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## **Scribal Practices among Muslims and Christians: A Comparison between the Judicial Letters of Qurra b. Sharīk and Ḥenanisho<sup>ʿ</sup> (1<sup>st</sup> century AH)**

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Historians of the Islamic legal system must confront two major issues when studying the formation of the early judiciary: that of its origins and its regional development. The question of the origins of the qadi has given rise to two types of answers. On one side, Émile Tyan states that the Islamic judiciary derived largely from the Byzantine system.<sup>1</sup> On the other side, Maurice Gaudefroy-Demombynes and later historians suggest that its roots lie in Pre-Islamic Arabia.<sup>2</sup> Both theories are unpersuasive: the first one because it ignores the developments of the judiciary in territories previously under Sassanid rule where Byzantine influence was probably limited; and the second because it ignores the profound structural differences between the Arabic pre-Islamic system of arbitration and procedures as they developed in Islam. The second issue at stake is that of regionalism. According to Joseph Schacht, ancient schools of law developed on a regional basis; scholars like Nimrod Hurvitz and Wael Hallaq however challenged this theory a decade ago.<sup>3</sup> Justice and law must be distinguished from one another: justice is an institution whereas law is a set of rules that may (or may not) be used by the judicial institutions. Up until now, studies of the Islamic judiciary have usually considered the legal institution as monolithic – with the exception of studies dealing specifically with al-Andalus – and postulated the unity of the system without looking at potential local divergences. Even if the apparent unity of Islamic judiciary as reflected by narrative sources is striking, this unity has never been demonstrated nor its underlying reasons explained.

In what follows, I will investigate these issues through a comparative study of two sets of documentary evidence dated approximately from the same period. The first one is composed of judicial rescripts sent by the governor of Egypt, Qurra b. Sharīk, to several of his pagarchs in 709 and 710. The second one is a collection of legal letters written by the East-Syrian catholicos Ḥenanisho<sup>ʿ</sup> I in the late 680s and early 690s. These two corpora come from two separate regions (Egypt and Iraq) with different historical backgrounds (Byzantine and Sassanid) and distinct religious traditions (Copto-Muslim and East-Syrian). Furthermore, they both provide unique

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<sup>1</sup> E. Tyan, *Histoire de l'organisation judiciaire en pays d'Islam* (Leiden, Brill: 1960), 98.

<sup>2</sup> M. Gaudefroy-Demombynes, "Sur les origines de la justice musulmane," in *Mélanges Syriens offerts à monsieur René Dussaud*, vol. 2 (Paris: Paul Geuthner, 1939), 819; W.B. Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), 26-8, 36; K.S. Vikør, *Between God and the Sultan. A History of Islamic Law* (London: Hurst, 2005), 168; U. Simonsohn, *A Common Justice. The Legal Allegiances of Christians and Jews under Early Islam* (Philadelphia: University of Pennsylvania Press, 2011), 73.

<sup>3</sup> N. Hurvitz, "Schools of Law and Historical Context: re-examining the Formation of the Ḥanbalī Madhhab," *Islamic Law and Society* 7 (2000), 44-6; W.B. Hallaq, "From Regional to Personal Schools of Law? A Reevaluation," *Islamic Law and Society* 8 (2001), 1-26.

documentary evidence of judicial practices little mentioned in narrative sources. A comparative reading of these corpora allows us therefore to investigate possible connections between Islamic judicial practices and other legal traditions. After examining the main characteristics of both corpora, I will argue that Copto-Muslim and Est-Syrian legal institutions were both drawing upon a common set of judicial practices that may also have contributed to the apparent unity of the early Islamic empire.

## 1. Qurra b. Sharīk and his judicial correspondence

### 1.1. Form and context

Qurra b. Sharīk was governor of Egypt from 90/709 to 96/714.<sup>4</sup> His reign is documented by an important dossier containing Greek and Arabic letters that he sent to several of his pagarchs (heads of districts around towns) – mainly Basilios, pagarch of Aphroditō/Ishqawh, but also pagarchs in al-Ushmūnayn and Ahnās. Among these papyri, ten or so are of “judiciary” nature, dealing with instructions from the governor to Basilios regarding lawsuits. The judicial letters were all written in similar situations: a litigant, who is usually named, filled a complaint at the governors’ court, after which Qurra b. Sharīk issued an order to the pagarch, asking him to investigate the complaint and render judgement.

Here is an example of this type of correspondence:

[In the name of God, the Compassionate, the Merciful.]

[From Qurra b. Sharīk to Basil, administra]tor [of Ishqawh].

[I praise G]od, [besides whom] there is no god. As to the matter in hand. Victor, son of Jamul, has reported to me that he has a claim of eleven *dīnārs* against a peasant (*nabaṭī*) from among the [pe]ople of your district. He asserts that he has deprived him of his right. When you receive the present letter, if he brings [eviden]ce (*bayyina*) of what he has reported to me, procure him his right, and may he not be victim of your injustice ! But if his matter [wa]s otherwise, write to me about it.

