifying that sorcery practiced by husband or wife constitutes grounds for marital dissolution (ḥarrāšūtā pārōštā, “dissolution-effecting sorcery”). As we saw in chapter six, Syriac Christianity knew a long tradition of condemning as “sorcery” the wide variety of Middle Eastern practices that involved extra-human powers but fell outside the church’s own ritual and

790 Wasīṭ 6: 84 and Wajīz 2: 92. Ghazālī actually states that there are two opinions on whether or not denial of paternity through liʿān is permissible in this case.
791 Bar Hebraeus adds that “outsider [i.e., non-Christian] wise men” (ḥakkīmē barrāyē) have also confirmed that offspring might have appearances different from their parents. In Bar Hebraeus’ parlance, “outsider wise men” usually refers to ancient Greek philosophers. Here he gives no citation to specify whom he has in mind.
792 See Nomocanon, 148-49.
institutional boundaries. Bar Hebraeus both draws from and carries on this tradition in the *Nomocanon*. I have found no precedent for specifying sorcery as grounds for divorce in West Syrian synodal legislation, but Bar Hebraeus was likely familiar with East Syrian sources that maintained this position.\footnote{We have previously seen him discuss rulings from Timothy and Īšo‘barnūn’s law books in detail; both of those list sorcery as grounds for divorce.} We may also mention in this respect the Syro-Roman canon cited by Bar Hebraeus in paragraph §1 that specifically allows a wife to divorce her husband for sorcery.\footnote{§86 in *SWST* 2 (text): 133-34 and §120b in *SRRB* 2: 176-77.}

Paragraph §8 continues with a long and evocative list of practitioners whom Bar Hebraeus considers sorcerers (such as *massqay zakkūrē*, “raisers of the dead,” and *gabrē d-zāqpīn ḥannayhōn*, “men who pierce their penises”), supported with a quotation of Numbers 22:7. The paragraph concludes with a list of practices (like astrology and *luḥsātā*, “incantations”) that might fall into the category of sorcery and are forbidden by certain (pseudo-) apostolic canons,\footnote{In the set of pseudo-apostolic canons associated with the text known as *The Teaching of the Apostles* (or the Apostle Addai), §12 condemns “sorcerers, soothsayers, and [astrological] diviners” (*ḥarrāšē w-qāṣōmē w-kaldāyē*). See Cureton, *Syriac Documents*, 27. On this text, see Kaufhold, “Sources,” 243.} but which do not necessitate marital dissolution according to Bar Hebraeus.\footnote{The last statement of paragraph §8 adds, “But the [Byzantine] emperors also condemn sorcerers to struggle with wild animals.” Kaufhold notes that this bears a striking resemblance to a passage from a Byzantine legal text, the *appendix Eclogae*. See SRRB 1: 56 (my translation of Bar Hebraeus’ statement here is based on Kaufhold’s German one). How Bar Hebraeus came to include this passage in the *Nomocanon* is not entirely clear; perhaps he was familiar with the Arabic version of the *Ecloga*, which is found in a number of the Copts’ legal compendia (see Kaufhold, “Sources,” 276). I have found no other trace of that work’s stipulations on marriage in the *Nomocanon*. On the *Ecloga* see Spyros Troianos, “Byzantine Canon law to 1100,” in Hartmann and Pennington, eds., *The History of Byzantine and Eastern Canon Law to 1500* (Washington, D.C.: The Catholic University of America Press, 2012), 129-32.}

Paragraph §9 is brief and contains no legal material. Its purpose is to assert that “sorcery is not ineffective” (*law lā maʾbdā ḥarrāšūtā*), which Bar Hebraeus supports by
quoting 1 Samuel 28:11-14 (on the raising of Samuel from the dead) and referring to one of Basil the Great’s letters.797

Apostasy, Prohibitive Kinship, and Monasticism

Paragraph §10 treats a number of other grounds for divorce, the first of which is apostasy.798 The paragraph again bears no direct relation to Islamic law, in which the penalty for apostasy is death. Bar Hebraeus expands here on his paragraph §8 of section 3 on confessional difference as an impediment to marriage. He affirms that if a spouse “disbelieves and converts” (kāpar w-meštahlap) to paganism, Magianism, Judaism, Islam (literally “Saracenism,” sarqāyūtā), or Arianism (all of which would render an individual unmarriageable in the first place) the marriage is dissolved. If a spouse only takes up a diophysite Christian creed (trayānūt kyānē), however, it is not.

Additionally, if a couple related within the prohibited degrees marry without a priest’s knowledge, they should be separated. If one spouse wants to adopt the monastic life, he or she may do so as long as the other agrees; the non-ascetic becomes free to remarry.

In general terms, these grounds for marital dissolution likely relate to Bar Hebraeus’ own considerations of the exigencies of Christian society and institutions. I know of no immediately obvious sources for these rulings in West Syrian legal works.

797 According to Bar Hebraeus, Basil heard of a woman who brought a case before the emperor Julian the Apostate concerning the death of her son through sorcery (abdānā da-brāh etharras); Basil “did not consider this fantastical” (law haggāgā ḥašbēh). This account can be found in Basil’s letter 41 to Julian. I have not been able to consult the Syriac version, which remains unpublished. For manuscript information see Fedwick, “Translations,” 452.

798 See Nomocanon, 150.
though we might again note that both Timothy and Īšō barnūn give rulings on apostasy and the adoption of the monastic life as grounds for marital dissolution in their law books (see chapter six).

*Dissolution of Slaves’ Marriages*

Paragraph §11 treats the dissolution of slaves’ marriages. It bears a certain similarity to Islamic law but does not draw directly on Ghazālī in any apparent way. Bar Hebraeus asserts that the marriages of slaves contracted without their owners’ consent (*puqdān mārayhōn*) are dissolved (this is consonant with Islamic law, as such a “marriage” would be fundamentally invalid). He adds a Syro-Roman provision that if a free woman willingly marries a slave she can be reduced to slave status herself.

*Bodily Flaws as Grounds for Divorce*

The final three paragraphs of the fifth section treat disease and bodily flaws that prevent consummation as grounds for divorce. Unlike the rest of this section, a portion of the material in these paragraphs is drawn from Ghazālī; Bar Hebraeus’ source is the *kitāb al-nikāh*’s discussions of defects (*ʿuyūb*) and impotence (*ʿunna*) in its section “on factors that necessitate the choice [of marital dissolution]” (*fī mūjibāt al-khiyār*).

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799 See *Nomocanon*, 150-51.
800 See §74 in *SWST* 2 (text): 129 and §44 in *SRRB* 2: 66-69. Paragraph §11 includes a few more provisions with no obvious source, including that offspring issuing from fornication between a slave woman and a free man are free, any marital union between the two requires the master’s consent, and such a man can never divorce the woman if he knows that he is marrying a slave.
The *Nomocanon*’s paragraph §12 opens with an evident structural reliance on Ghazâlî’s texts. Ghazâlî lists seven defects that give a spouse the option to withdraw from a marriage. Two, castration (jabb) and impotence (ʿunna), are specific to men; two forms of vaginal closure (rataq and qaran) are specific to women; and leprosy (baraṣ), elephantiasis (judhām), and madness (junūn) are common to both genders. Bar Hebraeus offers a similarly structured schema. He gives, again, seven “separation-effecting defects” (mūmē mapršānē). Gbarnešāyūtā (to be explained below) and castration (psāqē) are specific to men, mlaḥhmūtā and āpōṣṭīmē are specific to women, and leprosy (garbā), elephantiasis (aryānūtā), and epilepsy (literally “the demon,” daywā) are common to both genders.

<table>
<thead>
<tr>
<th>Ghazâlî</th>
<th>Bar Hebraeus</th>
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<tbody>
<tr>
<td>Male defects</td>
<td>jabb</td>
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<tr>
<td></td>
<td>ʿunna</td>
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<tr>
<td>Female defects</td>
<td>rataq</td>
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<tr>
<td></td>
<td>qaran</td>
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<tr>
<td>Common defects</td>
<td>leprosy</td>
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<tr>
<td></td>
<td>elephantiasis</td>
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<tr>
<td></td>
<td>madness (junūn)</td>
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Bar Hebraeus has evidently based his seven-part list on Ghazâlî’s, but there are a few differences we might note here. Instead of simple impotence, Bar Hebraeus gives us gbarnešāyūtā. This literally means something like “male-femaleness,” and Bar Hebraeus explains it as covering two conditions: impotence (natural or due to illness) and hermaphroditism. Āpōṣṭīmē, which Bar Hebraeus defines as some kind of vaginal

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801 *Nomocanon*, 151-52.
802 *Wasīṭ* 5: 159 and *Wajīz* 2: 23.
803 *Nomocanon*, 151. Interestingly, this category assimilates a man’s inability to perform sex to the actual physical state of possessing a vagina. The common thread is an emasculation of the male body – it is gendered as feminized either in its physical inability to fulfill the male sexual role of penetration or in its physical possession of a female member. A more precise translation of gbarnešāyūtā might be something like “the feminization of a man” – “a man” because the human
obstruction, is more or less analogous to Ghazālī’s *rataq* and *qaran*. *Mlaḥhmūtā*, however, means nothing more than menstruation (Bar Hebraeus even explains it as such with another common Syriac term, *uraḥ nešē*). One would hardly consider that an impediment to consummation, and it seems Bar Hebraeus has included it simply for the symmetry between male and female defects (and that between his text and Ghazālī’s).

Both Bar Hebraeus and Ghazālī include leprosy and elephantiasis in their lists but Bar Hebraeus substitutes epilepsy – “the demon” – for Ghazālī’s “madness.” That epilepsy is related to demonic possession was a widespread notion in the pre-modern Middle East; that condition is clearly what Bar Hebraeus has in mind here, as he defines it in paragraph §14 as “the falling pain” (*ḥaššā d-mappōltā*).

Throughout these final paragraphs, Bar Hebraeus takes a few other passages from Ghazālī, but also looks to draw some inspiration from East Syrian sources and to add some opinions of his own (or at least, opinions for which I can find no clear source).

Paragraph §14 features a passage clearly taken from Ghazālī to the effect that some legal opinions necessitate divorce for the causes of stench from the mouth or armpits or premature ejaculation. Bar Hebraeus also coins a Syriac neologism (*ʿadyūṭūtā*) for “premature ejaculation” from Ghazālī’s Arabic (*ʿidhyawt*). In paragraph §12, Bar...
Hebraeus gives another Ghazālian doctrine. He specifies that if a man cannot consummate a marriage due to impotence, the couple is given a year to wait, after which the wife can choose to dissolve the marriage. This is the standard Shāfiʿī position on the impotent (ʿinnīn) husband. Bar Hebraeus offers a parallel doctrine in paragraph §13 for a man whose wife’s condition prevents consummation: he should also wait a year, and then he may lawfully leave her.

Other material in these paragraphs looks to be Bar Hebraeus’ reworded interpretations of some East Syrian sources, many of which discuss matters of physical defects and their legal effect on marriages; no West Syrian sources before Bar Hebraeus do so, to my knowledge. In paragraph §12 Bar Hebraeus states that if a man becomes impotent after his marriage has been consummated, the couple should wait seven years to see if he can be healed; after that, they may separate. This bears a striking resemblance to an East Syrian ruling that allows for the dissolution of a marriage that has not been consummated due to the husband’s impotence after a period of seven years. This canon is preserved only in the fourteenth-century Ordo of ʿAbdīšōʿ bar Brīkā and is attributed to the “catholicos Yōḥannān” (likely Yōḥannān bar Abgārē). Generally, East Syrian sources tend to agree that any disease or defect that befalls a couple after consummation

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Footnotes:
807 Nomocanon, 151.
808 See Wasīṭ 5: 178-82 and Wajīz 2: 24-25. The doctrine of the one-year trial period for consummation is also found in East Syrian law, specifically Īšōʾ bōkt §III.vi. It is thus also possible that Bar Hebraeus drew it from that law book. As we have seen, however, Bar Hebraeus tends to reproduces Īšōʾ bōkt’s doctrines by way of Gabriel of Baṣra. This particular opinion is not found in Ibn al-Ṭayyib’s work, and so was most likely not in Gabriel either. Thus, if it was not found in Gabriel and Bar Habraeus did not have direct access to Īšōʾ bōkt, he is likely to have adopted it from Ghazālī.
809 Nomocanon, 152.
810 Nomocanon, 151.
811 ʿAbdīšōʿ, Ordo, 170 and MS Mosul Chaldean Patriarchate 66, folios 127b-128a. On this canon see note 501 in chapter six.
does not allow for separation; forbearance and prayer are the rule.\textsuperscript{812} Yōḥannān’s ruling takes this position, which stands in contrast to Bar Hebraeus’ (which allows for dissolution after the marriage has already been consummated). However, the congruence between Bar Hebraeus and Yōḥannān in terms of the nature of the defect (impotence) and the length of the waiting period (seven years) suggests the possibility that Bar Hebraeus’ knew this East Syrian source and adapted it as his own ruling.\textsuperscript{813}

Several other doctrines appear to be more singularly Bar Hebraeus’; though they may be inspired by other sources I have found no exact parallel for them. In paragraph §13 the text seems to say (it is not perfectly clear) that if a man has lost his genitalia – before or after consummation – the union is dissolved.\textsuperscript{814} Additionally, Bar Hebraeus upholds a general principle that when a couple separates lawfully because of a defect, the wife keeps all her marriage gifts – those from her husband and her father’s household. This might conceivably be based on two canons in the Syro-Roman Law Book that stipulate that if epilepsy or some other illness afflicts an already married woman, her

\textsuperscript{812} E.g., Timothy §34, \textit{SR} 2: 82-84; Īšōʿ bōkt §III.xi.1, \textit{SR} 3: 86; and §9 in Ibn al-Ṭayyib, \textit{Fiqh} 2 (text): 5. Shāfiʿi law too maintains that impotence after consummation does not give the wife the option to divorce; see Ghazālī, \textit{Wasīṭ} 5: 161.

\textsuperscript{813} Bar Hebraeus adds a few other opinions concerning impotence: “according to some of the law givers, they [the couple] are not divorced because the greatness of [sexual] need is the man’s, not the woman’s; and according to some of them they are divorced, because she has the same law of nature and forbears with difficulty on account of her weakness.” The former opinion (no dissolution after separation) is consonant with the East Syrian positions mentioned in the previous note, though I have not found Bar Hebraeus’ explanation elsewhere. I know of no source for the latter opinion. Bar Hebraeus also quotes 1 Corinthians 7:5 in support of the notion that desire is experienced by both men and women.

\textsuperscript{814} Nomocanon, 152. “Castration (psāqā) is either becoming a eunuch – that is, the removal of the testicles – or the cutting off of the penis at the root. After these things occur, the laws loose [the bonds of marriage] (šārēn nāmōsē), whether these things [i.e., castration] occurred previously and the bride did not know of them or [whether] they happened after [the marriage]. She takes the šādkē and the dōrā that were offered to her and separates, if she wants. And if she knew [of the problem] and was betrothed by contract, she loses her \textit{pernitā} in addition [to her other marriage gifts] if she separates.” The statement that “the laws loose” is not entirely unambiguous, but based on what follows the only reasonable sense of it is “the laws allow for separation.”
husband may divorce her but owes her both her \textit{pernītā} and \textit{dōrā}.^{815} In the Nomocanon, Bar Hebraeus gives us some similar doctrines, but extends the provision that all gifts go to the wife to any case in which an illness or defect allows for lawful separation – as long as the defect was not common knowledge between the spouses at the time of marriage. So, if a wife waits the stipulated year for an impotent husband and then chooses separation she keeps the marriage gifts – \textit{dōrā} and \textit{šadkē} – that her husband gave or promised her.$^{816}$ If a husband chooses to leave a wife with vaginal occlusion after a year she again keeps all the marriage gifts; but Bar Hebraeus adds that if she does not wish for the separation he must give her twice the stipulated \textit{dōrā}.^{817} If, however, a non-afflicted wife already knew of her husband’s defects at the time of marriage and she chooses separation in the cases of impotence or castration, she forfeits all her marriage gifts to him.$^{818}$

Finally, in paragraph §14 Bar Hebraeus describes the physical effects of leprosy, elephantiasis, and the “demon” and gives several opinions on how long an afflicted couple should wait for healing before separating from one another: one, four, and seven years. I have been unable to find direct sources for these opinions. He then cites the canon of the Syro-Roman Law Book pertaining to separation for epilepsy, mentioned above, as well as a \textit{responsum} of the fourth-century Alexandrian patriarch Timothy that

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$^{815}$ §§81-82 in \textit{SWST} 2 (text): 131 and §§102a-b in \textit{SRRB} 2: 144-47.
$^{816}$ \textit{Nomocanon}, 151.
$^{817}$ \textit{Nomocanon}, 152. The only other example I know of doubling a marriage gift is a Syro-Roman canon that obliges the family of a bride who breaks her betrothal agreement to return twice the value of whatever gift the groom gave on the first day of the betrothal. See §55 in \textit{SWST} 2 (text): 124-25 and §§85 in \textit{SRRB} 2: 106-107.
$^{818}$ \textit{Nomocanon}, 151-52.
avoids giving an answer to the question of whether the husband of a demon-afflicted wife can separate from her. Bar Hebraeus does not give a definite opinion of his own.

<table>
<thead>
<tr>
<th>Nomocanon, chapter on marriage, section 5: on dissolution of the marriage bond (puršānā)</th>
<th>al-Wasīẗ, kitāb al-ṣadāq</th>
<th>Christian sources</th>
</tr>
</thead>
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<tr>
<td>§1 – marital dissolution and Christian tradition</td>
<td>Genesis 2, Proverbs 19, Matthew 19/Mark 10, Syro-Roman Law Book §85/120a and §86/120b</td>
<td></td>
</tr>
<tr>
<td>§2 – disposition of marriage gifts at a spouse’s death</td>
<td>Syro-Roman Law Book §§84/54, 115/46* (?), 108/88* (?)</td>
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</tr>
<tr>
<td>§3 – halving marriage gifts in case of groom’s death before consummation</td>
<td>4.2-3 – chapter 4: on the ruling of splitting the marriage gift because of divorce before consummation (tashāṭṭur al-ṣadāq bi-l-ṭalāq qabl al-masīḫ) – section 2: on alterations in the marriage gift (tażhārīrīt fī ’l-ṣadāq) and section 3: on dispositions preventing return (al-ṭaṣarrufāt al-mānīʾa min al-rujūʾ)</td>
<td>Syro-Roman Law Book §108/88</td>
</tr>
<tr>
<td>§4 – adultery as grounds for divorce</td>
<td>Basil the Great’s letters to Amphiochius, Syro-Roman Law Book §23/69, Īšōʾ bōkt §II.xii* via Gabriel of Baṣra</td>
<td></td>
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<tr>
<td>§5 – proving adultery</td>
<td>Īšōʾ bōkt §II.xv* via Gabriel of Baṣra, Genesis 19</td>
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<td>§6 – cursing procedure of a wife accused of adultery</td>
<td>Īšōʾ bōkt §II.xv* via Gabriel of Baṣra, Numbers 5</td>
<td></td>
</tr>
<tr>
<td>§7 – denying paternity</td>
<td>2.1 – chapter 2: on unsubstantiated accusation of adultery between spouses (qadhf al-azwāj ḫāṣṣatan)</td>
<td>Genesis 30</td>
</tr>
</tbody>
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819 For Timothy’s responsum see §§27-28 (question 15) in SWST 1 (text): 143. Bar Hebraeus does not mention that Timothy implies that if a husband separates from his afflicted wife, he commits adultery if he marries again. The questions of Timothy of Alexandria constitute one of the oldest patristic sources of legal import received into Syriac tradition; see Kaufhold, “Sources,” 246.
§8 – sorcery as grounds for marital dissolution

§9 – on sorcery

§10 – other grounds for marital dissolution

§11 – dissolution of slaves’ marriages

§12 – physical defects as grounds for marital dissolution and defects particular to men

§13 – physical defects particular to women

§14 – physical defects common to both genders

§15 – other grounds for marital dissolution

§16 – dissolution of slaves’ marriages

Section 6: Maintenance and the Waiting Period

The sixth and final section of the Nomocanon’s chapter on marriage treats two major topics: the waiting period that widows must observe upon their husbands’ deaths before remarrying (zabnā da-nṭūrūt ḥērūtā) and maintenance owed by husbands to wives.
(apsonyātā). It is based closely on Ghazālī’s *kitāb al-ʿidād* and *kitāb al-nafaqāt* (in the arrangement of Ghazālī’s legal texts, the *kitāb al-ridā́* comes between these two).

**The Waiting Period**

Paragraph §1 introduces the topic of the waiting period, and in it we see the familiar pattern of Bar Hebraeus mixing doctrines from the Syro-Roman Law Book with those of Ghazālī.\(^{820}\) Bar Hebraeus begins by stipulating that any woman whose husband dies must wait for ten months before she can remarry, according to canon §78 of the Syro-Roman Law Book.\(^{821}\) This, of course, is different from the ʿidda of Muslim widows, which Q 2:234 fixes at four months and ten days. In what follows, however, Bar Hebraeus gives us opinions from Ghazālī. A widow must wait out the waiting period whether the marriage was consummated or not (this is specified in the *Wasīṭ* but not the *Wajīz*).\(^{822}\) Contrary to Shāfiʿī doctrine, Bar Hebraeus states that if a woman receives news of her husband’s death her waiting period begins from the day she received the news, not the day of his presumptive death. Bar Hebraeus’ source is still Ghazālī, however; the *Wasīṭ* gives this opinion (attributed to ʿAlī) in addition to the Shāfiʿī one (that the ʿidda begins from the day of his death).\(^{823}\)

Paragraph §1 continues to follow the arrangement of Ghazālī’s texts with a discussion of the missing husband (Arabic *mafqūd*), and here Bar Hebraeus again mixes

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\(^{820}\) See *Nomocanon*, 154-55.

\(^{821}\) See §78 in *SWST* 2 (text): 130 and §59 in *SRRB* 2: 78-81. Bar Hebraeus adds that a woman forfeits her marriage gifts if she “goes to a man” before the waiting period is up.

\(^{822}\) *Wasīṭ* 6: 146. Bar Hebraeus adds that even a pregnant woman must wait out the waiting period, which is contrary to Ghazālī.

\(^{823}\) See *Wasīṭ* 6: 148.
Syriac sources with Ghazālī. Bar Hebraeus states that a disappeared husband’s marriage cannot be dissolved as long as his death is not confirmed (meštarrar) and the support he has left for his wife is sufficient (sāpqān lāh apsonyātā). This is the basic Shāfiʿī position.824 Bar Hebraeus mentions other opinions, however, according to which a wife in such a situation must wait either seven or twenty years and then becomes free to remarry. A possible source of the seven-year opinion is a Syro-Roman canon that frees a woman from her marriage if she has no children and her husband has been absent for seven years, even if he has been providing maintenance.825 I know of no definite source for the twenty-year opinion. If a disappeared husband has left no maintenance, Bar Hebraeus mentions the opinions that his wife should wait either four or seven years and then remarry. The former is the standard Mālikī opinion on the missing husband: if a man’s whereabouts are unknown for four years, his wife may request from a judge the dissolution of the marriage.826 Ghazālī mentions this opinion in the Wajīz and the Wasīṭ.827 The seven-year opinion is recognizably Īšōʾbōkt’s and appears in Ibn al-Ṭayyib, so Bar Hebraeus has likely taken it from Gabriel of Baṣra.828

824 See Wasīṭ 6: 148 and Wajīz 2: 104. Two separate doctrines are at play here in Shāfiʿī fiqh: a marriage can only be dissolved with clear proof (bayyina) of the husband’s death, not mere doubt (shakk) that he is alive; and a wife has the right to request a ruling of marital dissolution (talab al-faskh) from a judge if her husband does not provide sufficient maintenance. Both of these doctrines are spelled out in Ghazālī’s chapter on the missing husband.
825 §134 in SRRB 2: 190-91. This canon, however, is not found in the version of the Syro-Roman Law Book published in SWST that we know to have been closely related to the one that Bar Hebraeus used. If Bar Hebraeus did not find this opinion in the Syro-Roman Law Book, another possible source is a passage in Ibn al-Ṭayyib/Gabriel that allows a woman to dissolve her betrothal to a man who pays maintenance but has been in a distant place (mawdīʿ shāsiʿ) for seven years. The difference, however, is that Bar Hebraeus’ seven-year opinion concerns women in fully consummated marriages. See §4 in Ibn al-Ṭayyib, Fiqh 2 (text): 4.
826 See chapter six.
828 §14 in Ibn al-Ṭayyib, Fiqh 2 (text): 7. Bar Hebraeus closes paragraph §1 by stating that he knows of no waiting period for widowers from any authoritative source, but that he suggests one of five months.
In paragraph §2, Bar Hebraeus continues to follow the arrangement of the Wasīt’s kitāb al-ʿiddad by addressing restrictions imposed on widows during the waiting period (Arabic iḥdād/hidād). Here, he paraphrases very directly from the Wasīt: a widow should not wear clothes dyed red (ahmar/summāqē), yellow (aṣfar/kurkmānē), or green (akhḍār/karātā), nor should she wear silk (ibraysam/mīṭaksāyā). Bar Hebraeus further affirms that a widow should not apply kohl (tekhol) to her eyes unless it is necessary because of an ailment, in which case she should apply it at night and wash it off in the morning. This is also taken from Ghazālī, who tells us that this practice has been commanded by the Prophet. Bar Hebraeus adds Ghazālī’s point that a widow should not leave her home.

Bar Hebraeus further follows the arrangement of Ghazālī’s texts by taking up the matter of whether a widow should remain in her husband’s dwelling during her waiting period, although here few opinions are evidently taken from Ghazālī. According to Ghazālī, a divorcee waiting an ʿidda must be given a dwelling place, but there are two opinions for a widow. Bar Hebraeus states that a widow’s in-laws cannot expel her from her home during the waiting period; and if her lease on it runs out (meštamlyā tenway da-ʾmuryā) they must provide a dwelling until the ten months are up. He likely

829 See Nomocanon, 155.
830 Wasīt 6: 150. The Wajīz states that a widow should not wear silk or colorful clothes (al-maṣbūgh lil-zayna), but does not list “red, yellow, green” as examples. This is therefore another passage that shows Bar Hebraeus to have been working off of the Wasīt or Basīt. See Wajīz 2: 104.
831 Wasīt 6: 151 and Wajīz 2: 105. According to the Wasīt, “[Applying kohl] is not permitted except for the cause of an eye ailment (ramad), and she must apply kohl at night and remove it during the day (takṭahil laylan wa-tamsah nahāran).”
832 Wasīt 6: 151 and Wajīz 2: 105. Bar Hebraeus’ exceptions are for her to go to public baths and churches. The Wasīt states only that she can leave her home for a “need” (ḥāja), though Ghazālī later has a short section on the circumstances in which a divorcee waiting an ʿidda can leave her dwelling (Wasīt 6: 155).
833 See Wasīt 6: 153 and Wajīz 2: 105.
based the latter point on Ghazālī’s discussion of the divorcee’s ‘idda, which specifies that her former husband must provide a dwelling place if the lease on their rented home expires (idhā ‘ntahat muddat al-iǧārā).\footnote{Wasīṭ 6: 157 and Wajīz 2: 106. Ghazālī also discusses what a man’s heirs are obligated to do for a widow if one holds the opinion that a widow is owed a dwelling place during the ‘idda (as mentioned, Ghazālī states that there are two positions on this matter, the other being that she is not owed one). However, Bar Hebraeus does not look to have drawn any points from this passage. See Wasīṭ 6: 158.}

Bar Hebraeus ends paragraph §2 by citing doctrines from the Syro-Roman Law Book to the effect that a widow may keep custody of her children and remain in her husband’s house as long as she confirms the plan with a judge and does not remarry.\footnote{See §4 in SWST 2 (text): 103-105 and §§6b-c in SRRB 2: 30-33.}

*Maintenance Owed to Wives*

The rest of section six treats maintenance, and draws much from Ghazālī’s *kitāb al-nafaqāt*.\footnote{Nallino noted the general dependence of Bar Hebraeus on Ghazālī in these paragraphs, but did not specify every point of correspondence between the two. See “Diritto musulmano,” 238-40.} Bar Hebraeus’ introduction to the topic in paragraph §3 comes directly from Ghazālī. Three legal relationships oblige a man to provide maintenance to particular individuals: marriage (*zawjiyya/baʿlūṭā*), familial relationship (*qarāba/ṭohmā*), and ownership (*milk al-yamīn/mārūṭā*).\footnote{Wasīṭ 6: 201, Wajīz 2: 114, and Nomocanon, 155.} In other words, according to both Ghazālī and Bar Hebraeus men owe maintenance to their wives, relatives, and slaves.

Paragraph §3 continues with a discussion of the first obligation, maintenance for a wife, and its doctrines are drawn almost entirely from the *kitāb al-nafaqāt*’s section on the same topic.\footnote{See Nomocanon, 155-56.} A wife’s maintenance must cover nourishment (*al-ṭaʿām wa-l-
idām/tarsītā), clothing (kiswa/taksītā), housing (suknā/baytā), and a servant (khādīm/mšammānsītā).⁸³⁹ Every day, the husband owes his wife a measure and a half of a basic foodstuff (Ghazālī’s medium amount) and a certain amount of oil or fat.⁸⁴⁰ Once a week he owes her a portion of meat.⁸⁴¹ He should not force her to eat with him if she does not want to.⁸⁴²

Regarding a servant (mšammānsītā), Bar Hebraeus says that a husband owes one “especially during [the wife’s] sickness.” Ghazālī says that a husband must provide for a serving girl if his wife is of a station (manṣīb) that requires one, but he also mentions chronic illness (zamānā wa-marāḍ) as a case that may necessitate a servant regardless.⁸⁴³

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⁸³⁹ See Wasīṭ 6: 203 and Waḏīz 2: 114-15. Ghazālī’s list also includes instruments for keeping oneself clean (ālat al-tanzīf).

⁸⁴⁰ Compare Wasīṭ 6: 204-206 and Waḏīz 2: 114. Ghazālī’s Shāfi‘ī law divides the nourishment owed as part of maintenance into ṭaʿām and idām, the former meaning a basic foodstuff and the latter an oil or fat with which to eat it. Ghazālī specifies that ṭaʿām is whatever is customary regionally (Wasīṭ 6: 205), which Bar Hebraeus translates as “bread/food… according to the form of custom” (lahmā… mēn āḏšā da-ʾyādā). Ghazālī says that the daily amount is two measures (singular mudd) for the rich, one for the poor, and one and a half for the “middle class” (mutawassiṣ); Bar Hebraeus adopts the last amount and does not mention the other two. For idām, Ghazālī says in the Wasīṭ that the husband owes an amount of oil or butter (ṣayt aw samm) that is sufficient for whatever the amount of ṭaʿām is; in the Waḏīz, that he owes a particular measure by volume (mīkāla) every day. Bar Hebraeus also specifies oil or butter (mēṣḥā aw ᵅūmnā) but gives the amount at eight ēstērē. On this measure see the lexicographical entry in Ḥasan Bar Bahlūl, Lexicon syriacum/Lehkisiqon suryāyā, ed. Rubens Duval (Paris: Reipublicæ typographæo, 1901), vol. 1: 245.

⁸⁴¹ Waḏīz 6: 206 and Wasīṭ 2: 114. According to Ghazālī, Shāfi‘ī has specified that if the amount of ṭaʿām owed is a single measure, one ṭaḥl of meat (laḥm) is owed; if two measures of ṭaʿām, two ṭaḥlats of meat. Bar Hebraeus takes the average, just as he did with the ṭaʿām, and specifies a measure and a half of meat (besrā manyā ḥad w-pelgēh). Departing from Ghazālī, Bar Hebraeus adds that a husband owes his wife roasted wheat (ksānē) instead of meat during fasting periods (when meat is prohibited).

⁸⁴² Arabic yakallifahā al-akl maʾahu, Syriac neʾšmēyḥ d-tetarsēʾ ṭamēʾ. See Wasīṭ 6: 211 and Waḏīz 2: 115. Bar Hebraeus adds that “if she is not ashamed (lā mēṣṭam rāʿ, i.e. does not observe proper modesty?), he does not owe her the value of the nourishment (dmay tarsītā).” Ghazālī discusses a few cases of a woman receiving cash (darāḥim) instead of foodstuff in the same passage, but none of his statements parallel Bar Hebraeus’ exactly.

⁸⁴³ Waḏīz 6: 206-207. The Waḏīz makes no mention of illness. Bar Hebraeus adds that the husband must provide for a servant “even though (āpen) he does not owe [his wife] apothecaries (ṣammāmnāḥ) and the wage of a physician (ṣagār ᵃṣyāʾ) if she has wealth.” This statement is not found in the Waḏīz or the Wasīṭ; whether it is in the Basīṭ remains an open question.
Bar Hebraeus says that a man cannot offer to serve his wife himself (“because he is her head,” a reference to Ephesians 5:23), while Ghazālī does allow a husband to serve his wife in a few ways; in any case, Bar Hebraeus’ mention of the issue is clearly inspired by Ghazālī’s discussion.\(^{844}\) Taken directly from Ghazālī, however, are several following opinions. If a wife says that she will serve herself she cannot seek a servant’s wages (nafaqat al-khādimah/apsnyātā da-mšammšānūtā) from her husband. If a wife has a serving girl but her husband has some suspicion (rayba/masbrānūtā bīštā) of her, he may find another servant and replace her. For the cause of suspicion as well, he may prevent his wife’s mother or father from visiting his wife. And if she has a number of serving girls he is only obligated to provide for one.\(^{845}\)

Regarding the obligation to provide clothing both Ghazālī and Bar Hebraeus list a number of garments that a husband must give to his wife, though in this case Bar Hebraeus’ list does not look to be copied exactly from Ghazālī’s.\(^{846}\) Finally, Bar Hebraeus gives a passage on household vessels that a husband must provide that is evidently taken from the \textit{Wasīṭ}:

\begin{center}
\begin{tabular}{|l|l|}
\hline
\textit{Nomocanon} & \textit{Wasīṭ} \\
\hline
He owes her a house with household vessels (krāpātēh) of clay, wood, or stone (pahhārā, qaysā, or kēpā); and if she is a noblewoman (mṭahhamtā), of bronze (nḥāsā). & He owes her household implements (mā ān al-dār)… of clay, wood, or stone (khazaf, khashab, or ḥajar). As for bronze (nuḥāsiyya), it is a luxury (taraffūh); but it may be appropriate for a noblewoman (sharīfa).\(^{847}\) \\
\hline
\end{tabular}
\end{center}


\(^{845}\) All these opinions are given in \textit{Wasīṭ} 6: 208 and \textit{Wajīz} 2: 114-15.