[Pe]ace be upon him who foll[ows] the [gui]d[ance]. Written by Muslim [b. Lab]nān and copied by al-Ṣalt i[n] *ṣafar* of the year ninet[y]-one.<sup>5</sup>

### 1.2. Stylistic aspects

These judicial letters all present a similar structure. (1) First, the governor exposes briefly the content of the complaint that was brought before him. (2) After the transition, (3) he asks the pagarch to hear the plaintiff’s evidence, and, if the claimant proves his case, (4) to make the defendant return what he owes. (5) Otherwise, the pagarch would report to the governor.<sup>6</sup> Very

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<sup>4</sup> On Qurra b. Sharīk, see al-Kindī, *Ta’rīkh Miṣr wa-wulāti-hā*, in *Kitāb al-wulāt wa-kitāb al-quḍāt*, ed. R. Guest (Leiden: Brill, 1912), 63-66; C.E. Bosworth, “Qurra b. Sharīk,” in *EP*<sup>2</sup>, 5: 500; H. Lammens, “Un gouverneur omaiyade d’Égypte. Qurra ibn Sharīk d’après les papyrus arabes,” *Bulletin de l’Institut d’Égypte*, 5<sup>e</sup> série, tome II (1908), 99-115; N. Abbott, *The Qurrah Papyri from Aphrodito in the Oriental Institute* (Chicago: The University of Chicago Press, 1938), 66 sq; J. b. Kh. Abū Ṣafya, *Bardiyyāt Qurra b. Sharīk al-’Absī. Dirāsa wa-taḥqīq* (Riyad: Markaz al-Malik Fayṣal li-l-buḥūth wa-l-dirāsāt al-islāmiyya, 2004), 27-57.

<sup>5</sup> *P.Cair.Arab.* III n°155 = Abū Ṣafya n°30. Translation adapted from A. Grohmann.

<sup>6</sup> J. Abū Ṣafya, *Bardiyyāt Qurra*, 108.

few details are usually mentioned about the dispute: most often, the governor only states its nature (a debt or a usurpation of property) or the claimed amount.<sup>7</sup>

In addition to their common structure, all letters use similar and repetitive sentences. Apart from initial and final salutation formulas, which are also found in non-judicial correspondence, several expressions give them overall uniformity:

Tab. 1 : Formulae in Qurra b. Sharik's judicial letters

Section	Formula	Translation	Papyri
1	يزعم	he asserts <sup>8</sup>	<i>P.Cair.Arab.</i> III n°154 = Abū Šafya n°28 = Grohmann, <i>Arabic Papyri</i> , 129; <i>P.Heid.Arab.</i> I n°3 = Abū Šafya n°29; <i>P.Cair.Arab.</i> III n°155 = Abū Šafya n°30; <i>P.Qurra</i> n°3 = Abū Šafya n°31
1 bis	غلبه على حقه	he has deprived him of his right	<i>P.Cair.Arab.</i> III n°154 = Abū Šafya n°28 = Grohmann, <i>Arabic Papyri</i> , 129; <i>P.Heid.Arab.</i> I n°3 = Abū Šafya n°29; <i>P.Cair.Arab.</i> III n°155 = Abū Šafya n°30; <i>P.Qurra</i> n°3 = Abū Šafya n°31; <i>P.Heid.Arab.</i> I n°10 = Abū Šafya n°32.
2	فإذا جاءك كتابي هذا	when this letter of mine reaches you	<i>P.Cair.Arab.</i> III n°154 = Abū Šafya n°28 = Grohmann, <i>Arabic Papyri</i> , 129; <i>P.Heid.Arab.</i> I n°3 = Abū Šafya n°29; <i>P.Cair.Arab.</i> III n°155 = Abū Šafya n°30; <i>P.Qurra</i> n°3 = Abū Šafya n°31; C.H. Becker, "Arabische Papyrus des Aphroditofundes," 74-75 = Abū Šafya n°34; Y. Rāgīb, "Lettres nouvelles de Qurra b. Šarīk," 183-5 = Abū Šafya n°43
3	فإن أقام البيّنة على ما أخبرني	if he brings evidence of what he has reported to me <sup>9</sup>	<i>P.Cair.Arab.</i> III n°154 = Abū Šafya n°28 = Grohmann, <i>Arabic Papyri</i> , 129; <i>P.Heid.Arab.</i> I n°3 = Abū Šafya n°29; <i>P.Cair.Arab.</i> III n°155 = Abū Šafya n°30; <i>P.Qurra</i> n°3 = Abū Šafya n°31
	فإن كان ما أخبرني حقاً	if what he reported to me is true	C.H. Becker, "Arabische Papyrus des Aphroditofundes," 74-75 = Abū Šafya n°34
4	فاستخرج له حقه	make [his adversary] give him what he owes him	<i>P.Heid.Arab.</i> I n°3 = Abū Šafya n°29; <i>P.Cair.Arab.</i> III n°155 = Abū Šafya n°30; <i>P.Qurra</i> n°3 = Abū Šafya n°31; C.H. Becker, "Arabische Papyrus des Aphroditofundes", 74-75 = Abū Šafya n°34
	فما كان له من حق فاستخرجه له	the right that is his, make [his adversary] give it back to him	<i>P.Heid.Arab.</i> I n°10 = Abū Šafya n°32; <i>P.Heid.Arab.</i> I n°11 = Abū Šafya n°33
4 bis	ولا يظلمنّ عندك	and may he [the plaintiff] not be victim of your injustice <sup>10</sup>	<i>P.Cair.Arab.</i> III n°154 = Abū Šafya n°28 = Grohmann, <i>Arabic Papyri</i> , 129; <i>P.Heid.Arab.</i> I n°3 = Abū Šafya n°29; <i>P.Cair.Arab.</i> III n°155 = Abū Šafya n°30; <i>P.Qurra</i> n°3 = Abū Šafya n°31; <i>P.Heid.Arab.</i> I n°10 = Abū Šafya n°32; <i>P.Heid.Arab.</i> I n°11 = Abū Šafya n°33 (hypothetical reading in the last document, because of a lacuna in the papyrus); C.H. Becker, "Arabische Papyrus des Aphroditofundes", 74-75 = Abū Šafya n°34

<sup>7</sup> More details about the case are available in several papyri. See for example *P.Cair.Arab.* III n°154 = Abū Šafya n°28 = Grohmann, *From the World of Arabic Papyri* (Cairo: Al-Maaref Press, 1952), 129, where the governor states that the claimant, whose initial adversary passed away, is now filing a complaint against his heirs.