\(^{847}\) \textit{Wasīṭ} 6: 209.
The *Wajīz* includes the “clay, wood, or stone” list, but makes no mention of the
noblewoman’s bronze.\(^848\)

The *Nomocanon*’s paragraph §4 draws doctrines from two further sections of the
*Wasīṭ’s kitāb al-nafaqāt* that treat “factors that remove [the obligation to provide]
maintenance” (*musqīṭāt al-nafaqā*) and “poverty [preventing the furnishing] of
maintenance” (*al-iʿsār bi-l-nafaqā*).\(^849\) First, Bar Hebraeus affirms that a disobedient wife
is not owed maintenance, “even if she does not leave [her husband’s] house.”\(^850\) That a
disobedient (Arabic *nāshīza*) wife is not owed maintenance is a standard doctrine in
Islamic law, and the first factor that nullifies the obligation in Ghazālī’s list. A short
excursus follows on whether a wife who has left the house (*kharajāt*) is owed
maintenance (which largely depends on whether she has her husband’s permission, *idhn*),
which is likely the inspiration for Bar Hebraeus’ caveat on the same issue.\(^851\) Bar
Hebraeus adds that a wife who refuses sex (*tetklē*) is not owed maintenance, another
basic position of Islamic law (though for Bar Hebraeus an exception holds on the days on
which abstinence has been commanded by Christian tradition).\(^852\)

Bar Hebraeus goes on to discuss whether a wife who is ill (*krīhā*) or too young to
consummate a marriage (*zʿoryā d-lā b-nāmōs etmakrat*) is owed maintenance. The reason
these are at issue (which is clear in the Islamic source material but which Bar Hebraeus

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\(^848\) See *Wajīz* 2: 115.

\(^849\) See *Nomocanon*, 156-57.

\(^850\) Bar Hebraeus actually uses a somewhat convoluted phrasing to describe the disobedient wife: she is “vexed with a wicked disposition [but] without [committing] a transgression [that would
necessitate marital dissolution?]” (*mēštāqā b-yad yāsrāh bīsāh bel ʿad sakklūtā*).


\(^852\) According to Ghazālī, “there is no disagreement [among jurists] that [the obligation to
provide] maintenance is cancelled by [a wife] preventing [her] sexual availability [to her
husband] on her own account for an unexcused reason” (*lā khilāf annahu tasqūt al-nafaqā bī-
does not make explicit) is that neither wife is sexually available to her husband, which in Ghazālī’s Shāfiʿī fiqh is one of the basic conditions that establishes that a wife is not disobedient and is owed maintenance. Like Ghazālī Bar Hebraeus affirms that a sick wife is owed maintenance. Regarding a wife too young to consummate, Ghazālī offers a host of scenarios and possibilities; Bar Hebraeus boils them down to the opinion that a husband, whether a minor or adult, owes maintenance to his minor wife.

The rest of paragraph §4 is based partly on Ghazālī’s following section on husbands’ poverty, though not all of Bar Hebraeus’ rulings are explicit reproductions from Ghazālī. Ghazālī’s discussion revolves around the basic Shāfiʿī position (there are other opinions as well) that a husband’s inability to provide his wife with maintenance gives her the right to seek the dissolution of the marriage from a judge (ḥaqq al-faskh). Bar Hebraeus picks up on this idea, but specifies that the wife of a husband who is unable to provide maintenance must stay with him for four years, during which her maintenance shall be provided by herself, her relatives, or the church (i.e., charity); if he is still unable to provide after those four years the marriage bond is dissolved, he is compelled to join a monastery, and she may remarry. This stands in contrast to Ghazālī’s Shāfiʿī law, one opinion of which gives a husband a period of three days and another of which allows a wife to seek dissolution after a single day in which her husband has been unable to provide for her. I have found no apparent source for Bar Hebraeus’ four-year window.

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853 To be specific, Ghazālī explains that interpretations differ as to whether maintenance is considered an obligation effected by the marriage contract with the condition of wifely obedience (which generally means sexual availability; al-ʿaqd bi-shart ʿadam al-nushūz); or as compensation for sexual availability (iwaḍan ʿan al-tamkīn). See Wasīṭ 6: 214 and Wajīz 2: 116.
856 See Wasīṭ 6: 225 and Wajīz 2: 120.
A few other of Bar Hebraeus’ points, however, are quite apparently drawn from Ghazālī. A husband who simply refuses to provide maintenance should be thrown in prison (bēt assīrē); Ghazālī considers the possibility that a judge might imprison a negligent husband (yahbisahu) until he either provides maintenance or divorces his wife. A wife whose husband cannot provide maintenance can withhold sex from him (lahā ’l-man’ min al-waṭ’iteklē napšāh men šawtāpūtēh). A slave owner cannot call for the dissolution of his slave’s marriage to a husband who cannot provide for her, even if the owner provides some of her maintenance.

*Maintenance Owed to Relatives*

Paragraphs §§5-7 are based on Ghazālī’s chapter on the obligation to provide maintenance to relatives (al-nafaqa lil-qarāba). In paragraph §5, Bar Hebraeus defines those relatives to whom a man owes maintenance as “children and their children and parents and their parents, poor ones who are unable to work (lā mšēn l-meplaḥ) because of being children, elderly, or sick (b-yad ṭalyūtā aw-saybūtā aw-kurhānā).” That maintenance is owed to ascendants (uṣūl) and descendants (furū’) is the basic Shāfi’ī opinion, which Ghazālī states at the beginning of his chapter. Bar Hebraeus has slightly altered Ghazālī’s conditions for the obligation, which are that the relative is

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858 *Wasīṭ* 6: 224 and *Wajīz* 2: 120.
859 *Wasīṭ* 6: 227 and *Wajīz* 2: 120. Ghazālī adds the stipulation that she can withhold as long as she has not previously made herself available to him sexually when he has been unable to provide maintenance.
860 *Wasīṭ* 6: 226-27 and *Wajīz* 2: 120.
861 See *Nomocanon*, 157-58.
862 *Wasīṭ* 6: 228. Compare *Wajīz* 2: 120, which does not specify ascendants and descendants.
needy and that the provider has the means to provision maintenance (i’sār al-munfaq ʿalayhi wa-yasār al-munfīq).\textsuperscript{863}

Following, we see the familiar pattern of Bar Hebraeus picking and choosing several doctrines from the text of the Wasīṭ. One such opinion is that if a father is poor but capable of working, a son is still obligated to provide maintenance for him. Bar Hebraeus supports this point with reference to the commandment “to honor your father,” but he has taken it from a passage in the Wasīṭ (it does not appear in the Wajīz) in which Ghazālī explains that for a son to hold a father accountable in this respect would be an offense against his senior standing (ghadd min mansīb al-ubuwwā).\textsuperscript{864} Any income or property beyond what a man needs for his daily sustenance is owed as maintenance to his relative dependents.\textsuperscript{865} There are no set amounts for maintenance owed to relatives, as there are for that to spouses, but whatever is sufficient to live must be provided.\textsuperscript{866} If a husband does not pay maintenance a wife can take it from his property without his permission,\textsuperscript{867} and she can also borrow against him.\textsuperscript{868}

\textsuperscript{863} Wasīṭ 6: 229.
\textsuperscript{864} Wasīṭ 6: 229. Bar Hebraeus adds that the laws “do not compel an honored person (bar yaqqirē) to work at a trade (amnā) in which he struggles (mettzī bēḥ).” As indicated by Bedjan’s footnote, this appears to refer to a series of verses in Ben Sira 38 that expound on the notion that only those who are free from having to toil in manual labor have the time to seek wisdom. Verse 38:27a includes the statement “all workmen struggle” (kulhōn ummānē mettzī în), which looks to be the source of Bar Hebraeus’ language here.
\textsuperscript{865} In the Wasīṭ, “Regarding the well-off status (yasār) of the provider, we mean that there is something beyond his daily bread (yafḍul ʿan qūṭ yawmīhi shay), in which case everything that would be sold to pay off a debt, including real estate (ʿiqār) and a slave, should be sold for the maintenance of the relative.” 6: 230. See also Wajīz 2: 120-21. According to Bar Hebraeus, “Everything beyond his daily needs (kul d-yattīr men sunqānēh yawmānīyēh), even if a single coin, is owed to needy (snīqē) parents and children.”
\textsuperscript{866} Wasīṭ 6: 232 and Wajīz 2: 121. Ghazālī has “as is sufficient” (ʿalā ʿl-kifāya), and Bar Hebraeus “preserving the self” (meṭṭar npeš).
\textsuperscript{867} This passage in Bar Hebraeus is actually problematic, and by comparison to Ghazālī seem to be corrupt. Bedjan’s edition reads, “When a father is killed (metqēt), a mother may fulfill the need of her children from what is hers (dīlāh) without his permission (d-lā puqdānēh).” I would suggest that the following passage from the Wasīṭ was Bar Hebraeus’ source here: “If a father
Bar Hebraeus then takes some opinions from Ghazâlî’s following chapter on the order in which relatives receive support. For descendants, that order is according to closeness of relation in the order of inheritance, and here Bar Hebraeus copies the exact example that Ghazâlî gives: a daughter’s daughter receives maintenance before a son’s son’s daughter.869 Regarding ascendants, fathers take priority over mothers.870 Ghazâlî then mentions a number of cases in which there are both ascendants and descendants who require maintenance, and Bar Hebraeus picks up several of them. Ghazâlî offers two opinions in the cases of a mother and son and a grandfather and son; Bar Hebraeus copies the same cases, though he says they have equal claims to maintenance.871 Finally, Bar Hebraeus continues to follow the order of Ghazâlî’s text by concluding the paragraph refuses (mana ‘a) maintenance, may a mother take maintenance from his property without his permission (dînā idhnhî)? There are two opinions.” Given Ghazâlî’s text, it is reasonable to suggest that two corruptions have crept into the Ethicon. First, metqṭel (“he is killed”) makes little sense in the passage for two reasons. One, the perfect form of the verb (etqṭel) would properly convey the sense that the man “has been killed,” rather than the present participle “is being killed” (metqṭel). Two, if the man is dead then the phrase “without his permission” is entirely unnecessary. As such, it is reasonable to suggest that metqṭel is a corruption of something carrying the meaning of “to resist,” as in Ghazâlî’s text, like met ṣē. Second, the dîlâh, “hers,” could very easily have been corrupted from dîlēh, “his.” A diacritical dot above the hā is all that distinguishes the two words, and “his” corresponds to Ghazâlî and again makes better sense of the passage; if the woman in question is providing for her children from “her” property, why would she need her husband’s permission? Thus, I would suggest the following emended reading for Bar Hebraeus: “When a father refuses [to pay maintenance, perhaps met ṣē], a mother may fulfill the need of her children from what is his (dîlēh) without his permission.” For the passages in Ghazâlî, see Wasîṭ 6: 232 and Wajîz 2: 121.

868 Ghazâlî actually says that there are two opinions in the cases of a woman taking from her husband’s property or borrowing against him; he prefers that a wife not take these initiatives, though the other opinion allows it. See Wasîṭ 6: 232 and Wajîz 2: 121.
869 Wasîṭ 6: 234. The Wajîz does not give these examples.
870 Wajîz 2: 121.
871 Wasîṭ 6: 236. Wajîz 2: 122 mentions the case of the grandfather and son but not the mother and son.
with the reminder that a wife’s maintenance takes precedence over that of all other relatives because her claim subsists for her entire life.

Paragraph §6 treats the custody of children and draws a good deal from the *kitāb al-nafaqāt*’s chapters on “the rulings of custody” (*ahkām al-hadāna*), though it is not entirely based on them. In fact, Bar Hebraeus starts off with the very un-Shāfi‘ī doctrine that a woman is required to nurse her children as long as she is physically able; if she is not, she must pay for a wet nurse from her own property (*qannāyūtā d-emmā*).

According to Ghazālī a mother is obligated only for the first suckle after birth; afterwards, she chooses whether to nurse her children or not, and if she chooses not to the father must provide a wet nurse.

After this, however, Bar Hebraeus appropriates a number of doctrines from Ghazālī’s discussion of custody. Ghazālī gives the order of relatives who have a right to child custody as follows: the mother, maternal grandmother, paternal grandmother, grandfather’s mother, great-grandfather’s mother, sisters, maternal aunts, nieces, and finally paternal aunts. Bar Hebraeus gives the same list (except for the two oldest generations, the grandfather’s mother and great-grandfather’s mother), but he says that this is the order in which relatives have the right to wet-nursing, *maynqūtā*. It is possible

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872 In the *Wasīṭ*: “her right [to maintenance] is subsisting; it does not fall away with the passage of time or her being rich” (ḥaqquhā ʿakad idh lā yasqūṭ bi-murūr al-zamān wa-lā bi-ghināhā, 6: 236). In the *Nomocanon*: “the debt [of maintenance] remains until the end of life” (hawbtā ʿdamā l-ṣullām hayyē pāysā). See also *Wajīz* 2: 122.

873 See *Nomocanon*, 158-59.


875 *Wasīṭ* 6: 243 and *Wajīz* 2: 123. Additionally, Ghazālī specifies that each class of ascendant includes all of that person’s female cognate ascendants as well. So, for example, the category “maternal grandmother” includes her mother, her mother’s mother, etc. We might note also that “nieces” is *banāt al-ikhwa*, which could include the daughters of sisters as well as brothers.
that this term is meant to convey the broader sense of “custody” (Arabic ḥāḍāna) as in Ghazālī’s discussion, but the text does not make this explicit. Bar Hebraeus then reproduces Ghazālī’s reason why female lineages have priority over male ones in these situations: women are more compassionate.876 For the same reason, Bar Hebraeus follows Ghazālī in asserting that a half-sister through the mother has priority over a half-sister through the father.877

Bar Hebraeus continues to follow the arrangement of Ghazālī’s texts in treating the order of male relatives who might receive custody (here he specifies that the point is raising the children, mrabbāyū, in addition to wet-nursing), but he does not take up Ghazālī’s position specifically. Ghazālī gives several rules for determining that order, the first of which is to follow the order of right to guardianship over brides.878 Bar Hebraeus lists the order as the father, brother, brother’s son, grandfather, paternal uncle, and paternal uncle’s son; were this the order of guardianship, the grandfather would come immediately after the father.

Bar Hebraeus then adds an interesting note: female cousins have no right of custody in “the East” (i.e. the West Syrian dioceses of Iraq and Iran over which Bar Hebraeus was maphrian) because there they marry their male cousins, “even if unlawfully” (w-āpen law nāmōsā ‘īt). Female cousins also do not have right of custody in Islamic law; but this is precisely because in Islamic law cousin marriage is lawful, and no one can have custody over another to whom she is marriageable (to whom she is not mahram). In Bar Hebraeus’ West Syrian law cousins are “mahram” in the Islamic sense,

876 They have shafaqa according to Ghazālī and are hayyūstānyān according to Bar Hebraeus. See Wasīṭ 6: 238 and 243. This goes unmentioned in the Wajīz.
877 In the Wasīṭ, al-ukht min al-ab muqaddama ‘alā ’l-ukht min al-umm. 6: 243. In the Nomocanon, w-meṭṭol ḥādē ḥātā d-men emmā qādmā l-ḥātā d-men abā. See also Wajīz 2: 123.
unmarriageable by virtue of their degree of relationship. Yet here Bar Hebraeus acknowledges the prevalence of cousin marriage in practice, and so adopts the Islamic position that leaves female cousins out of the list of eligible custodians. This is a quite exceptional instance: Bar Hebraeus stakes a legal doctrine on the ubiquity of what to him is an unlawful social practice.

Paragraph §6 closes with a further set of opinions on custody, most of which are taken from or based on Ghazālī. Bar Hebraeus states that children’s female custodians retain custody until a son can eat, drink, dress, and purify himself, and a daughter until she menstruates. Then, when the child has use of its rational faculties (nestakkal), it chooses whether it will live with its father or mother. Bar Hebraeus has taken the latter but not the former statement from Ghazālī, who affirms that a child is offered the choice of the mother or father when it has the ability of rational discernment (tamyīz). 879 Bar Hebraeus then offers a Ḥanafī opinion mentioned in the Wasīṭ (but not in the Wajīz): upon reaching mental maturity, it is better for a boy to go with his father and a girl with her mother. 880 Finally, Bar Hebraeus states that a Christian child should be separated from a non-Christian mother. 881

Paragraph §7 continues to draw a host of doctrines from Ghazālī’s chapters on custody. 882 A father or grandfather can house a virgin daughter who has reached her

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879 See Wasīṭ 6: 240-41 and Wajīz 2: 123.
880 In Wasīṭ 6: 240 Ghazālī quotes Abū Ḥanīfa as saying, “al-ab bi-l-ghulām awlā wa-l-umm bi-l-jāriya awlā.” In the Nomocanon, w-hāy d-ḥattītā da-brā ṣēd abā nehwē w-ba(ṛ)tā ṣēd emmā.
881 One of the conditions of maternal custodianship is that the custodian be Muslim; see Wasīṭ 6: 238 and Wajīz 2: 123. Bar Hebraeus’ phrasing is not exactly the same as Ghazālī’s, however, and this is a general enough doctrine that we should not necessarily see Ghazālī’s texts as its inspiration.
882 See Nomocanon, 159-60.
majority wherever he wishes. Though a formerly married woman can ostensibly live where she wishes, any of her relatives who have the right of guardianship can house her and watch over her to prevent anyone else being suspicious of her activities (which could lead to damaging the family’s honor). If a child chooses the custody of his father, the father cannot prevent him from seeing the mother, continues to owe the income for raising the child, and must send him to learn some kind of craft. If a father travels from place to place, however, he may take a male child with him against his mother’s wishes, unless the purpose of the travel is pleasure or trade.

The rest of the paragraph includes a set of opinions on maintenance owed to relatives for which I can find no definite source, and which seem to be additional points Bar Hebraeus sought to include himself.

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884 In Wasīṭ 6: 241, “If she is accused of some suspicion (rayba), her agnate relatives have the guardianship (wilāya) to house her and look over her (mulāḥazatuhā) to defend the lineage against dishonor (daf an lil-‘ār ‘an al-nasab).” In Bar Hebraeus, “Lest there be wicked suspicion (masbrānūtā bīštā) upon [a widow], all her family members who have the right of guardianship (zedgā d-quratorūtā) may house her where they wish and observe her (nerhōnāh).” In the Wajīz, Ghazālī’s states much more succinctly that a thayyib’s agnates cannot choose a dwelling location for her “unless there is an accusation” (illā ‘inda tuhma).
885 Wasīṭ 6: 242. According to Ghazālī, the father is responsible for “handing him over to a craft or office” (taslīmuhu ilā ‘l-hirfa aw al-maktab). See also Wajīz 2: 123. Bar Hebraeus says that the father “shall hand him over to a workman or teacher” (našlmīw[hy] l-ummānā w-mallpānā).
886 “Pleasure” and “trade” are nuzha and tijāra in Ghazālī, purgāyā and taggurtā in Bar Hebraeus. See Wasīṭ 6: 242 and Wajīz 2: 123. Bar Hebraeus adds the caveat that a father can take a child who is not nursing with him when he travels. He also states that a mother who separates (pāršā) from her husband cannot take the child with her.
887 “And a believing son owes maintenance to a nonbelieving father, mother, and grandparents. Believing father, mother, and grandparents are not obligated to unbelieving children. [For] a blind or crippled son or a spinster daughter, a father shall fulfill two portions of their maintenance and the mother one. And when a son goes away and his parents and grandparents become needy, they may sell something of his, except for houses and lands, to maintain themselves and not repay later. Also, they can borrow with the permission of the bishop, and the son shall repay when he returns. A non-relative who holds a trust for [someone’s] son shall give it to his parents at the bishop’s command. Otherwise, he shall repay it.”
Paragraph §8, the last of section six and of the Nomocanon’s entire chapter on marriage, is based on the closing chapter of Ghazālī’s *kitāb al-nafaqāt*, “the third cause of [the obligation] of maintenance: ownership” (*al-sabab al-thālith lil-nafaqa: milk al-yamīn*).\(^{888}\) Once again, Bar Hebraeus offers a series of opinions adopted from Ghazālī. A slave’s maintenance is not fixed at a particular amount, but is whatever is sufficient.\(^{889}\) According to Ghazālī, a slave for whom his master refuses to provide maintenance must be sold.\(^{890}\) Bar Hebraeus alters this opinion somewhat, saying that if such a slave is able to work his maintenance should be taken first from whatever he earns; but he does fall in line with Ghazālī by saying that a bishop should compel an owner to sell if he does not provide and his slaves cannot earn.\(^{891}\) Bar Hebraeus returns squarely to Ghazālī’s texts in affirming that an owner cannot stipulate a specific income (*kharāj muqaddar*/*kespā yaddāʾ*) that a slave must fulfill daily; rather, a slave should work and an owner should not demand more than the slave can reasonably do.\(^{892}\)

Finally, Bar Hebraeus closes the paragraph by reproducing much of Ghazālī’s text on the maintenance that owners owe to their beasts of burden. They must provide sufficient fodder (*ʿalaf*/kesstä) for their beasts and they may not overburden them,

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888 See Nomocanon, 160-61.
890 *Wasīṭ 6*: 248 and *Wajīz 2*: 125.
891 Bar Hebraeus also states that if the owner does not agree to sell, the church provides maintenance for the slaves. This is analogous to Ghazālī’s statement that if no one buys a slave that a negligent owner has been compelled to sell, he is considered to be “among the needy Muslims” (*min maḥāwīj al-muslimīn*, i.e. deserving of charity). *Wasīṭ 6*: 248.
892 *Wasīṭ 6*: 248 and *Wajīz 2*: 125. For the statement that an owner should not make unreasonable demands, the *Wasīṭ* has *ʿalā l-sayyid an yahmilahu ʿalā mā yuṭīquh*; Bar Hebraeus has *w-lā nēlsīw(hy) ba-ʿbādā l-ʿel men ḥaylēh*. 

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slaughter them for any purpose other than to eat of their meat, or exhaust their supplies of milk in a way that would harm their offspring. In certain cases of need it is acceptable to deny beasts their fodder, but otherwise if masters do so they will be compelled to sell their animals (by a judge according to Ghazālī, a bishop according to Bar Hebraeus).\textsuperscript{893}

<table>
<thead>
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\textsuperscript{893} See Wasīṭ 6: 248-49 and Wajīz 2: 125. The Wajīz does not mention the restrictions on overburdening or slaughtering.
| §4 – cases in which maintenance is not owed or is not delivered | 1.2-3 – chapter 2: on factors that remove [the obligation to provide] maintenance (musqiṭāt al-nafaqa) and chapter 3: on poverty [preventing the furnishing] of maintenance (al-iṣār bi-l-nafaqa) |  |
| §5 – maintenance owed to relatives | 2.1.1-2 – cause 2: family relationship (qarāba) – chapter 1 – section 1: on the conditions [required for] the right [to maintenance] (sharāʾīt al-istiḥqāq) and section 2: on how maintenance is provided (kayfīyyat al-infāq) 2.2 – chapter 2: on the order of multiple relatives (tartīb al-aqārib ‘inda l-ijtimāʿ) | Exodus 20, Ben Sira 38 |
| §6 – custody | 2.3.1-2 – cause 2 – chapter 3: on the rulings of custody (aḥkām al-ḥadāna) – section 1: on the stipulated characteristics [of the custodian] (al-ṣifāt al-mashrūṭa) and section 2: on who has a right to custody (fīman yastaḥḍiq al-ḥadāna) |  |
| §7 – custody | 2.3.2 |  |
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**Part 3: Analysis and Conclusions**

The preceding examination has demonstrated in great detail the general reliance of the *Nomocanon*’s chapter on marriage on Ghazālī’s legal texts. At the same time, we have seen how Bar Hebraeus’ work also incorporated much from several Syriac traditions.
– particularly East and West Syrian family law and the Roman-derived traditions of the Syro-Roman Law Book – and at times blended Christian and Islamic sources into a very particular kind of hybrid. In what follows, we will distill these observations into some more specific conclusions on West Syrian family law as represented in Bar Hebraeus’ *Nomocanon*. To begin, we will survey the textual methods by which the *Nomocanon* takes up Ghazālīan material. Then, we will consider the broader implications of these methods for Bar Hebraeus’ project and for family law as a Christian intellectual tradition in the pre-modern Middle East.

_Ghazālī as a Source of the Nomocanon: Bar Hebraeus’ Editorial Methods_

*Structure*

First of all, the arrangement of sections in the *Nomocanon* is quite evidently based on the overall structure of the books on family law as found in Ghazālī. Bar Hebraeus follows both the general topical divisions and their order in Ghazālī’s texts. So, section 1 corresponds to the *kitāb al-nikāḥ*’s division 1 on preliminary matters; section 2 to the *kitāb al-nikāḥ*’s division 2 on guardianship; section 3 to the *kitāb al-nikāḥ*’s division 3 on impediments to marriage; section 4 to the *kitāb al-ṣadāq*; and section 6 to the *kitāb al-ʿidad* and *kitāb al-nafaqāt*. As we have seen, the *Nomocanon*’s section 5 on marital dissolution is its lone one that does not draw heavily from Islamic law. Its placement after marriage gifts and before the waiting period, however, is yet reflective of the arrangement of Ghazālī’s works; in the *Wasīṭ* and *Wajīz*, the various books related to
marital dissolution (khulʿ, talāq, rajʿa, īlāʿ, zihār) come after the kitāb al-ṣadāq and before the kitāb al-ʿidda.

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<td>kitāb al-ṣadāq 4.2-3</td>
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Direct Appropriation of Institutions, Doctrines, and Clusters of Islamic Legal Opinions

Perhaps the most conspicuous manner in which Ghazâlî figures as a source for Bar Hebraeus is when the latter takes from the former specific doctrines and institutions of Islamic law that have no precedent in Syriac traditions. A few of the many examples in the Nomocanon include the doctrine that a groom should see a bride’s face before betrothal (§1.3); the powers of compulsion that fathers have over virgin and previously married brides (§2.4); milk kinship (§3.3); and the fair marriage gift (§4.8). Similarly, we have seen many paragraphs in the Nomocanon (e.g., §§1.3, 2.4, 2.5, 2.6, 3.7, 5.3, 6.2, 6.3, 6.5, among others) in which Bar Hebraeus picks a cluster of specific opinions concerning
a general doctrine or institution from Ghazâlî, translates them into Syriac, and includes them in the *Nomocanon*.

It is by this method of direct appropriation that Islamic legal norms most explicitly enter Bar Hebraeus’ text. In fact, this kind of textual appropriation occurs on a scale much larger than the historiography has previously suggested. The *Nomocanon*’s provisions for witnessing a betrothal and the exchange of formulas between guardian and groom, for example, which Nallino attributed to a kind of general cultural assimilation of West Syrian practice to Islamic norms, are actually reproduced directly from Ghazâlî’s texts (Nallino was unable to see this because he had only the *Wajîz* and not the *Wasîf* to compare to the *Nomocanon*).\(^{894}\) The same holds for Bar Hebraeus’ mention of ten *dirhams* as a minimum value for the marriage gift; Nallino attributed this to a general familiarity on Bar Hebraeus’ part with Ḥanafī norms, but an examination of the *Wasîf* shows that in this case too Bar Hebraeus copied the opinion from that text (or perhaps from the *Basîṭ*).\(^{895}\) Nallino makes no mention of numerous other, similar instances that we have detailed in this chapter. In fact, essentially all the specific opinions in the *Nomocanon*’s chapter on marriage that look to be of Islamic provenance have direct textual parallels in Ghazâlî.

*Direct Appropriation with Attribution to Christian Authorities*

At times, Bar Hebraeus takes legal opinions from Ghazâlî but attributes them to or supports them with Christian texts, especially biblical ones. In paragraph §1.3, for

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\(^{894}\) See Nallino, “Diritto musulmano,” 231-33.

\(^{895}\) See Nallino, “Diritto musulmano,” 233-35.
example, Bar Hebraeus adopts from Ghazālī an opinion that it is inappropriate for
eunuchs and old men to look at the faces of women to whom they are unrelated. He
supports this point, however, with reference to Matthew 5:28 to the effect that to gaze at a
woman with desire is to commit adultery of the heart. In §2.4 Bar Hebraeus offers the
manifestly Shāfiʿī opinion that a father may marry off his virgin daughter even against
her will. He grounds it, however, by citing 1 Corinthians 7:36 and its reference to a man
doing as he sees fit with his virgin daughter. In §4.9 Bar Hebraeus reproduces Ghazālī’s
assertion that one should (almost) always accept an invitation to a wedding banquet; but
he illustrates this with reference to Jesus’ attendance at the wedding at Cana (John 2:1-
11).

Another result of Bar Hebraeus’ heavy reliance on Ghazālī is his introduction of
Syriac versions of technical Islamic legal terms into the vocabulary of West Syrian law.
In §2.4 and elsewhere Bar Hebraeus uses mzawwagtā as a Syriac version of Arabic
\textit{thayyib}, a woman who has been previously married. \textit{Šawyūt nezlā} in §2.6 is Bar
Hebraeus’ rendering of \textit{kafā’a}, the equality of social station that should obtain between
bride and groom. In §4.8 Bar Hebraeus introduces into West Syrian tradition the \textit{mahr al-
mithl}, the marriage gift appropriate for a particular woman in view of the standing of her
family and female relatives, as Syriac \textit{dōrā da-bnāt pehmāh}. Significant here is that these
new Syriac terms, like the Islamic ones that they replicate, are more than general
descriptors; they denote institutions and personages of particular legal import and effect.
Being *mzawwagtā*, for example, is a legal status distinct from being a virgin and entails different rights when contracting marriages.

*Mixing Ghazālian and Christian Sources*

Finally, another of Bar Hebraeus’ common methods in the *Nomocanon* is to alter passages and legal opinions taken from Ghazālī to accord with institutions, doctrines, and concerns derived from Syriac Christian source material. In §1.4, for example, Bar Hebraeus adopts Ghazālī’s list of conditions that make a bride marriageable but adds several of specifically Christian provenance, including that there be no sponsorial relationship between spouses and that the bride not be a divorcee. In §2.1 Bar Hebraeus appropriates the *Wasīṭ*’s basic formulas of offer and acceptance between groom and guardian but dresses them up with Christian language. In §3.9 Bar Hebraeus asserts that a convert to Christianity with more than one wife may choose which one to keep and which to divorce. This prerogative of choice is a Shāfiʿī opinion; but in Ghazālī’s text it applies to a convert with more than four wives or one who is married to two sisters, while Bar Hebraeus has applied it to a monogamous Christian context. In §5.3 Bar Hebraeus appropriates a number of opinions from Ghazālī on splitting the marriage gift between bride and groom; in their Islamic context these pertain to cases of divorce before consummation, while Bar Hebraeus applies them to cases of spousal death before consummation. As a final example, in §6.1 Bar Hebraeus takes up a host of Islamic opinions on the ‘*idda* but applies them to the ten-month waiting period specified by the Syro-Roman Law Book.
Christianizing Islamic Family Law

The preceding has given us an overview of the ways in which Bar Hebraeus takes up material of Islamic provenance from Ghazâlî. We need to think more carefully, however, about what it means to say that the *Nomocanon* contains Islamic legal norms. Nowhere does Bar Hebraeus acknowledge the provenance of his Islamic provisions or that Ghazâlî is their source; once shorn of any such attribution, in what way are these norms “Islamic”? Furthermore, the *Nomocanon* contains many regulations and norms drawn from the source materials of Syriac Christian legal traditions. From this perspective, while acknowledging that the *Nomocanon*’s chapter on marriage is indeed “based on” much Islamic law, I would suggest that it is better to construe it as a new Christian law of marriage resulting from a practice of “bricolage” – that is, a process of creative appropriation and reassembly of the constituent parts of a diverse array of traditions.  

The notion of bricolage is a useful way to conceive how Islamic norms become Christian through Bar Hebraeus’ redactional methods. When he includes opinions, doctrines, and institutions of Islamic provenance in the *Nomocanon*, Bar Hebraeus cuts them off from their Islamic genealogies – their derivation from source texts through particular methods of reasoning. It is in relationship to such genealogies and to a web of other similarly derived doctrines that any given provision acquires authoritativeness in

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Islamic terms. Bar Hebraeus, however, divests Ghazālī’s provisions of those contexts, includes them in a work composed by and for Christians, positions them in relation to Christian proof texts and other doctrines drawn from Christian sources, and in doing so authorizes them as specifically Christian. In this way, Bar Hebraeus does not merely appropriate Islamic norms; he weaves an array of norms uprooted from their original contexts into a corpus of Christian law.

As a particularly apt illustration, we might take Bar Hebraeus’ provisions in paragraph §3.7 that a free man may only marry a slave if he cannot afford to marry a free woman, if he fears that he will commit fornication, and if the prospective slave bride is Christian. A version of this doctrine is, of course, found in Ghazālī’s texts; and notably, it derives squarely from God’s instructions in Q 4:25 to believers who do not have the means to marry free women. In this instance, Bar Hebraeus has included a doctrine with a manifestly Quranic pedigree in his work of Christian law. But in the Nomocanon that doctrine has no attribution and is cut off from its fiqh genealogy; and therefore, read in relation to the Nomocanon’s broader context as a work of Christian law, it gains a newly Christian authoritativeness.

This kind of creative appropriation and reassembly applies not only to Bar Hebraeus’ use of Islamic material; it is in a certain respect the modus operandi of the Nomocanon’s chapter on marriage as a whole. By virtue of being composed by a West Syrian writer, the Nomocanon is a work of West Syrian law. But in compiling it Bar Hebraeus drew from a number of legal traditions – Islamic, Roman, and East Syrian – of which he himself was hardly a tradent or custodian. To take the major example, the styles of Roman provincial law represented in the text of the Syro-Roman Law Book were not
living traditions in Bar Hebraeus’ milieu. When he cites that work’s provisions, therefore, he removes them from their Roman genealogies and “original” meanings in essentially the same way that he does with Ghazâlî’s and gives them new meanings in relation to the other norms that combine to make the *Nomocanon*. The prime example is paragraph §2.5, in which Bar Hebraeus’ (mis)reading of a Syro-Roman canon changes the function of the *quraṭor* to bring it closer in line with the Islamic *walî*. The point to take away, however, is not that Bar Hebraeus got Roman law wrong; he was emphatically not a jurist in the Roman legal tradition. Rather, he selectively removed a piece from that tradition’s textual resources, reinterpreted it, and strung it together with others to create a new and different whole.

The section on guardianship in its entirety, in fact, is in many ways emblematic of the *Nomocanon*’s chapter on marriage as a work of bricolage. The legal personage of the guardian who oversees a bride’s marriage appears as the *mamkrānā* in West Syrian synodal legislation, the *quraṭor* in the Syro-Roman Law Book, and the *walî* in Ghazâlî’s Shâfi’î law. Bar Hebraeus combines provisions from all of these sources to give shape to a particular type of guardianship newly constructed for – and defined as Christian by virtue of its inclusion in – the *Nomocanon*. In broad view, this perspective returns us to Nallino’s insightful characterization of the *Nomocanon* as a kind of literary construction. Bar Hebraeus crafted a new and authoritative compendium of Christian marriage law by filtering and compiling provisions drawn from a wide array of specifically textual sources, but not from the world of judicial or social practice. Through this process of textual construction, Bar Hebraeus rendered the materials of Islamic marriage law – as well as those of a number of other laws – part of a Christian legal tradition.
If describing the *Nomocanon* as a mere appropriation of Islamic norms undervalues the creative process of reworking and recombination involved in its composition, this should not distract us from the fact that the text yet includes a staggering amount of Ghazālian material. As much as the *Nomocanon*’s chapter on marriage is a new synthesis, the sheer volume of norms taken over from Ghazālī means that certain areas of it resemble and are largely congruent with Islamic law. The *Nomocanon* does more than simply borrow Islamic norms, but it brings so many of them into a Christian legal tradition that we might say heuristically (and for lack of a better term) that Bar Hebraeus “Islamicizes” significant corners and strands of that tradition.