<sup>8</sup> However the verb *za'ama* is absent in *P.Heid.Arab.* I n°10 = Abū Šafya n°32, in which the governor only mentions that the claimant "informed" (*akhbara-nī*) of the damage caused to him.

<sup>9</sup> *P.Heid.Arab.* I n°10 = Abū Šafya n°32 and *P.Heid.Arab.* I n°11 = Abū Šafya n°33 provide a variation to this formula: *fa-in kāna mā abara-nī ḥaqqan wa-aqāma 'alā dhālika l-bayyina*.

<sup>10</sup> Grohmann reads 'abdu-ka (عبدك) instead of 'inda-ka (عندك): "may your servant not be treated unjustly".

<p>إلا أن يكون شأنه غير ذلك فتكتب إلي به وإن كان شأنه غير ذلك 5 فتكتب إلي به [إلا] أن شأنه غير ذلك فأكتب [إلي]</p>	<p>but if his case proves to be different, write to me about it</p>	<p><i>P.Cair.Arab.</i> III n°154 = Abū Šafya n°28 = Grohmann, <i>Arabic Papyri</i>, 129</p> <p><i>P.Heid.Arab.</i> I n°3 = Abū Šafya n°29</p> <p><i>P.Cair.Arab.</i> III n°155 = Abū Šafya n°30; <i>P.Qurra</i> n°3 = Abū Šafya n°31</p>
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The plaintiff “asserts” (*yaz ‘amu*) that he suffers his adversary’s injustice; he states that the defendant “has deprived him of his right”. Then the governor uses a conditional sentence beginning usually by “if he [the plaintiff] brings proof of what he has reported to me”, or, more rarely, by “if what he reported to me is true” (*fa-in kāna mā akhbara-nī ḥaqqan*). The second part of the conditional sentence is an order, “procure him his right” – that is, make sure that his adversary returns what he owes him (*fa-stakhrij la-hu ḥaqqah*) – immediately followed by the injunction: “and may he [the plaintiff] not be victim of your injustice” (*wa-lā yuḥlamanna ‘inda-ka*). Finally, in several letters, the governor concludes with a sentence asking the pagarch to write him if the trial revealed a situation different from the plaintiff’s statement (*illā an yakūna sha’nu-hu ghayra dhālika fa-taktubu ilayya bi-hi*).

As Werner Diem remarked, all these expressions are standardized formulae.<sup>11</sup> They are repeated from a letter to another with only minor variations – a single scribe could apparently use different forms of the same formula<sup>12</sup> – but only in letters concerning judicial matters. It looks as if the scribes who wrote them were following the same model, or abided by a formulary that they adapted to each case, mostly by changing the litigants’ names or the nature of the dispute.

### 1.3. *Qurra b. Sharīk’s scribes*

The administrative context in which these letters were written can be deduced from the scribes’ names.<sup>13</sup> With one exception, all of Qurra’s judicial letters were written down by Muslim b. Labnan,<sup>14</sup> most likely an Egyptian Christian converted to Islam if we follow Becker’s hypothesis.<sup>15</sup> Nabia Abbott pointed out that this person appears several times in

<sup>11</sup> W. Diem, “Drei amtliche Schreiben aus frühislamischer Zeit (Papyrus Erzherzog Rainer, Wien),” *Jerusalem Studies in Arabic and Islam*, 12 (1989), 149.

<sup>12</sup> Cf. A. Grohmann, “Ein Qurra-Brief vom Jahre 90 H.,” in E.F. Weidner (ed.), *Aus fünf Jahrtausenden morgenländischer Kultur. Festschrift für Max Freiherrn von Oppenheimer* (Berlin: Archiv für Orientforschung, 1933), 37-40 = Abū Šafya n°37.

<sup>13</sup> A list of Qurra b. Sharīk’s main scribes has been established by T.S. Richter, “Language Choice in the Qurra Dossier,” in A. Papaconstantinou (ed.), *The Multilingual Experience in Egypt, from the Ptolemies to the Abbasids* (Farnham: Ashgate, 2010), 213.

<sup>14</sup> As noticed by J. Abū Šafya, *Bardiyyāt Qurra b. Sharīk*, 198. The vocalisation of “Labnan” is uncertain. Becker reads it in a dialectal form, “Lebnan”. C.H. Becker, “Neue Arabische Papyrus des Aphroditofundes,” *Der Islam*, 2 (1911), 262. *P.Qurra* n° 3 = Abū Šafya n°31; *P.Cair.Arab.* III n°154 = Abū Šafya n° 28 = Grohmann, *Arabic Papyri*, 129; *P.Heid.Arab.* I n°3 = Abū Šafya n°29; *P.Cair.Arab.* III n°155 = Abū Šafya n°30; *P.Heid.Arab.* I n°10 = Abū Šafya n°32; *P.Heid.Arab.* I n°11 = Abū Šafya n°33.