We have seen this Islamicization, of course, in terms of the many individual doctrines, institutions, and terms that show up in Bar Hebraeus’ *Nomocanon*. And we should not forget that certain areas of Bar Hebraeus’ marriage law, divorce most prominently, remain largely disconnected from Islamic legal norms and rooted in Christian traditions. Looking more widely, however, Bar Hebraeus’ Islamicizing tendency has major implications for several of the organizing concepts that underlie the West Syrian law of marriage. Two worth highlighting are conceptions of social hierarchy and the nature of the marriage bond itself.

Regarding the former, Bar Hebraeus’ close reliance on Ghazālī in the area of guardianship means that he formalizes in West Syrian tradition the particular hierarchies of social power, stratified mainly by gender but also by age and free/slave status, that
Islamic family law renders normative. In particular, we have seen that Bar Hebraeus quite apparently adopts Shāfiʿī perspectives on the guardian’s patriarchal powers of compulsion over female charges, as well as the standard Islamic emphasis on the role of male agnate relatives in bargaining for and determining the marital futures of their female relations.

Now, from a certain perspective there may be nothing particularly notable about this. West Syrian Christians in the pre-modern Middle East certainly did not need Islamic law to tell them that people of different genders properly had access to different kinds and degrees of social power, that a household’s males should see to the interests of its female members, or that fathers were heads of households and were due obedience. At the same time, there are strands of Bar Hebraeus’ West Syrian tradition that run counter to the particular hierarchies that Shāfiʿī law and the Nomocanon propagate or imply. That a bride’s consent is always necessary to make a marriage valid, for example, is emphasized relatively frequently in West Syrian synodal legislation.\(^\text{897}\) West Syrian tradition before Bar Hebraeus recognized none of the powers of compulsion that the Nomocanon allows to fathers over their virgin daughters. In one canon of particular interest, the synod of the late ninth-century patriarch Ignatius asserted that

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\text{no father, mother, brother, sister, person from among the householders, or boy or girl has the authority (šultānā) to betroth a boy or make a betrothal agreement for (namkar) a girl before they reach the age of 15 years, and then [only] with the consent (šalmūtā) of the boy and the girl.}\(^\text{898}\)
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Not only does this canon recognize the necessity of a female’s (or any minor’s) consent to a marriage; it also imagines a wider assortment of relatives, females as well as males,

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\(^{897}\) See synod of Kyriakos §31, synod of Yōḥannān III §15, synod of Ignatius II §11, and synod of Dionysius II §7. SWST 2 (text): 13, 42, 56, and 60.
\(^{898}\) Canon §11, SWST 2 (text): 56.
that might be involved in arranging marriages for their younger householders than the group of strictly agnatic males that Bar Hebraeus and Shāfīʿī law recognize as guardians.

None of this is to claim that these perspectives were in any way characteristic of or more widely held by West Syrian or other Christian communities in the Middle East. The point, rather, is that strands of Bar Hebraeus’ own West Syrian legal tradition suggested conceptions of social hierarchy and male power different in certain ways, small though they may have been, from those of Shāfīʿī Islamic law. And yet when Bar Hebraeus sought to compile a systematic treatise of West Syrian marriage law, he privileged the intellectual resources offered by Ghazālī and thus introduced those Islamic conceptions into his own authoritative textual tradition.

The other notable respect in which Bar Hebraeus’ reliance on Ghazālī causes the Nomocanon to diverge from previous Christian tradition is in its conception of the purposes of the marriage bond and their relationship to sexuality. While Islamic tradition encompasses many different notions in this area, the common legal viewpoint posits marriage as a contractual relationship that brings into effect particular rights and duties for each party. Chief among the wife’s duties, and the husband’s rights, is that she be sexually available exclusively to him and at any time he may wish (with a few exceptions, such as when she is ill or menstruating). As we have seen, many (though not all) jurists conceive the husband’s furnishing of a marriage gift and maintenance as compensation for his right to his wife’s body.899

Provisions deriving from this conception of the marriage bond figure prominently in Bar Hebraeus’ sections on the marriage gift and maintenance. In §6.4 we saw Bar

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899 On the reciprocal obligations of sex and maintenance in Islamic law, see Tucker, Women, Family, and Gender, 52-53.
Hebraeus assert that if a wife refuses sex (tetklē) to her husband at any time other than the
days of the week that have been specified for abstinence, he does not have to provide
maintenance. In §4.7 Bar Hebraeus gives the converse: if a husband does not deliver his
wife’s marriage gifts she does not owe him sexual availability. Otherwise, however, a
wife may not restrict her husband’s access to her body – and if she does, Bar Hebraeus
goes so far as to say that “she may be compelled” (tetdblbar ba-qfīrā).900 This phrase most
apparently means that “she may be forced into sex,” although it is possible to interpret it
more vaguely as “she may be disciplined forcefully.” Either way, it implies a remarkably
different conception of sexuality and the purposes of marriage than Bar Hebraeus’
received Christian tradition. That tradition put a primary value on virginity and
continence, though it did not denigrate marriage for those who could not uphold that
ideal, and depicted lay marriage chiefly as a means to facilitate the reproduction of the
species in an orderly manner. And while Middle Eastern Christians in Bar Hebraeus’ day
were doubtless fully familiar with and accepting of the notion that marriage was also a
contractual exchange between a woman, a man, and their respective families, West
Syrian traditions before Bar Hebraeus exhibited no notion that that contract gave a
husband the near-unlimited right to make use of his and his wife’s sexuality. Rather, the
texts of Bar Hebraeus’ received tradition maintained that more conservative conception
of human sexuality as primarily geared to and appropriate for procreation.901 Marriage as
contract providing a husband with the right to sex and to his wife’s body was a

900 See Nomocanon, 139.
901 On this aspect of Christian tradition generally, see chapter three. I have found few discussions
of the purposes and theological dimensions of lay marriage in West Syrian tradition prior to Bar
Hebraeus. A notable exception is the letter of the seventh-century bishop Yōnān, which construes
marriage in a typically late antique Christian way as providing for the rational ordering of human
sexuality for the purpose of procreation. See chapter three, note 243. For a discussion following
similar themes see Yahyā ibn Jarīr’s Kitāb al-murshid, published in Aydin, Die Ehe, 192-97.
characteristically Islamic legal conception that Bar Hebraeus introduced into West Syrian tradition.

The rights and duties pertaining to the marriage contract and the powers of guardianship possessed by a bride’s male agnates represent the most prominent ways in which Bar Hebraeus’ reliance on Ghazālī brought West Syrian marriage law – and the organizing conceptions of social power, family, and sexuality that underlay it – more closely in line with Islamic traditions. We know so little of social life in Bar Hebraeus’ milieu and the following centuries that it is functionally impossible to say anything of how his innovations in the field of marriage law might have shaped patterns of practice once the *Nomocanon* was recognized as the West Syrians’ authoritative legal guide. It is eminently possible, of course, that the kinds of Islamicized conceptions of social hierarchy and the marriage bond that Bar Hebraeus adopted from Ghazālī had already been part of a more or less shared social framework among Middle Eastern communities, Muslim, Christian, or other, for a considerable period. But the novelty of their introduction into a Christian intellectual tradition remains striking, and returns us to one of the central concerns of this dissertation. Even as Bar Hebraeus brought together a tradition of family law meant to define a specifically Christian community, that tradition itself fell ever closer in line with the norms and standards of the wider Islamic intellectual milieu.
Chapter Conclusion

This extensive examination of the chapter on marriage of Bar Hebraeus’ Nomocanon has demonstrated how the tradition of West Syrian marriage law assimilated and adapted a wide array of Islamic doctrines, institutions, and legal concepts in the later medieval period. Lacking a particularly extensive or developed body of Christian works of family law, Bar Hebraeus turned to the resources of Islamic tradition in his endeavor to compose an encyclopedic and systematic West Syrian legal compendium. In the following chapter, we will turn to Bar Hebraeus’ near-contemporary ʿAbdīšōʿ bar Brīkā and his efforts to compile a systematic treatment of law for the East Syrians – and examine how the very different history of East Syrian legal writing determined that law’s relationship to the intellectual traditions of Islam.
In chapter seven we saw that Bar Hebraeus drew heavily on the Islamic legal texts of Ghazālī to compose the chapter on marriage in his extensive and comprehensive summary of West Syrian law. In this chapter we will examine the legal works of the figure generally viewed as Bar Hebraeus’ East Syrian counterpart: ‘Abdīšō’ bar Brīkā (d. 1318), metropolitan of Nisibis and Armenia. In contrast to the case of Bar Hebraeus, we will see that ‘Abdīšō’’s systematic compendia of East Syrian marriage law owe very little to the traditions of Islam. We will further consider the reasons for this difference and their resulting implications for the intellectual history of Christian law in the medieval Islamic world.

**Introductory Matters**

*East Syrian Family Law from the ‘Abbāsid Law Books to ‘Abdīšō’*

One apparent explanation we offered for Bar Hebraeus’ great reliance on Islamic family law was that the West Syrians had not developed a particularly extensive civil law tradition of their own. As we have noted throughout this dissertation, the same was not true of the East Syrians. Indeed, East Syrian ecclesiastics continued to produce legal works addressed to family law in the centuries following Īšō’ bōkt, Timothy, and Īšō’barnūn’s fundamental contributions to the tradition. In the mid-ninth century ‘Abdīšō’ bar Bahrīz, metropolitan of Mosul, composed a work on marriage and inheritance law that synthesized the material of the earlier East Syrian law books. Elias of
Damascus’ Arabic translation of the East Syrian synodal texts dates from the late ninth century. Of the same period is Gabriel of Baṣra’s systematic legal compendium.

Yōḥannān bar Abgārē’s letter to a priest in Yemen, which we considered in chapter five, deals with a number of points of marriage law. George, metropolitan of Mosul (the East Syrian eparchy of Ātōr) in the tenth century, composed a treatise on inheritance law and another on marriage law. In the eleventh century we have a profusion of legal works, including Ibn al-Ṭayyib’s *Fiqh al-naṣrāniyya* and two extensive treatises on inheritance composed by Elias bar Ṣennāyā of Nisibis (d. 1056) and the patriarch Elias I (1028-49).  

These various works attest to an active and fairly continuous process on the part of East Syrian bishops to develop and refine their family law tradition in the period between the early ʿAbbāsid law books and ʿAbdīšōʾ’s compendia of the late thirteenth and early fourteenth century. It is particularly noteworthy that already with Bar Bahrīz’s treatise in the mid-ninth century the East Syrian bishops had begun to systematize and sift the corpus of provisions relevant to family law in the law books of Ḫnānīšōʾ bōkt, Timothy, and Ḫnānīšōʾ bārnūn, as well as in that of Simeon of Rēwardašīr (the letters of Ḫnānīšōʾ do not figure prominently in the later sources). In other words, the East Syrians had begun to systematize and compile comprehensive treatments of family law well before Bar Hebraeus carried out the first such effort among the West Syrians.

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902 On all these works see Kaufhold, “Sources,” 306-311.
We know a good deal less of ’Abdīšō’’s life than we do of Bar Hebraeus’. In fact, essentially our only confirmed information relates to his ecclesiastical career in northern Mesopotamia during the early period of Mongol rule. By 1279/80 we hear of ’Abdīšō’ as bishop of Sinjār (Syriac Šiggār) and Bēt ‘Arbāyē, the region west of Mosul; before becoming a bishop he had presumably been a monk (East Syrian upper clergy were traditionally drawn from the ranks of the monasteries). By 1290/1 he had been elevated to metropolitan of Nisibis and Armenia. He died in 1318. 903

’Abdīšō’ composed a wide variety of prose and verse works, especially theological ones, over the course of his time as monk and bishop. 904 Because of his prolific output and the fact that he was a younger contemporary of Bar Hebraeus, he is commonly described as Bar Hebraeus’ East Syrian counterpart. 905 Many differences between the two remain, of course, particularly in view of the extremely wide variety of genres in which Bar Hebraeus worked. In the area of law, however, the comparison is very apt. Already in his own lifetime, ’Abdīšō’’s legal compendia were acknowledged by

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903 For ’Abdīšō’’s biography see Hubert Kaufhold, “Introduction,” in ’Abdīšō’ bar Brīkā and István Perczel, ed., The Nomocanon of Abdisho of Nisibis: A Facsimile Edition of MS 64 from the Collection of the Church of the East in Trissur, second edition (Piscataway, New Jersey: Gorgias Press, 2009), xvii-xviii. Kaufhold includes a few other purported details of ’Abdīšō’’s early life, including that he was born in the town of Jazīrat Ibn ’Umar (Syriac Gāzartā) and subsequently entered the monastery of Mār Aḥā and Mār Yōḥannān in the same town. Kaufhold notes, however, that this information is in fact unsubstantiated. Thanks are due to Salam Rassi for drawing my attention to this problem.

904 On ’Abdīšō’’s works see Kaufhold, “Introduction,” xviii-xxiii.

905 In many narratives of Syriac literature ’Abdīšō’ and Bar Hebraeus are commonly portrayed as the last noteworthy writers before a long and inexorable period of decline. See for example William Wright, A Short History of Syriac Literature (London: Adam and Charles Black, 1894), 265-90. Studies in later periods of Syriac literature are beginning to emend the “decline” narrative and its implicitly moral judgment.
the East Syrian hierarchy as the authoritative textual embodiment of the community’s law, much as Bar Hebraeus’ *Nomocanon* was for the West Syrians.

ʿAbdíšōʿ composed two systematic, comprehensive works of East Syrian law. The first is the *Kunnāšā d-qānōnē sunhādīqāyē* (*Collection of Synodal Canons*), commonly called the *Nomocanon*, which ʿAbdíšōʿ likely wrote while still a monk. The second is the *Ṭukkās dīnē ṭānāyē* (*Order of Ecclesiastical Decisions*), commonly called the *Ordo iudiciorum ecclesiasticorum* after its Latin translation, which was written around 1314–15 while ʿAbdíšōʿ was metropolitan of Nisibis.906 Both works were recognized as authoritative at the synod of 1318 convoked by the catholicos Timothy II.907 The *Nomocanon*, however, appears to have been much more popular in ecclesiastical circles, as today many more manuscripts of it are extant than of the *Ordo*.908 Both works include tracts devoted to the law of betrothal and marriage. In what follows, we will consider the various sources on which ʿAbdíšōʿ drew in composing the two texts, his redactional technique, and the limited ways in which legal perspectives parallel to Islamic law crop up in them.

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906 For publication details of these texts, see Kaufhold, “Sources,” 311-12 (the *Ordo* has only been published in Latin translation). The dating of the *Nomocanon* is suggested by ʿAbdíšōʿ’s statement in the preface to the *Ordo* that he composed the former during a period of monasticism; see ʿAbdíšōʿ, *Ordo*, 24 and MS Mosul Chaldean Patriarchate 66, folio 2a. I owe this point to Salam Rassi and his upcoming publications on ʿAbdíšōʿ’s life and works. On the dating of the *Ordo* see Kaufhold, “Sources,” 312.


The Nomocanon

‘Abdīšō’’s *Nomocanon* is divided into nine tracts that treat the range of ecclesiastical and civil law topics; of these tract two is devoted to marriage law (tract three treats the law of succession). Like the compendia of Gabriel of Baṣra, Ibn al-Ṭayyib, and Bar Hebraeus, ‘Abdīšō’’s *Nomocanon* is a comprehensive and systematized statement of East Syrian law. Scholarship on the text has established that it “consists almost entirely of excerpts from earlier [East Syrian] legal literature,” many of which are taken from Gabriel of Baṣra’s compendium.⁹⁰⁹ Indeed, the marked parallels revealed by Kaufhold’s comparison of the *Nomocanon* to the second part of Ibn al-Ṭayyib’s *Fiqh al-naṣrāniyya* (an abbreviated Arabic translation of Gabriel) show that ‘Abdīšō’ made extensive use of Gabriel.⁹¹⁰ Because of this, ‘Abdīšō’ often does not mention the original sources of his provisions – i.e., the earlier East Syrian law books on which Gabriel drew.

The tract on marriage is one section of the *Nomocanon* that is particularly dependent on Gabriel. The following chart details the sources of the tract’s 27 paragraphs. I should stress that Kaufhold has already identified the passages dependent on Gabriel (my few disagreements may be found in the footnotes).⁹¹¹ We will then consider what, if any, relationship the provisions of the tract have to Islamic law.

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⁹¹⁰ On ‘Abdīšō’’s relationship to Gabriel see Kaufhold, “Rechtssammlung,” 57-64. See also pp. 324-33 for a chart showing the parallel passages in Ibn al-Ṭayyib and ‘Abdīšō’’s *Nomocanon*, as well as their original sources.
⁹¹¹ See the previous note.
<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Description</th>
<th>Source</th>
</tr>
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</table>
| §1 – prohibited unions | 'Abdīšō' bar Bahrīz | 912, 913
| §2 – on betrothal, the ceremony, and the contract | Gabriel (Ibn al-Ṭayyib on betrothal §1), 914 | Timothy §28 (§) 915
| §3 – betrothal where no priests are present | Gabriel (Ibn al-Ṭayyib on betrothal §§1-2) 916 |
| §4 – minimum age for betrothal | - 917 |
| §5 – order of guardianship | Gabriel (Ibn al-Ṭayyib on betrothal §2) 918 |
| §6 – betrothal for girls without relatives and for men of unknown background | --- 919 |
| §7 – dissolving betrothal | Gabriel (Ibn al-Ṭayyib on betrothal §§2-3) 920 |
| §8 – how long a betrothed woman must wait for a groom who is absent for a time | Gabriel (Ibn al-Ṭayyib on betrothal §§4-5) 921 |

912 'Abdīšō', Collectio, 207-219. 'Abdīšō’’s title for tract 2 is: “On marriage, the canons and orders of the betrothal of Christians, and how it should be administered, along with the rest of the matter.”