<sup>15</sup> C.H. Becker, “Neue Arabische Papyrus des Aphroditofundes”, 262.

Qurra's correspondence and concluded that he "seems to have been a busy scribe."<sup>16</sup> Muslim b. Labnan was indeed busy, but not with any old task, for in all of Qurra's preserved correspondence he only appears in judicial letters. Another Muslim is cited, without any genealogy (*nasab*), as the writer of a letter sent by Qurra b. Sharīk to the pagarch of Ishqawh, in which the governor asks the addressee not to fine villages that are late in paying their taxes (*jizya*). Adolph Grohmann thinks it could be the same Muslim b. Labnan.<sup>17</sup> This is doubtful, however, since Muslim b. Labnan does not appear in any other non-judicial papyrus.<sup>18</sup>

At least two copyists were working with Muslim b. Labnan. The most frequently cited is al-Ṣalt b. Mas'ūd, who copied (*nasakha*) five of Qurra's judicial letters to a pagarch<sup>19</sup> – the original was probably kept and archived in Fuṣṭāṭ. In the earliest letter in the series, dated *ramadān* 90/Jul-Aug. 709, al-Ṣalt b. Mas'ūd appears as the writer (not copyist), although no copy is mentioned in the text.<sup>20</sup> A second copyist, Sa'īd, appears once next to Muslim b. Labnan in a letter sent to the pagarch of Ashmūn in *jumādā* I 91/March-Apr. 710.<sup>21</sup>

This almost systematic collaboration between the same scribes to write down and copy the governor's judicial letters suggests that a group of specialised scribes was responsible for judicial cases and in charge of the official correspondence with pagarchs. In another area of the Egyptian chancellery referred to as the *entagia* (orders for levying taxes), Yūsuf Rāghib found no less than twenty different scribes serving Qurra b. Sharīk.<sup>22</sup> It is therefore surprising to find a single scribe being responsible for almost all judicial letters, and the tempting conclusion is to see Muslim b. Labnan as the head (or one of the prominent scribes) of an "office" specialised in dispute resolution. A plausible scenario would be that, whenever a complaint was referred to the governor, he would delegate the task – or at least the letter-writing part – to a specialised office in which Muslim b. Labnan played a prominent part. Muslim wrote standardised answers and entrusted a copyist (mainly al-Ṣalt b. Mas'ūd, perhaps his personal assistant and his occasional deputy) to produce a copy that would be sent to the pagarch. Although Muslim b. Labnan was perhaps a convert, systematic mention of his *nasab* after his name suggests that he was a free man, since this practice was the privilege of non-slaves.<sup>23</sup> As for his main assistant, al-Ṣalt b. Mas'ūd, his condition is less clear for he seems to appear three times without *nasab*

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<sup>16</sup> N. Abbott, *The Qurrah Papyrus*, 49.

<sup>17</sup> *P. Cair. Arab.* III n°153.

<sup>18</sup> Since we only have a limited number of documents written at Qurra b. Sharīk's chancellery, this observation should not be over interpreted. It is possible that Muslim b. Labnan wrote other kinds of documents that did not survive.

<sup>19</sup> *P. Qurra* n°3 = Abū Ṣafya n°31; *P. Heid. Arab.* I n°3 = Abū Ṣafya n°29; *P. Cair. Arab.* III n°154 = Abū Ṣafya n°28 = Grohmann, *Arabic Papyri*, 129; *P. Cair. Arab.* III n°155 = Abū Ṣafya n°30; Y. Rāghib, "Lettres nouvelles de Qurra b. Sharīk," *Journal of Near Eastern Studies*, 40 (1981), 183-5 = Abū Ṣafya n°43. The judicial documents that survived are usually the copies. About the process of writing and copying letters, see Y. Rāghib, "Les esclaves publics aux premiers siècles de l'Islam," in H. Bresc (ed.), *Figures de l'esclave au Moyen Âge et dans le monde moderne* (Paris: L'Harmattan, 1996), 10.

<sup>20</sup> C.H. Becker, "Arabische Papyrus des Aphroditofundes," *Zeitschrift für Assyriologie*, 20 (1906), 74-75 = Abū Ṣafya n°34.

<sup>21</sup> *P. Heid. Arab.* I n°10 = Abū Ṣafya n°32.

<sup>22</sup> Y. Rāghib, "Les esclaves publics," 10

<sup>23</sup> Only free people could mention their *nasab*. Slaves usually bore a single *ism*, and sometimes a *kunya*. J. Sublet, *Le voile du nom* (Paris: PUF, 1991), 29; Y. Rāghib, "Les esclaves publics," 7.

(if this is indeed the same person). According to Yūsuf Rāghib, this kind of copyists occupying an inferior position were usually referred to by their *ism* alone, and were probably slaves.<sup>24</sup> Al-Ṣalt b. Mas‘ūd was certainly not a slave, since he obviously bore a *nasab*, and perhaps his lower administrative position dissuaded him to mention it on a systematic basis.