913 Though most of 'Abdīšō’’s Nomocanon is based on Gabriel of Bašra, Kaufhold deduces that its paragraph §1 on prohibited unions differed from that of Gabriel. See Rechtssammlung, 65-66. The close similarities between the Nomocanon’s list of prohibited unions and that of the mid-ninth century text of 'Abdīšō’ bar Bahrīz suggest that Bar Brikā’s is based on Bar Bahrīz’s, either directly or via some intermediary. See 'Abdīšō’ bar Bahrīz, Ordnung, 30-37.

914  Fiqh 2 (text): 3. Based on Išō’ bōkt §III.i.1, SR 3: 74. 'Abdīšō' adds details on how the offer of betrothal should be presented to a bride and also gives a short formulary for a betrothal contract; these have no apparent source in earlier East Syrian legal texts.

915 'Abdīšō’’s paragraph §2 concludes by affirming that betrothals not carried out according to the procedure he details shall not be recognized, and that “in this we create a distinction (puršănā) between the betrothal of Christians and that of pagans and crucifiers (hanpē w-zāqopē)”. These points are not found in Ibn al-Ṭayyib, but they are in Timothy §28 (compare the latter phrase in particular: “in this manner our betrothal is distinguished [priš] from [that of] the pagans [hanpēl]”). It thus stands to reason that either these points were found in Gabriel’s text, from where ‘Abdīšō’ took them, or that they were not and that he included them directly from Timothy’s law book. For the Timothy canon see MS Sinai Syriac 82, folio 68b.


917 'Abdīšō’ states that a girl should not be betrothed before she reaches the age of fourteen, or twelve at the absolute youngest. I know of no East Syrian source for this provision. Twelve is the minimum age according to Bar Hebraeus’ Nomocanon (§8.1.4) and fourteen according to the synod of the West Syrian patriarch Dionysius II (§7). See the relevant section of chapter seven.

918  Fiqh 2 (text): 3-4.

919 'Abdīšō’ stipulates that a priest should act as guardian for a girl with no suitable relatives. The background of a foreign, unfamiliar man (nukrāyā) should be investigated before he is betrothed to ensure that he has no wife in another land. If his background is uncertain he must write a deed of debt for his wife. If he turns out to be upright the deed is returned; if, on the other hand, he turns out to be a man of ill repute he must pay it and the marriage is dissolved. I know of no apparent sources of these provisions.


<table>
<thead>
<tr>
<th>Paragraph</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>§9 – betrothals without parents’ consent</td>
<td>Gabriel (Ibn al-Ṭayyib on betrothal §7)(^{922})</td>
</tr>
<tr>
<td>§10 – taking monastic vows as grounds for dissolution of betrothal</td>
<td>Gabriel (Ibn al-Ṭayyib on betrothal §8)(^{925})</td>
</tr>
<tr>
<td>§11 – monks and nuns who forsake vows and marry</td>
<td>-- (^{924})</td>
</tr>
<tr>
<td>§12 – abduction of brides</td>
<td>Gabriel (Ibn al-Ṭayyib on betrothal §10)(^{925})</td>
</tr>
<tr>
<td>§13 – amounts of marriage gifts</td>
<td>Gabriel (Ibn al-Ṭayyib on betrothal §12)(^{926})</td>
</tr>
<tr>
<td>§14 – Christian men may marry non-Christian women</td>
<td>Gabriel (Ibn al-Ṭayyib on betrothal §15)(^{927})</td>
</tr>
<tr>
<td>§15 – Christian women may not marry non-Christian men</td>
<td>Gabriel (Ibn al-Ṭayyib on betrothal §15)(^{928})</td>
</tr>
<tr>
<td>§16 – on waiting periods for widowers and widows</td>
<td>Gabriel (Ibn al-Ṭayyib on betrothal §16)(^{929})</td>
</tr>
<tr>
<td>§17 – on grounds for dissolutions of marriage and betrothal</td>
<td>Íšō’barnūn §§5, 6, and 16, Timothy §36, §31 Gabriel (Ibn al-Ṭayyib on betrothal §9), Syro-Roman Law Book §§120a-9. (^{933})</td>
</tr>
<tr>
<td>§18 – disobedient wives and obstinate husbands</td>
<td>Íšō’bōkt §II.xi. (^{934})</td>
</tr>
<tr>
<td>§19 – how adultery is proven</td>
<td>Gabriel (Ibn al-Ṭayyib on divorce §5)(^{935})</td>
</tr>
<tr>
<td>§20 – oath-taking procedure for a woman accused of adultery but against whom there are no witnesses</td>
<td>Gabriel (Ibn al-Ṭayyib on divorce §5)(^{936})</td>
</tr>
<tr>
<td>§21 – a spouse who has been taken captive</td>
<td>Gabriel (Ibn al-Ṭayyib on divorce §11)(^{937})</td>
</tr>
</tbody>
</table>


\(^{924}\) This is not based in an apparent way on any passage in Gabriel/Ibn al-Ṭayyib. Timothy §37 and Íšō’barnūn §32 treat this subject. See *SR* 2: 86 and 130.


\(^{926}\) *Fiqh* 2 (text): 6. Based on Syro-Roman Law Book §87, Timothy §62, and Íšō’barnūn §43. See *SRRB* 2: 34-35 and *SR* 2: 100 and 134.


\(^{929}\) *Fiqh* 2 (text): 8. Based on Syro-Roman Law Book §10 and/or §59, *SRRB* 2: 36-37 and 78-81.

\(^{929}\) ‘Abdīsō’ does not actually cite these rulings; he notes only that Íšō’barnūn offers three grounds for divorce. They are delineated in these rulings. See *SR* 2: 120-22.

\(^{930}\) *SR* 2: 84-86. ‘Abdīsō’ says that Timothy’s fourth grounds for dissolution is “murder” (*qetlā*). In Sachau’s edition this is rendered as “death” (*mawtā*). See chapter six.

\(^{931}\) *Fiqh* 2 (text): 5. Based on Íšō’bōkt §§III.xi.1-2, *SR* 3: 86-88. Kaufhold identifies the corresponding passage as Ibn al-Ṭayyib on divorce §§1-4, but this does not appear to be correct.

\(^{932}\) *SRRB* 2: 174-77. ‘Abdīsō’ attributes the provisions of §120b directly to Gabriel.

\(^{933}\) *SR* 3: 56-58. ‘Abdīsō’s paragraph is an expanded and reworked version of Íšō’bōkt’s ruling.


Women’s Consent and Guardians’ Powers of Compulsion: The Influence of Islamic Law?

As is evident from the chart above, the treatment of the law of marriage in ‘Abdīšō’’s Nomocanon is based essentially in its entirety on East Syrian sources, especially Gabriel of Baṣra’s systematic compendium. However, in two minor points the Nomocanon exhibits the possibility that legal perspectives of Islamic provenance have crept into East Syrian tradition. They revolve around the issue of women’s consent to marriages, and we will consider them here.

The first concerns the special powers that fathers wield when they act as guardians for their daughters. As we saw in chapter seven, Islamic law makes a basic distinction between fathers and other relatives as guardians for brides. All four Sunnī schools as well as the Twelver Shīʿī assert that a father (and, for some, a grandfather)
can compel a virgin daughter who has yet to reach legal majority to marry without her consent and regardless of her wishes; all except the Ḥanafīs (and minority Shīʿī opinions) hold the same for a virgin daughter in her majority.944 If any otheragnate acts as a guardian, however, the bride’s consent is required.945 The general idea is that fathers may compel their virgin daughters to marry.

No clear statement of doctrine on this matter is to be found in East Syrian legal tradition before ʿAbdīšō’, but we can observe a number of relevant views in the earlier sources. Several tend toward the necessity of all parties’ consent to a valid marriage. Īšō’bōkt asserts that a couple that has concluded a betrothal contract may dissolve it if they do not want to finalize the union.946 Though guardians do not come up in his discussion, his position highlights the necessity of the betrotheds’ consent to the marriage. When discussing the case of a man who has been unable for financial reasons to finalize a marriage to his betrothed, Timothy states:

If [the bride] is a child who was left an orphan by her parents, having been betrothed to her groom [previously] by her parents [but] not yet having reached the age of discernment (mšuḥtā d-pursānā d-īda tā), her will shall stand (ṣebỳānāh nehwē). If she keeps the commandment of her father [and goes ahead with the marriage], that is good; if she does not, her will shall stand. If she had reached [the age of] knowledge when her parents gave her [in marriage] and she consented (eṣṭabyat), she must be given to her betrothed.947

945 The Ḥanafīs allow a guardian other than the father to marry off a minor virgin girl, but when she reaches majority she then receives the option to dissolve the union. See Marghīnānī, Hidāya 2: 480-81.
947 §30, SR 2: 78.
Though this particular case concerns an orphan, there is no reason to presume that the underlying principle – the necessity of the bride’s consent to the marriage – does not apply to all cases in which a betrothal is concluded before the bride reaches legal majority. Her parents (abāhēyh) might contract a betrothal for her before she has reached the “age of discernment,” but upon reaching it her consent (ṣebīyānā) must be sought to finalize the union; she may either go along with her father’s decision or end the betrothal.\footnote{Though this particular case concerns an orphan, there is no reason to presume that the underlying principle – the necessity of the bride’s consent to the marriage – does not apply to all cases in which a betrothal is concluded before the bride reaches legal majority. Her parents (abāhēyh) might contract a betrothal for her before she has reached the “age of discernment,” but upon reaching it her consent (ṣebīyānā) must be sought to finalize the union; she may either go along with her father’s decision or end the betrothal.\footnote{\textsuperscript{948}}\footnote{\textsuperscript{948}}}

Īšō’barnūn is both less inclined to recognize the betrotheds’ consent and less clear on the matter than Timothy. One of his rulings grudgingly allows a groom to get out of a betrothal to which he does not consent (d-lā ṣebīyānēh), but if he does so his parents should disinherit him and must pay the value of a marriage gift to the bride as compensation for the broken betrothal. If a bride breaks a betrothal her parents must similarly pay compensation to the groom, but it is notable that Īšō’barnūn imagines this happening only through the bride’s suicide; he does not suggest that she might simply refuse the marriage.\footnote{\textsuperscript{949}} In two other rulings Īšō’barnūn considers the case of fatherless women; he asserts that they fall under the guardianship of their paternal uncles, who decide whom their nieces will marry.\footnote{\textsuperscript{950}} The issue of women’s consent does not come up

\footnote{\textsuperscript{948} Timothy’s position as represented in this ruling is essentially that of the Ḥanafīs on non-paternal guardians: they may give minor virgins in marriage but the women’s consent is necessary upon reaching majority. Timothy, however, applies this condition also to fathers acting as guardians, which the Ḥanafīs do not. Another interesting similarity is the close idiomatic correspondence between the Syriac and Arabic terminology for legal majority: puršānā and tamyīz both mean something like “the power to make rational distinctions.”}

\footnote{\textsuperscript{949} \textsuperscript{949}}

\footnote{\textsuperscript{950}}

\footnote{\textsuperscript{950}}
explicitly, but Īšō’bārnūn clearly deemphasizes it by focusing on the will of the paternal
uncles.

The ‘Abbāsid East Syrian law books thus contain a number of references to the
issue of women’s consent to marriages arranged for them; Timothy and Īšō’bōkt more or
less imply the necessity of that consent, while Īšō’bārnūn does not ascribe much
importance to it. None of them makes an obvious distinction between unions arranged by
fathers or by other relatives as Islamic family law does. However, when we get to the
later East Syrian systematic compendia a slight difference appears to have crept in. A
passage in paragraph §5 of ‘Abdīšō’ of Nomocanon that treats the guardian (‘arrābāh d-af[n]ttā w-mamkrānāh) reads as follows:

As long as the father is alive authority [to conclude a marriage for his daughter] is
his (dīlēh [hū] šultānā). When the father does not live, brothers have authority as
long as they receive it from their sister (kad menāh d-ḥāthōn nessbūn šultānā). When there are no brothers, paternal uncles have authority, whether [they give
their niece in marriage] to their sons or to others, as she wishes and commands (ak
d-hī šābyā w-pāqdā). When there are no brothers and no uncles [the woman’s]
mother has authority to give her [in marriage] to a man, whomever her daughter
wishes (man d-hāy ba[r]tāh sābyā).

Notably, the specification that the guardian marries off the charge according to her
wishes is given in each case except that of the father; in its literal sense the text gives him
unconditional “authority” over the marriage. This passage is found in Ibn al-Ṭayyib as
well (which means that it must go back to Gabriel of Baṣra), where it exhibits an even
clearer emphasis that the bride’s consent must be sought by any guardian other than her
father. He “has [the power to] contract a marriage” (fa-l-’aqd lahu); the others may do so
“after asking the permission” (ba’ da ’sti’dhān) of the prospective betrothed.

952 See §2 in Fiqh 2 (text): 3.
What are we to make of this passage? A strict reading of the text – which specifies that the bride’s consent is required for each of the non-paternal guardians but makes no mention of it in reference to the father – might take it to mean that the father’s power to contract a marriage for his daughter is unconditional. An alternate reading, however, might simply chalk this discrepancy up to compositional negligence and presume that the necessity of consent is implied in all cases. This, in fact, appears to be ‘Abdīšō’’s perspective. In the section of the Nomocanon immediately preceding the passage in question he states that “[a bride] may not be given to a man by her parents or by others without her will and consent (bel ʿād ʿebyānāh w-puqdatānāh), in contrast to that opinion of the outsiders (tarʿītā hāy d-barrayē).”

ʿAbdīšō seems to be well aware of the standard Islamic doctrine that gives paternal guardians expanded powers, as evidenced by his reference to the contradictory opinion of the “outsiders.” The fact that he quotes our passage immediately after this statement indicates that he does not interpret the passage to support that outsider opinion.

If we consider, however, that ‘Abdīšō’ has reproduced the passage from a work compiled some four centuries previously, it remains possible that earlier East Syrian jurist-bishops like Gabriel had in fact subscribed to the Islamic-like opinion that paternal guardians enjoy expanded powers over the contracting of marriages for their daughters – a sense that the text as we have it certainly suggests. That those bishops might have done so under the influence of Islamic legal thought and practice seems plausible, but we have no further direct evidence.

One other point in ‘Abdīšō’’s Nomocanon is worthy of mention in view of its similarity to Islamic law: the ruling that a woman’s silence indicates her consent to an

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953 ʿAbdīšō, Collectio, 211.
offer of betrothal. It is a largely standard Islamic doctrine, based on prophetic tradition, that a virgin’s silence in response to an offer of marriage indicates her consent (while a previously married woman’s consent must be vocal).\textsuperscript{954} In the *Nomocanon*’s paragraph §2 ‘Abdīšō’ lays out a scenario in which four women bring a ring of betrothal to a girl (ṭlītā) and say to her, “If you are pleased with him [the suitor], be silent (štoq[y] wā-šlāy). If you are not, throw down the ring.”\textsuperscript{955} This passage looks to be an original one of ‘Abdīšō’; it does not appear in Ibn al-Ṭayyib and so most likely does not go back to Gabriel of Baṣra. I know of only one precedent in East Syrian legal literature for the position that silence equals consent: a passage preserved only in ‘Abdīšō’’s *Ordo* and attributed to Elias of Nisibis. In it Elias asserts that “if [a girl] is silent it is [indicative] of her consent” (en šātqā w-šālyā ītaw[hy] b-šebyānāh) and “through a girl’s consent betrothal is fulfilled” (b-šebyānā da-ṭlītā mkuryā neštamlē).\textsuperscript{956} We thus have evidence for the position that a woman’s silence in response to an offer of betrothal indicates her consent in East Syrian law in the eleventh century, and ‘Abdīšō’ continues to uphold it in his *Nomocanon*. The texts do not specify explicitly that the woman in question is a virgin, but their designation of her as a “girl” (ṭlītā) shows that they presume her to be so. This doctrine is thus highly suggestive of Islamic law, and so it is worth raising the possibility that it was adopted by East Syrian jurist-bishops by way of Islamic legal texts or the practical ubiquity of the norms that they propagated.

These two cases – the paternal guardian’s powers of compulsion and women’s silence as consent – are the only instances in the *Nomocanon*’s treatise on marriage at all suggestive of Islamic law; even these, however, lack further corroborating evidence. This

\textsuperscript{954} See Tucker, *Women, Family, and Gender*, 42.
\textsuperscript{955} ‘Abdīšō’, *Collectio*, 210.
\textsuperscript{956} ‘Abdīšō’, *Ordo*, 198 and MS Mosul Chaldean Patriarchate 66, folios 129b-130a.
stands in contrast, of course, to Bar Hebraeus’ *Nomocanon* and its heavy dependence in a
great number of areas on Ghazālī’s *fiqh* works.

*The Ordo iudiciorum ecclesiasticorum*

‘Abdīšō’’s *Ordo*, which is composed of ten tracts treating ecclesiastical and civil
law, differs in a number of respects from the *Nomocanon*. Though it similarly includes
large numbers of excerpts from earlier East Syrian legal literature, many of these are
direct quotations with attributions to their original sources, in contrast to the largely
unattributed passages of the *Nomocanon*. Besides the *Ordo*’s East Syrian source material,
Kaufhold has demonstrated that ‘Abdīšō’ also made much use of another, unattributed
source: *al-Majmūʿ al-ṣafawi*, a systematic legal compendium composed in Arabic by the
Copt Abū ‘l-Faadāʾil al-Ṣafī ibn al-ʿAssāl (fl. mid-thirteenth century).957 By comparing
unattributed passages in the *Ordo* to the *Majmūʿ*, Kaufhold has shown that many are
Syriac translations of the latter. Further notable is the fact that Ibn al-ʿAssāl had been
familiar with Islamic legal works and had incorporated a variety of Islamic norms into his
text; ‘Abdīšō’ thus adopted much of that Islamic material when he modeled the *Ordo* on
the *Majmūʿ*.958

How does the Islamic influence on the *Majmūʿ* figure in the *Ordo*’s tract on
marriage? Little, as it turns out. Most of the tract is made up of attributed quotations
taken directly from East Syrian legal works. Several unattributed sections are indeed

957 On this work see Kaufhold, “Sources,” 285-86.
958 On ‘Abdīšō’’s adoption of Islamic law by way of Ibn al-ʿAssāl see Hubert Kaufhold, “Der
Richter in den syrischen Rechtsquellen: Zum Einfluß islamischen Rechts auf die christlich-
chart displaying the sections of the *Ordo* that are dependent on the *Majmūʿ*. 

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translated from the *Majmūʿ*, but none of these include doctrines of Islamic provenance
(nor does much of anything in the *Majmūʿ*’s chapter on marriage and betrothal). What
has gone little remarked before, however, is that several of the other unattributed
passages in the *Ordo*’s tract on marriage appear to be based on Bar Hebraeus’
*Nomocanon.* When we examine these below, we will see that one Ghazālīan passage has
made its way into ‘Abdīšō’’s *Ordo* via Bar Hebraeus.

The following chart gives an overview of the sources of the *Ordo*’s tract on
marriage. Brackets indicate unattributed sources; those without brackets ‘Abdīšō’ cites by
name (though usually without giving numbers for the rulings or canons in question). I am
again indebted to the work of Kaufhold for identifying the passages taken from Ibn al-
‘Assāl.\(^\text{959}\)

<table>
<thead>
<tr>
<th><em>Ordo</em>, tract 8: on the betrothal of Christians and lawful marriage(^\text{960})</th>
<th>Sources</th>
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</thead>
<tbody>
<tr>
<td>§1 – on lawful marriage and its benefit</td>
<td>[Ibn al-'Assāl on marriage §77], synod of Īšō’ yahb I §13(^\text{961})</td>
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<tr>
<td>§2 – the purpose of lawful marriage</td>
<td>[Ibn al-'Assāl on marriage §§1-5, 7-8, 15-24](^\text{962})</td>
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<tr>
<td>§3 – unmarriageable persons</td>
<td>['Abdīšō’ bar Bahrīz/<em>Nomocanon</em> of 'Abdīšō’ bar Brīkā](^\text{963})</td>
</tr>
<tr>
<td>§4 – the harm that comes from marrying relatives and the benefit of marrying</td>
<td>Īšō’ bōkt §II.ii, synod of Īšō’ yahb I §13, synod of Bēt Lāppāt(^\text{964})</td>
</tr>
</tbody>
</table>

\(^{959}\) See again “Der Richter,” 111-13 for the parallel passages. Kaufhold’s references are to a
different edition of the *Majmūʿ* than will be cited here.

\(^{960}\) 'Abdīšō’,* Ordo*, 170-201 and MS Mosul Chaldean Patriarchate 66, folios 107b-132a.
'Abdīšō’’s title of the tract is “The betrothal of Christians and lawful marriage” (*mkuryā da-
krēṣṭyānē w-zuwwāgā nāmōsāyā*).


\(^{962}\) *Al-Majmūʿ* al-safawī 2: 17-23.

\(^{963}\) The *Ordo*’s discussion and chart of unmarriageable relations is a slightly expanded version of
that found in ‘Abdīšō’’s *Nomocanon*. For its likely ultimate source, see again ‘Abdīšō’ bar

\(^{964}\) For Īšō’ bōkt and Īšō’ yahb see SR 3: 30-36 and Chabot, *Synodicon*, 149, respectively. The
canons of the synod of Bēt Lāppāt that ‘Abdīšō’ cites in the *Ordo* have not been preserved
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<tr>
<th>§</th>
<th>Topic</th>
<th>Source</th>
</tr>
</thead>
<tbody>
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<td>5</td>
<td>from where we learn that a Christian may only marry one woman</td>
<td>Išō’ bōkt §II.ix, synod of Bēt Lāppāt&lt;sup&gt;965&lt;/sup&gt;</td>
</tr>
<tr>
<td>6</td>
<td>on the levirate, its permissibility according to the old Law, and its subsequent prohibition</td>
<td>Išō’ bōkt §II.vi&lt;sup&gt;966&lt;/sup&gt;</td>
</tr>
<tr>
<td>7</td>
<td>– on betrothal and its benefit</td>
<td>Ibn al-ʾAssāl on marriage §§48-49&lt;sup&gt;967&lt;/sup&gt;</td>
</tr>
<tr>
<td>8</td>
<td>– on the order and canons for betrothal</td>
<td>Išō’ bōkt §§III.i.1-3, Timothy §28, Išō’ barnūn §29, Syro-Roman Law Book §85&lt;sup&gt;968&lt;/sup&gt;</td>
</tr>
<tr>
<td>9</td>
<td>– the investigation that precedes betrothal</td>
<td>Bar Hebraeus §8.1.4 and §8.2.4&lt;sup&gt;969&lt;/sup&gt;</td>
</tr>
<tr>
<td>10</td>
<td>marriage gifts: pernūṭā, mahrā, dōrā, zebdē, and šādkē</td>
<td>Bar Hebraeus §8.4.1, Syro-Roman Law Book §87, Timothy §40, Išō’ barnūn §4&lt;sup&gt;971&lt;/sup&gt;</td>
</tr>
<tr>
<td>11</td>
<td>– abduction of brides</td>
<td>Synod of Bēt Lāppāt, Timothy §40, Išō’ barnūn §4&lt;sup&gt;971&lt;/sup&gt;</td>
</tr>
<tr>
<td>12</td>
<td>– absent grooms</td>
<td>Išō’ bōkt §III.ix, Timothy §33&lt;sup&gt;972&lt;/sup&gt;</td>
</tr>
<tr>
<td>13</td>
<td>– spouses taken captive</td>
<td>Išō’ bōkt §III.viii, Timothy §32&lt;sup&gt;973&lt;/sup&gt;</td>
</tr>
<tr>
<td>14</td>
<td>– on dissolving a marriage or betrothal because the bride did not show signs of virginity or because of natural defects</td>
<td>Išō’ bōkt §§III.ii.1-2 and iv.1-3, Timothy §35&lt;sup&gt;974&lt;/sup&gt;</td>
</tr>
<tr>
<td>15</td>
<td>– grounds for divorce</td>
<td>Išō’ bōkt §§II.x-xii, Timothy §36 and §44, Išō’ barnūn §19, George of Ātōr&lt;sup&gt;975&lt;/sup&gt;</td>
</tr>
<tr>
<td>16</td>
<td>– how adultery is proven</td>
<td>Bar Hebraeus §8.5.5, Išō’ bōkt §II.xv, Išō’ barnūn §31&lt;sup&gt;976&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

elsewhere. For the Syriac text of those canons on the basis of an Ordo manuscript, see Chabot, Synodicon, 623.<br>SR 3: 52-54 and Chabot, Synodicon, 623.<br>SRR 3: 42-44.<br><sup>967</sup> Al-Majmūʿ al-ṣafawi 2: 33.<br><sup>968</sup> For Išō’ bōkt and Išō’ barnūn see SR 3: 74 and 2: 128, respectively. For the partial Syriac text of Timothy see SR 2: 74; see MS Sinai Syriac 82, folio 68b for the complete one. For the Syro-Roman canon see SRRB 2: 106-107<br><sup>969</sup> Nomocanon, 119-20 and 123.<br><sup>970</sup> For Bar Hebraeus see Nomocanon, 134-35. For the Syro-Roman canon see SRRB 2: 110-11. The passage containing Timothy and Išō’ barnūn’s opinions on the amount of a marriage gift is that found in Ibn al-Ṭayyib; see §12 in Fiqh 2 (text): 6. The passage is based on Timothy §62 and Išō’ barnūn §43. See SR 2: 100 and 134.<br><sup>971</sup> Chabot, Synodicon, 23; SR 2: 86; and Sauget, “Décisions canoniques,” facsimile folios 1-2.<br><sup>972</sup> SR 3: 84 and 2: 80-82.<br><sup>973</sup> SR 3: 84 and 2: 80.<br><sup>974</sup> SR 3: 78-80 and 2: 84.<br><sup>975</sup> For Išō’ bōkt, Timothy, and Išō’ barnūn see SR 3: 54-58 and SR 2: 84-90 and 124, respectively. The citations from the work on marriage law of George (fl. second half of the tenth century) are preserved only by ‘Abdíšō’. See Kaufhold, “Sources,” 307.
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Attribution</th>
</tr>
</thead>
</table>
| §17     | impotence preventing consummation | Catholicos Yōhannān (bar Abgārē?)
| §18     | men who neglect to conclude marriages to their betrotheds | George of Ātōr, Timothy §30
| §19     | a man who does not want to marry the betrothed chosen by his parents |Īšō barnūn §20, Elias of Nisibis
| §20     | those who choose the monastic life and separate from their wives |Īšō barnūn §§16-18 and 22
| §21     | on the times in which sex is not permissible | (Pseudo-) Basil the Great [via Ibn al-ʿAssāl on marriage §106], Syro-Roman Law Book §14
| §22     | the marriages of slaves |Īšō bōkt §III.x.1-4, [Gabriel (Ibn al-Ṭayyib on betrothal §11)]

*Bar Hebraeus’ Nomocanon as a Source of the Ordo*

The possibility that ʿAbdīšō used Bar Hebraeus’ *Nomocanon* has been noted only briefly and has not been systematically explored. Let us examine more closely the three unattributed paragraphs – §§9, 10, and 16 – from the *Ordo*’s tract on marriage that exhibit marked similarities to the *Nomocanon.*

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976 For the Bar Hebraeus passage see *Nomocanon*, 146-47. For the others see *SR* 3: 64-66 and 2: 130. The text of the *Ordo* misattributesĪšō barnūn’s ruling toĪšō bōkt.
977 On this canon and its attribution to Yōhannān bar Abgārē see note 501 in chapter six.
978 For Timothy see *SR* 2: 76-78. ʿAbdīšō’s quotation of George is preserved nowhere else.
979 ForĪšō barnūn see *SR* 2: 124. The passage attributed to Elias bar Šennāyā of Nisibis is, as far as I know, not preserved elsewhere.
980 *SR* 2: 122-26.
983 Kaufhold notes that the mention of šadkē in §10 of the  *Ordo*’s tract on marriage seems to be drawn from Bar Hebraeus. See *Rechtssammlung*, 84, note 367. Vosté’s translation of the *Ordo* notes the similarity between the same paragraph and Bar Hebraeus; see p. 185, note 35. Vosté notes a few points of similarity in other chapters of the *Ordo*; see pp. 157, 163-65, 216, and 218-19.
<table>
<thead>
<tr>
<th><strong>Ordo §8.9</strong>&lt;sup&gt;984&lt;/sup&gt;</th>
<th><strong>Bar Hebraeus §8.1.4</strong>&lt;sup&gt;985&lt;/sup&gt;</th>
</tr>
</thead>
</table>
| **On the investigations and examination**  
(buhḥānā) **prior to betrothal** (**qdām**  
mkuryā).**  
There are eight [points to be] investigated concerning the groom and bride according to a just inquiry into true things.**  
1) That she who is betrothed not be betrothed to another, nor that the one who betroths [her] have another betrothed. | **The things that should be examined**  
(m바ḥḥānā) **prior to betrothal** (**qdām**  
mkīrūṭā) are these.**  
1) That she who is betrothed not be betrothed to another, nor that he who betroths be betrothed to another, because one is only for one. “A man shall leave his father and mother and cleave to his wife,” not to his wives, the Word of the Spirit commands.**  
9) She should not be of another confession (**men** **ḥrānyay** **šubḥā**).**  
7) She should not be young, that is, less than twelve years.**  
8) She should have no bodily defect (**mūmā** **pağrānāyā**).**  
4) The bride should not be a slave girl or the groom a slave. These ones may be married only with the consent of their masters.**  
5) There should be between them no relationship of kinship (**ḥyānūtā**  
gensānāytā), wet-nursing, or sponsorship.**  
2) [Betrothals may not occur on fasting days during which feasts are prohibited]**  
3) [Betrothals may not occur during a |
The above shows the general similarity between ‘Abdīšōʾ’s unattributed passage on the conditions that should be met prior to contracting a betrothal and a similar one in Bar Hebraeus’ Nomocanon. There are many differences as well, of course; but we can highlight a few of the closest similarities that (in addition to the passages discussed below) point most directly to the Nomocanon being ‘Abdīšōʾ’s underlying source. The introductory statements exhibit very similar language, including the use of forms of the Syriac root $b$-$ḥ$-$n$ for “examination.” The language of the first condition in the two texts is nearly identical.⁹⁸⁶ ‘Abdīšōʾ has Bar Hebraeus’ minimum age of twelve years for a bride, which I have found in no other Syriac source. Additionally, we might note that ‘Abdīšōʾ’s list of physical defects hindering marriage is very similar to the one given by Bar Hebraeus in paragraph §8.5.12: both include vaginal closure (‘Abdīšōʾ $aṭṭīmūt$ ṭāmūt, Bar Hebraeus $āpōstīmē$), elephantiasis ($āryānūtā$), “the demon” ($dāywā$), leprosy ($gārbā$), and hermaphroditism (‘Abdīšōʾ $dκrṇqēb$, Bar Hebraeus $gκrνqēb$).⁹⁸⁷

Beyond these similarities, the correspondence between ‘Abdīšōʾ’s eighth condition and another of Bar Hebraeus’ paragraphs is immediately striking:

<table>
<thead>
<tr>
<th>Ordo §8.9⁹⁸⁸</th>
<th>Bar Hebraeus §8.2.4⁹⁸⁹</th>
</tr>
</thead>
<tbody>
<tr>
<td>8) That there be a guardian ($qurātor$) for the girl, either her father, grandfather, brother, paternal uncle, paternal uncle’s guardianship ($qurātorūtā$) is the right of the father, then grandfather, then brother, then brother’s son, then paternal uncle, then</td>
<td></td>
</tr>
</tbody>
</table>

⁹⁸⁶ Compare: ‘Abdīšōʾ, Ordo, 185 and MS Mosul Chaldean Patriarchate 66, folios 120a-b.
⁹⁸⁷ Nomocanon, 123.
son, maternal grandfather, maternal uncle, or maternal uncle’s son. If there is not one of these, a priest of God shall be the guardian (quraṣṭor awkēṭ ‘arrāḥā) of the woman, and the one who gives her in betrothal (mamkrānāḥ).

paternal uncle’s son, then maternal grandfather, then maternal uncle, then maternal uncle’s son’s, then the region’s bishop.

Though ‘Abdīšō leaves out the nephew, his passage is immediately recognizable as the order of guardians offered by Bar Hebraeus. Moreover, it differs from that given by ‘Abdīšō in the Nomocanon (father, brother, paternal uncle, mother) and found in the East Syrian sources Gabriel of Baṣra and Ibn al-Ṭayyib. ‘Abdīšō’s adoption of an order different from the one he recognized in his earlier text certainly suggests that he worked off of different source material, and in eastern Christian legal literature I have found this particular order only in Bar Hebraeus’ Nomocanon.

The following paragraph in the Ordo, which concerns marriage gifts, corresponds also to one of Bar Hebraeus’ (this is the only point of similarity between the two texts noted by Kaufhold and Vosté).

<table>
<thead>
<tr>
<th>Ordo §8.10⁹⁹⁰</th>
<th>Bar Hebraeus §8.4.1⁹⁹¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>On pernīṭā, mahrā, dorā, zebdē, and šadkē.</td>
<td>Section 4: on pernīṭā, dōrā, zebdē, the wedding banquet, the one who scatters [nuts at the banquet], and šadkē.</td>
</tr>
</tbody>
</table>

Pernīṭā and mahrā are that which the husband stipulates in writing for (kāteb) or accepts from his wife. Ṣadkē is that sent prior [to the betrothal] by the groom for the betrothal: vessels, accouterments, food, and drinks (mānē, ḥešlātā, mēklā, šeqyā). Zebdē is that sent out with the bride from the household of her parents in the way of accouterments, vessels, and [other] things (ḥešlātā, mānē, ṣebwātā). Dōrā is that written [in contract] (metkteb) for the wife from her husband or from the household of Section 4: on pernīṭā, dōrā, zebdē, the wedding banquet, the one who scatters [nuts at the banquet], and šadkē. Pernīṭā is that which the wife brings from the household of her masters to the household of her husband as stipulated in writing (ba-kātībā). Dōrā is that which the man offers or promises to his wife in writing. Zebdē are the accouterments and vessels (ḥešlātā, mānē) that her parents give but not in writing. Ṣadkē is accouterments, vessels, food, and drink (ḥešlātā, mānē, ukēlā, šeqyā) that the man sends for the betrothal, but not in writing.