The historical existence of an office specialised in dispute resolution remains hypothetical at this stage. If this hypothesis is correct, it is likely that the governor did not dictate judicial letters written in his name in accordance with standard procedure.<sup>25</sup> Qurra b. Sharīk only had to check them and affix his seal at the bottom of the letter to authenticate it and enhance its authority.<sup>26</sup>

#### 1.4. Judicial procedure under Qurra b. Sharīk

Let us summarize the proceedings.<sup>27</sup> Individuals residing outside Fuṣṭāṭ raised their cases with the governor either by means of a direct petition or by seeking an audience with him. The governor wrote to the pagarch of the plaintiff's *kūra* a letter informing him of the plaintiff's identity and the basis of the complaint, and ordered him to judge the case. He prescribed a procedure that included at one stage a confrontation between the litigants. If the plaintiff produced a type of evidence called *bayyina*, the pagarch had to issue a judgement restoring the disputed item to the plaintiff. Where such proof was not produced, the pagarch was obliged to write to the governor, possibly to seek new instructions.<sup>28</sup>

It is important to note at this point that the entire proceeding was executed as if the governor was himself issuing conditional judgement. He did not receive the litigants, nor record any evidence thereof, so could not have acted as a judge himself. Nevertheless, he dictated his verdict to the pagarch who fulfilled this role on his behalf. What remains unclear is the reason why litigants addressed the governor in the first place. It is possible that the plaintiffs had originally referred the matter to their pagarch who initially issued a judgement but the plaintiff chose to appeal the case with the governor, being unhappy with the outcome. However, Qurra b. Sharīk's letters do not mention any injustice committed by the pagarch, nor any reference to judgements quashed by the governor. The second hypothesis is that the pagarchs did not consider the plaintiffs' complaint, and that the plaintiffs decided therefore to petition the matter directly with the governor. However, Qurra b. Sharīk's judicial letters do not mention the

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<sup>24</sup> Y. Rāghib, "Les esclaves publics," 10-11.

<sup>25</sup> Voir à ce sujet les hypothèses de Y. Rāghib, "Les esclaves publics," 10.

<sup>26</sup> Qurra b. Sharīk's seal bore a quadruped animal. See for example *P.Qurra* n°3 = Abū Ṣafya n°31. About seals, see A. Grohmann, *Einführung und Chrestomathie zur arabischen Papyruskunde* (Prague: Státní Pedagogické Nakladatelství, 1954), 129-30.

<sup>27</sup> What follows has been exposed with more details in M. Tillier, "Dispensing Justice in a Minority Context: the Judicial Administration of Upper Egypt under Muslim Rule in the Early Eighth Century," in Robert G. Hoyland (ed.), *The Late Antique World of Early Islam: Muslims among Jews and Christians in the East Mediterranean* (Princeton: Darwin Press, 2014), 138-146.

<sup>28</sup> At a first glance, Qurra b. Sharīk appears to be requesting to be kept abreast of a certain case (this is for instance Steinwenter's interpretation of the sentences in A. Steinwenter, *Studien zu den koptischen Rechtsurkunden aus Oberägypten* (Amsterdam: Verlag Adof M. Hakkert, 1967 [1<sup>st</sup> ed. 1920]), 15). However, these instructions can only be understood if taken as part of a binary construction. If the plaintiff produces a *bayyina*, the pagarch must issue a judgement. On the other hand, if the plaintiff fails to prove his claim, he must not issue any judgement and is required to consult the governor. We can only speculate on what happens next, but it is likely that the governor will issue new instructions regarding the procedure to be followed and the judgement.

pagarch rejecting a previously filed complaint, and no serious evidence allows us to conclude that appeals to governors arose out of denial of justice.

The standardised form of judicial letters and their frequency – Qurra b. Sharīk's letters were written during a period of a little more than one year – suggest on the contrary that they formed part of standard judicial procedure. The complaint before the governor was most likely to form part of a first instance procedure according to which a plaintiff living far from Fustāṭ could submit his case to the governor or his administration. The case was then referred to the pagarch in a letter prescribing the judicial procedure, including conditional judgement. Accordingly, the governor's letter was a precondition to the examination of a dispute by the pagarch.

This scenario is strongly comparable to certain procedures dating from Late Antiquity. Historians of Byzantium noticed the development of a procedure by rescripts in sixth-century Egypt. A plaintiff sent a petition to the Emperor in the first instance, in which he explained his case. The Emperor's administration sent a rescript to the *dux* of Thebaide, in which he ordered him to hear the complaint and to dispense judgement in favour of the plaintiff. These rescripts were enforceable only after the *dux* had conducted a proper trial, in the presence of both litigants, and after the facts mentioned by the plaintiff in his petition had been verified.<sup>29</sup> Jill Harries also notes that from the fifth century onward a specific procedure developed in which a petitioner addressed the office of the governor through a *libellus* in which the plaintiff described his adversary and the dispute.<sup>30</sup> The rescript issued by the governor exposed a rule pertinent to the case and authorised the plaintiff to refer his dispute before a judge (*iudex*).<sup>31</sup> The governor could send the rescript to the plaintiff or directly to the local officer in charge of adjudicating similar disputes.<sup>32</sup>

The similarity between the procedure by rescript in Byzantine Egypt and the procedure revealed by Qurra b. Sharīk's letters is striking. It is thus tempting to conclude that early eighth-century Egyptian judicial administration originated partly from late Roman-Byzantine procedures. Like the Emperor or the *dux*, the governor of Fustāṭ sent rescripts – i.e. surviving judicial letters – to pagarchs whenever he received a complaint. These rescripts prescribed the procedure to be followed and issued conditional judgements. Did the governors of Fustāṭ impose such procedure by rescripts? It is possible that at first, Egyptian Christians simply kept their former habit of sending petitions to their rulers – the *dux*, or the governor, whatever his religion – to ensure their disputes would merit more scrutiny by the pagarch,<sup>33</sup> especially in high-value cases. If this last hypothesis is true, the governors of Fustāṭ adopted this procedure as a way of dealing with constant inflow of new petitions.

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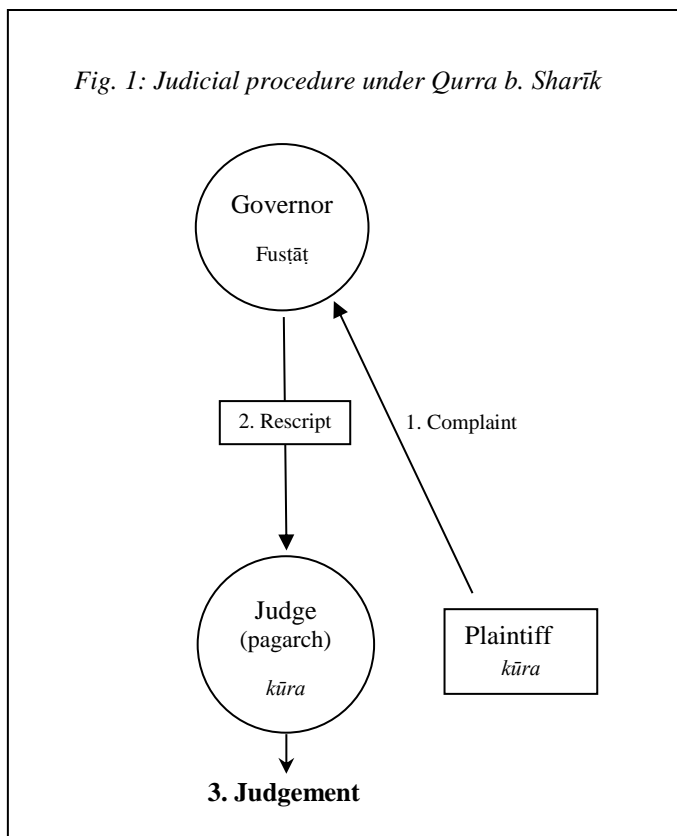
<sup>29</sup> C. Zuckerman, "Les deux Dioscore d'Aphrodite ou les limites de la pétition," in Denis Feissel and Jean Gascou (eds.), *La pétition à Byzance* (Paris: Centre d'Histoire et Civilisation de Byzance, 2004), 83-84. Cf. H.I. Bell, "An Egyptian Village in the Age of Justinian," *The Journal of Hellenic Studies*, 64 (1944), 26. See also J. Harries, *Law and Empire in Late Antiquity* (Cambridge: Cambridge University Press, 1999), 184.

<sup>30</sup> About the Roman concept of *libellus*, see A. Berger, *Encyclopedic Dictionary of Roman Law* (Philadelphia: The American Philosophical Society, 1954), 561.

<sup>31</sup> J. Harries, *Law and Empire*, 27, 104-105.

<sup>32</sup> C. Humfress, *Orthodoxy and the Courts* (Oxford: Oxford University Press, 2007), 42.

<sup>33</sup> See G. Frantz-Murphy, "Settlement of Property Disputes in Provincial Egypt: the Reinstitution of Courts in the Early Islamic Period," *al-Masāq* 6 (1993), 103.



## 2. Ḥenanisho‘’s judicial letters

### 2.1. Form and context

Ḥenanisho‘ became the patriarch of al-Madā‘in/Ctesiphon in 67/686 and stayed in office until 74/693, when a plot lead by a rival led to his dismissal by the governor of Kūfa. Ḥenanisho‘ took refuge in a monastery near Mosul, from which he continued to exert spiritual leadership until his death in 700 CE.<sup>34</sup> Owing to his writing, his religious authority was long recognized among the East-Syrian (Nestorian) communities.<sup>35</sup> Beside homilies and commentaries on the Gospels, Ḥenanisho‘ was active in the legal field. His principal Arabic biography mentions that he “established twenty canons regarding lawsuits (ar. *muḥākamāt*), each canon including

<sup>34</sup> About his life, see Elias of Nisibis, *Opus chronologicum*, ed. E.W. Brooks (Paris-Lepzig: Carolus Poussielgue-Otto Harrassowitz, 1910), I, 55; ‘Amr b. Mattā, *Akhbār faṭārika kursī al-mashriq min Kitāb al-majdal*, in Maris Amri et Slibae, *De Patriarchis nestorianorum commentaria*, II, ed. H. Gismondi, F. de Luigi (Rome: 1896), 59-60; Mārī b. Sulaymān, *Akhbār faṭārika*, 63-5; Bar Hebraeus, *Chronicon ecclesiasticum*, ed. Joannes Baptista Abbeloos and Thomas Josephus Lamy (Paris-Louvain: Maisonneuve-Peeters, 1877), III, 135-9. The principal modern biography of this catholicos is that of M. Tamcke, “Ḥenanisho‘ I,” in O. Jastrow, Sh. Talay and H. Hafenrichter (eds.), *Studien zur Semitistik und Arabistik: Festschrift für Hartmut Bobzin zum 60. Geburtstag* (Wiesbaden: Otto Harrassowitz, 2008), 395-402. See also W. Wright, *A Short History of Syriac Literature* (London: Adam and Charles Black, 1894), 181-2; W. Selb, *Orientalisches Kirchenrecht* (Vienna: Österreichische Akademie der Wissenschaften, 1981), I, 177; W.G. Young, *Patriarch, Shah and Caliph* (Rawalpindi: Christian Study Centre, 1974), 103, 160; J.M. Fiey, *Assyrie chrétienne* (Beirut: Imprimerie catholique, n.d.), II, 499-500; B. Landron, *Chrétiens et musulmans en Irak* (Paris: Cariscript, 1994), 29; S. Qāshā, *Aḥwāl naṣārā l-‘Irāq fī khilāfat banī Umayya* (Beirut: Markaz al-turāṭ al-‘arabī al-masīhī, 2005), II, 346 sq.