⁹⁹⁰ ‘Abdīšō, Ordo, 185-86 and MS Mosul Chaldean Patriarchate 66, folio 120b.
⁹⁹¹ Nomocanon, 134-35.
her father in the way of wealth, lands, property, and [other] things.

Here, ‘Abdīšō’’s definitions of the pernītā, zebdē, and šadkē correspond exactly to those of Bar Hebraeus. The real giveaway of ‘Abdīšō’’s dependence on Bar Hebraeus is his inclusion of šadkē and dōrā; in the Nomocanon, ‘Abdīšō’ mentions only the pernītā, mahrā, and zebdē. As we noted in chapter seven, šadkē is in fact not commonly used as a descriptor of marriage gifts; Bar Hebraeus’ Nomocanon is the only source in which I have found such a usage. ‘Abdīšō’’s inclusion of that type and the dōrā thus indicate that he based this passage on the West Syrian text. Regarding the dōrā, Bar Hebraeus’ definition is equivalent to ‘Abdīšō’’s mahrā; so ‘Abdīšō’ looks to have taken the term from Bar Hebraeus, defined it more vaguely (by saying it can come from either the groom or the bride’s father), and tacked it on to the end of his list.

Finally, Bar Hebraeus’ Nomocanon likely lies behind ‘Abdīšō’’s paragraph §16, which treats the ways in which a woman’s adultery is proven. This is a topic we have seen before in Syriac legal texts; its ultimate source is a passage from Īšō’bōkt’s law book that establishes exactly three ways by which adultery might be proven: by a woman’s pregnancy when her husband has been absent, by her committing adultery frequently and openly (whatever that may mean exactly), and by the testimony of witnesses. This formulation was subsequently taken up by Gabriel of Baṣra, Ibn al-Ṭayyib, and ‘Abdīšō’ in his Nomocanon (§2.19). As we saw in chapter seven, Bar Hebraeus adopted it from Gabriel as well but expanded it in several ways, chiefly by adding a fourth means of proof: confession. In contrast to ‘Abdīšō’’s formulation in his Nomocanon, the Ordo includes confession and another of Bar Hebraeus’ additions to the original version (as well as some extra points apparently added by ‘Abdīšō’), again
suggesting that ‘Abdišō’ modeled this passage off of Bar Hebraeus’ text. The following
demonstrates this by showing the different iterations of this formulation found in
‘Abdišō’’s Nomocanon (which is representative of the early version of Gabriel), Bar
Hebraeus’ Nomocanon, and the Ordo. Underlined text indicates Bar Hebraeus’ additions
that are also found in the Ordo.

<table>
<thead>
<tr>
<th>Nomocanon of ‘Abdišō’ §2.19&lt;sup&gt;992&lt;/sup&gt;</th>
<th>Nomocanon of Bar Hebraeus §8.5.5&lt;sup&gt;993&lt;/sup&gt;</th>
<th>Ordo §8.16&lt;sup&gt;994&lt;/sup&gt;</th>
</tr>
</thead>
<tbody>
<tr>
<td>The matter of adultery is known in three ways: either by the wife’s pregnancy (baṭnāḥ) when her husband is in a distant place (atrā rahḥiqā) for a long time, or through fornication and dishonor (mparsayūtā) that occurs openly (galyā īṭ) many times,</td>
<td>Four things confirm a woman’s adultery. One is if she becomes pregnant (tebṭan) when her husband is distant (kad rahḥiq ba lāḥ), or is near but has not had sex with her (qarrīb w-lā meštawtep lāḥ). Two is if she is dishonored (tetparsē) by adultery openly (galyā īṭ) with one or with many [men]. Three is if she confesses with her [own] tongue (tawdē b-lešānāḥ) that she has committed adultery. Four is if six just witnesses testify against her, men and not women. Because the testimony is against two persons [six witnesses are</td>
<td>The matter of adultery is proven in six ways… 1) The pregnancy of the woman (baṭnāḥ) when her husband is distant (kad rahḥiq ba lāḥ), or is near but has not had sex with her (qarrīb w-lā eštawtep lāḥ). 2) Her shame (pursāyāḥ) and that of he who fornciated with her when they are discovered (mettaḥdīn) suddenly in [some] place 3) The confession of the woman by her own tongue (mawdyānūtāḥ dīlāḥ d-afftā b-lešānāḥ) against herself before a judge or just persons who witness. 4) [moving from town to town without a male relative escort] 5) [entering a strange man’s home] 6) Testimony of six or four just witnesses to whom her adultery has been established.</td>
</tr>
</tbody>
</table>

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<sup>992</sup> ‘Abdišō’, Collectio, 216-17.
<sup>993</sup> Bar Hebraeus, Nomocanon, 146-47.
<sup>994</sup> ‘Abdišō’, Ordo, 193-94 and MS Mosul Chaldean Patriarchate 66, folio 126b.
buying and selling, and the rest, we require two or three witnesses, but against adulterers [we require] six, or four at the least. needed], all of them having seen her at the same time with a stranger under a cloak in a wicked display.

Together, the similarities in the *Ordo’s* paragraphs §§8.9, 8.10, and 8.16 to parallel passages in Bar Hebraeus’ *Nomocanon* are sufficient to indicate the former’s dependence on the latter.

**Islamic Marriage Law in the Ordo**

In spite of the fact that ‘Abdīšōʿ based significant passages of the *Ordo’s* tract on marriage on the Islamic-influenced legal texts of Ibn al-ʿAssāl and Bar Hebraeus, at only one point has any doctrine of originally Islamic provenance made its way into the text. This is the order of guardians given in paragraph §8.9, which as we have noted differs from that in ‘Abdīšōʿ’s *Nomocanon* and is apparently drawn from paragraph §2.4 in Bar Hebraeus’ chapter on marriage. As we saw in the previous chapter, Bar Hebraeus adopted Ghazālī’s ordering of guardians – father, grandfather, brother, brother’s son, paternal uncle, paternal uncle’s son, and judge – for inclusion in his *Nomocanon*, and altered it only by adding the maternal grandfather, maternal uncle, and maternal uncle’s son before the judge (for whom he substituted the bishop). ‘Abdīšōʿ adopted this ultimately Ghazālī-inspired schema in the *Ordo* instead of that found in earlier East Syrian legal texts, including Gabriel of Baṣra and Ibn al-Ṭayyib’s compendia: father, brother, paternal
Conclusions

ʿAbdīšōʾ, East Syrian Legal Tradition, and Islamic Law

It should be broadly clear from the foregoing that neither of ʿAbdīšōʾ’s summary and comprehensive legal works exhibits much in the way of incorporation of Islamic legal norms in the field of marriage law. Though one passage in the Nomocanon indicates that some earlier East Syrian jurist-bishops might have adopted an Islamic-like perspective giving fathers expanded powers to arrange their daughters’ marriages, ʿAbdīšōʾ marginalizes this opinion and emphasizes the necessity of women’s consent to their marriages in all cases. Otherwise, only the Ghazālī-derived order of right to guardianship as detailed in the Ordo and the opinion that a woman’s silence indicates her consent to marriage might in any way be related to the norms of Islamic legal traditions. It is perhaps noteworthy that these instances, as few as they are, all relate to matters of gendered family hierarchy – women’s prerogatives and men’s authority over the women of their households. This at least suggests that East Syrian jurist-bishops (much like Bar Hebraeus) had to grapple in a few respects with the normative models of hierarchy that Islamic legal traditions promoted. ʿAbdīšōʾ, after all, goes out of his way to emphasize that the East Syrian opinion necessitating women’s consent contradicts that of the “outsiders” – i.e., Muslims. However, much as we noted in the previous chapter, the

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995 Because both Ibn al-Ṭayyib and ʿAbdīšōʾ’s Nomocanon include this order of guardians it must go back to Gabriel of Basra, but I have found no earlier East Syrian source that states it explicitly. It might represent Gabriel’s opinion.
general notion that authority rested with senior males in the normal and proper order of things was hardly a novel Islamic contribution to the thought-world of Christian ecclesiastical elites in the pre-modern Middle East; and in any case the instances of similarity between ‘Abdışo‘’s texts and Islamic traditions are few and minor enough that whatever grappling East Syrian bishops did with Islamic marriage law, they appropriated exceedingly little from it. East Syrians had been composing and compiling works of family law for long enough by ‘Abdışo‘’s time that he found sufficient resources for his comprehensive survey within his own tradition (besides a few borrowings from other Middle Eastern Christians).

In comparative perspective, then, ‘Abdışo‘ and Bar Hebraeus stand in fairly stark contrast to one another as authoritative systematizers of their respective legal traditions in terms of the degree to which their treatments of family law relate to Islamic law. As we have seen, the compositional method of Bar Hebraeus’ Nomocanon entailed the appropriation, redaction, and rearrangement of a considerable body of Islamic legal doctrines and institutions into West Syrian law. ‘Abdışo‘, on the other hand, relied mainly on the textual resources of his own East Syrian tradition in composing the marriage law sections of both his Nomocanon and Ordo (though the latter also incorporated much material from Ibn al-‘Assāl’s al-Majmū‘ al-ṣafawi).

Several factors, all fairly apparent, explain these differences. Since the early ‘Abbāsid period, East Syrian bishops had been relatively actively engaged in producing
legal texts and developing their communal legal tradition. Quite simply, ʿAbdīšōʿ already had much of the necessary material at hand when he sought to issue a comprehensive statement of East Syrian family law.\footnote{Although we might add in this regard that if length is a sign of comprehensiveness, ʿAbdīšōʿ did not use the resources of East Syrian tradition to compose a work as “comprehensive” as Bar Hebraeus’ Nomocanon; ʿAbdīšōʿ’ s texts are shorter and are not full of clusters of very specific rulings like those that Bar Hebraeus adopts from Ghazālī.} Bar Hebraeus, on the other hand, did not. West Syrian canonical legislation was not sufficient for the kind of comprehensiveness that Bar Hebraeus typically sought to achieve in his works, and so the textual resources of Islamic law constituted a rich alternative. We should add, however, that they were hardly the only or most obvious one; Bar Hebraeus might easily have adapted more, for example, from East Syrian sources or the Syro-Roman Law Book. From this perspective, it is important to note that the accommodation of West Syrian family law to Islamic tradition has quite a lot to do with the singular figure of Bar Hebraeus; it is largely because a learned individual so open to drawing on the resources of other religious traditions composed the Nomocanon that West Syrian law is so full of norms of Islamic provenance. In view of broader social processes, the fact that his Nomocanon was acclaimed and recognized as authoritative was possible only insofar as those norms were intelligible and acceptable to his Christian audience and its dominant conceptions of the workings of social life. But in effect the West Syrian appropriation of Islamic law was effected through the textual endeavors of one individual, not a longer process of interaction between scholarly communities.

The differences between Bar Hebraeus and ʿAbdīšōʿ’ s treatments of family law also point to more broadly divergent developments in the social and intellectual cultures of Middle Eastern Christians in the pre-modern Islamic world. In the early ʿAbbāsid
period the East Syrian hierarchy found itself in the heartlands of the caliphal world, and had to respond more readily to that world’s latest institutional and intellectual developments. As we saw in chapter one, it was in part as a reaction to caliphal judicial reform and the emergence of Islamic law that the East Syrian bishops began the ongoing process of developing a specifically Christian family law, with the broader goal of promoting their vision of communal integrity in the ʿAbbāsid world. Though Islamic institutions and intellectual trends thus formed the context for the emergence of a relatively robust East Syrian civil law, the result we see in ʿAbdīšōʾ’s works is that the later tradition was able to develop largely independently of Islamic traditions. Among the West Syrians, by contrast, the development of an expansive civil and family law tradition did not proceed in a manner comparable to the East Syrians. If West Syrian bishops did not respond as actively to the problems of communal identity raised by Islamic institutions in the early period, the later result was a heavy reliance on Islamic intellectual resources in the making of the very legal tradition that defined their community as Christian in the Islamic Middle East.
Conclusion

Are the contracting of marriage, divorce, debts, and inheritance inscribed in the religion of Christianity (din al-naṣrāniyya) and stipulated in the book of the Divine Law (kitāb al-sharīʿa al-ilāhiyya), meaning the pure Gospels, or are they delegated (mufawwaḍa) to the leaders and chiefs (al-aʿīma wa-l-mudabbirīn) through the power of God?

… Until a bit before the time of Mār Timothy, the departed catholicos, the provisions [of Christian law, al-farāʿ idl] did not concern worldly matters (al-umūr al-ʿālamīyya), but rather clerics and their chiefs, because they had [the power] of loosing and binding. Whatever they accepted accorded with the core of the Law (aṣl al-sharʿ) in the way of belief in the unity [of God], the trinity, the resurrection, baptism, and the commandments of the Gospels (al-awāmir al-injīliyya)… the departed Mār Timothy began to decide canons (qawānīn) concerning inheritance, debts, marriage, and things like these, having stated in the beginning of his writing, “I record with my hands these canons, bemoaning how I might establish a tradition (asumm sunna) for worldly matters when the Christian Law (al-sharīʿa al-maṣīḥiyya) does away with worldly commandments.” This impelled him to create a law (ḥudūṭh sharīʿa) that had these things [i.e., rules concerning worldly matters], for he feared that believers might follow a deviant path (madhhab gharīb). And after him came one who disagreed with him (khālafaʿ alayhi) and established a tradition different from what he had (sannana bi-khilāf mā sannahū). Had that [tradition] been an imperative of the Law (mūjib sharʿ), disagreement over it would not have been permissible. But rather, it was an imperative of general welfare (mūjib maṣlaḥa) established out of the care of the Fathers for the children of Christ [so disagreement was permissible].

- Ibn al-Ṭayyib, [On the] Problem of Marriage and Divorce (Masʾala fīʾl-tazwīj wa-l-ṭalāq) 997

Throughout this dissertation, we have investigated how East Syrian bishops (as well as a few of their West Syrian contemporaries) crafted new legal traditions meant to define a distinctively Christian social practice in the ʿAbbāsid Middle East, particularly in the realm of marital and household relations. Along the way, we have seen how socio-political factors and intellectual developments in the wider Islamic world shaped these traditions in spite of their explicitly Christian character. Īšōʿ bōkt’s law book drew on the

997 MS Vatican Arabic 157, folios 91a (introductory question) and 91b (passages from the response).
Sasanian legal heritage of his home province of Fārs. Timothy and Īšō’barnūn produced their legal works partly in response to the rising predominance of Islamic law in ʿAbbāsid Iraq, and engaged in styles of legal discourse characteristic of the broader ʿAbbāsid intellectual scene. In later centuries Bar Hebraeus and ʿAbdīšō’ bar Brīkā engaged directly with the positive content and structures of Islamic family law; though the former appropriated much from Islamic law while the latter largely eschewed it, both had to reckon with the normative perspectives on marriage, divorce, and gender that hegemonic Islamic legal traditions promoted.

Ultimately, these bishops sought to foster particular notions of Christian community by marking communal belonging in marital practices and defining the family, that basic unit of social reproduction, in terms of Christian teachings. But through that process, their intellectual traditions were molded in various ways by factors and imperatives of the broader Islamic world, imperatives that loomed ever larger following the first century and a half of ʿAbbāsid rule as the central lands of the Middle East became more Muslim and the institutions characteristic of pre-Ottoman Islamic societies consolidated. It is this theme – Christian family law as a tradition of the medieval Islamic world – and its illustration in the passages quoted above, from a short unpublished treatise of Ibn al-Ṭayyib, with which we will close our investigation.

Abū ʿI-Faraj ʿAbd Allāh Ibn al-Ṭayyib has stood in the center of our story both chronologically and thematically. Active in Iraq two centuries later than the formative legal endeavors of Īšō’bōkt, Timothy, and Īšō’barnūn and two centuries before the final systematizations of Bar Hebraeus and ʿAbdīšō’, Ibn al-Ṭayyib’s major contribution was the *Fiqh al-naṣrāniyya*, a translation of the East Syrian legal heritage into the Arabic.
lingua franca of the Islamic world. In the treatise quoted above, he gives a brief insider’s account of the development of East Syrian civil law, one that by now should appear quite familiar to us. Ibn al-Ṭayyib locates the beginnings of concern for a law of “worldly matters” during the time of Timothy, and family law – marriage, divorce, inheritance – figures as its most prominent component. But immediately notable is how Ibn al-Ṭayyib’s language is suffused with the terminology of Islamic law, and how he conceives of Christian law through the Islamic framework that that terminology signifies. Jurist-bishops like Timothy and Īšō ʿbarūn establish sunna, exemplary traditions of normative practice. Ikhtilāf or difference of opinion between the bishops is permissible in interpretive legal matters that do not affect the foundations of the faith. Maṣlaḥa, the general welfare, is a principle of reasoning by which to arrive at legal rulings.

Ibn al-Ṭayyib’s terminological usages raise again our oft-encountered question of whether this Christian jurist was familiar with Islamic law and read Islamic legal texts. He likely was and likely did, but the origins of his terminology here are less significant than the conceptual paradigm that undergirds his usages. In Ibn al-Ṭayyib’s presentation, East Syrian bishops, by seeking to regulate social and marital practices in the Islamic world in terms of Christian teaching, have rendered Christianity not only religion or dogma, but also a true “path,” a divine “Law” – a sharīʿa. His account of Christian legal history in the language of Islamic fiqh exemplifies the broader trend that we have followed throughout this dissertation, from Īšō ʿbōkt to ʿAbdīšō: the articulation of Christian community in the idiom of law – a development encouraged by the institutions and ideologies of the formative Islamic caliphates – entailed as well a coming to terms
with the intellectual horizons of that world, as bishops, like their Muslim, Jewish, and Zoroastrian contemporaries, sought to define the boundaries of all who would be faithful.
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