<sup>35</sup> ‘Amr b. Mattā, *Akhbār faṭārika*, 58.

several rules.<sup>36</sup> Ḥenanisho' also states in one of his letters that he wrote a *Book of Sentences* (*Ktōbō d-zūdōqē*) which is usually regarded as lost.<sup>37</sup>

East-Syrian legal literature preserves a series of twenty-five letters written by Ḥenanisho', some of which are actually composed of excerpts from different letters pieced together.<sup>38</sup> This collection could actually correspond to the "Canons regarding lawsuits" mentioned by 'Amr b. Mattā. At any rate, the preservation of these letters shows how much the catholicos' authority continued after his death.<sup>39</sup> Moreover, the content of these letters reveals an important part of the judicial process followed by Christians in Iraq at the end of the seventh century CE.

Most of these letters are not dated. They were obviously written at a time when Ḥenanisho' commanded a position of authority, either when he was officially catholicos of al-Madā'in/Ctesiphon or when he was left with only spiritual leadership during his retreat in a monastery near Mosul.<sup>40</sup> Several clues suggest that the first assumption is more justified. First, these letters show that Ḥenanisho' held formal hierarchical authority on the clerks he wrote to. Second, some of his letters mention the cities of Kūfa ('Āqūlā), Ḥīra, Prat, Baṣra, al-Ubulla,<sup>41</sup> suggesting that his authority was then recognized in the South of Iraq – which was no longer the case after his dismissal according to Marī b. Sulaymān.<sup>42</sup> Last, one of his letters is dated "May 69 of the Muslim authority,"<sup>43</sup> which would be May 689, when Ḥenanisho' was still catholicos.<sup>44</sup>

Several types of letters must be distinguished:<sup>45</sup>

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<sup>36</sup> 'Amr b. Mattā, *Akhbār faṭārika*, 58.

<sup>37</sup> J. Dauvillier, "Chaldéen (droit)," in R. Naz (ed.), *Dictionnaire du droit canonique* (Paris: Librairie Letouzey et Ané, 1942), III, 336. See E. Sachau (ed.), *Syrische Rechtsbücher* (Berlin: Verlag von Georg Reimer, 1907-1914), II, 16.

<sup>38</sup> E. Sachau (ed.), *Syrische Rechtsbücher*, II, 1-51. See also H. Kaufhold, "Sources of Canon Law in the Eastern Churches," in W. Hartmann and K. Pennington (ed.), *The History of Byzantine and Eastern Canon Law to 1500* (Washington: The Catholic University of America Press, 2012), 306.

<sup>39</sup> The same phenomena happened in Occidental Christianity, where Late Antique papal letters were included in canonical collections. See J. Gaudemet, *L'Église dans l'empire romain* (Paris: Sirey, 1958), 221.

<sup>40</sup> Claudia Rapp defined three types of episcopal authority in Late Antiquity: pragmatic authority, which relies on public actions; spiritual authority, which characterizes a person touched by the Holy Spirit; ascetic authority, which comes from a certain lifestyle. Cf. Rapp, *Holy Bishops in Late Antiquity: the Nature of Christian Leadership in an Age of Transition* (Berkeley-Los Angeles: University of California Press, 2005), 16-7. According to this classification, the authority of the catholicos in office is a pragmatic one, whereas that of the deposed one is closer to spiritual or ascetic authority.

<sup>41</sup> E. Sachau (ed.), *Syrische Rechtsbücher*, II, 28, n° 15, n° 16.

<sup>42</sup> See *supra*.

<sup>43</sup> E. Sachau (ed.), *Syrische Rechtsbücher*, II, 6.

<sup>44</sup> Jean Dauvillier, according to whom Ḥenanisho' kept judicial prerogatives after his removal from office, thinks that some of his letters could have been written while he was in his retreat in Mesopotamia. J. Dauvillier, "Chaldéen (droit)," 335. Thomas of Margā mentions indeed a lawsuit for heresy initiated before Ḥenanisho' during this period. However, the patriarch refused to judge the case and referred the litigants to other clerks. Thomas of Margā, *The Book of Governors*, ed. E.A. Wallis Budge (London: Kegan Paul, Trench, Trübner and co, 1893), 53-4/95-7.

<sup>45</sup> A few excerpts are too short to be classified: E. Sachau (ed.), *Syrische Rechtsbücher*, II, n°s 18<sup>(1)</sup> (2), 20<sup>(9)</sup> (numbers are those appearing in Sachau's edition; numerals in superscript indicate sub-sections under a same number). Cf. other tentative classifications by Richard Payne (*Christianity and Iranian Society in Late Antiquity, ca. 500-700 CE*, Ph.D dissertation, Princeton University, 2009, 208) and Walter Selb (*Orientalisches Kirchenrecht*, I, 175).

- (1) Letters of exhortations, recommendations or extra-judicial instructions.<sup>46</sup>
- (2) Letters sent to one or several judicial authorities, following a complaint filed with the catholicos (judicial rescripts).<sup>47</sup>
- (3) Letters requesting from individuals the enforcement of the catholicos' judgement (enforcement rescript).<sup>48</sup>
- (4) Answers to judicial authorities who solicited the catholicos.<sup>49</sup>
- (5) *Responsa* sent to private persons who asked his opinion out of judicial framework.<sup>50</sup>
- (6) Excerpts of judgements or legal opinions recorded without any context.<sup>51</sup>

The second and the third categories are particularly relevant for understanding the judicial process, and the following analysis will focus on them.

Fourteen of these letters are rescripts sent by Ḥenanisho' to judicial authorities following a complaint, in which the catholicos either issues a judgement or delegates the trial to substitute authority. Here is an example of one such letter:

Sefray bar Surēn bar Berunā, from your town, through whom we send you this letter, complained before us about his brothers Mīhr Narsē and Mīhran. He accuses them of having freed a slave left by their father, on the pretext that he is their wet nurse's husband. They claim that their father had decided to free him after his death. Sefray wants us to hand over the examination of this case to your rectitude.

As soon as you read this letter, summon Sefray's brothers and carry out an investigation about them with your usual rigor. If, at the end of the investigation, you find that the slave was freed by his master Sūrīn, you will confirm the liberty that his master had decided to give him at his own pleasure. However, if their father, Sūrīn, did not free him, his sons Mīhr Narsē and Mīhran are the ones who freed the slave because of their kinship. The slave's emancipation will therefore be confirmed [and taken] on their share of the inheritance. If they did not agree with the slave's emancipation, their other brothers will be entitled to [the equivalent of] their share [of the slave]. That is how you shall put an end to this dispute.

May God keep you from all evil every day of your life, and may you remain in good health!<sup>52</sup>

### 2.3. Stylistic aspects

Unlike Qurra b. Sharīk's papyri, Ḥenanisho' 's letters did not survive in their original form. They are only known through a literary selection of letters or excerpts of letters compiled for legal purposes. Some have been reworked by deleting addresses and salutations, or even full sections, and we cannot exclude the possibility of copyists modifying textual details. One

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<sup>46</sup> E. Sachau (ed.), *Syrische Rechtsbücher*, II, n<sup>os</sup> 1, 2, 3, 6, 16, 17.

<sup>47</sup> E. Sachau (ed.), *Syrische Rechtsbücher*, II, n<sup>os</sup> 7, 8, 12, 14, 18<sup>(3)</sup>, 24, 25.

<sup>48</sup> E. Sachau (ed.), *Syrische Rechtsbücher*, II, n<sup>os</sup> 4, 5, 10, 11, 15, 22.

<sup>49</sup> E. Sachau (ed.), *Syrische Rechtsbücher*, II, n<sup>os</sup> 9, 23.

<sup>50</sup> E. Sachau (ed.), *Syrische Rechtsbücher*, II, n<sup>os</sup> 13, 21<sup>(5)</sup>.

<sup>51</sup> E. Sachau (ed.), *Syrische Rechtsbücher*, II, n<sup>os</sup> 19<sup>(1-4)</sup>, 20<sup>(1-8)</sup>, 21<sup>(1-4)</sup> (6-8). We can add to these excerpts other ones in which the context is clearer, but which are too short to be classified: E. Sachau (ed.), *Syrische Rechtsbücher*, II, n<sup>os</sup> 18<sup>(1)</sup> (2), 20<sup>(9)</sup>.

<sup>52</sup> E. Sachau (ed.), *Syrische Rechtsbücher*, II, 14.

striking difference with Qurra’s concise papyri is the profusion of details about cases in Hēnanisho’s letters. It is difficult, however, to assess the significance of this difference, which could result from selection process: we can suppose that East-Syrian jurists who compiled his letters at an unknown date chose the most explicit cases and left short letters dealing with more simple ones.

Like Qurra b. Sharīk’s correspondence, Hēnanisho’s judicial letters are characterised by a high degree of standardisation. After the address and the salutations, his judicial rescripts (type 2) begin by mentioning (1) the carrier of the letter, who is also the plaintiff. (2) The nature of his claim is then recounted in varying details. (3) The catholicos mentions what the plaintiff is expecting from him. (4) After the transition, (5) he orders the addressee(s) to summon the defendant and (6) to examine the case in presence of both litigants. (7) Hēnanisho exposes the decision that should be issued if the plaintiff’s allegations are true (and sometimes if they are not); and (8) ends by revealing the penalty to which recalcitrant litigants shall be subjected to. Several of these sections are introduced by standard formulae that can be found (sometimes with minor variants) in a majority of judicial rescripts:

Tab. 2 : Formulae in Hēnanisho’s judicial letters

Section	Formula	Translation	N <sup>os</sup> of letters
1	فل... كما نرسله، تلج حثك (حثك) لحي	through whom we (I) send you this letter	5, 7, 8, 14, 25
2	كل من نحن	complained before us	7, 12
	كل من من نحن	filed a complaint before us	4, 5, 8, 11, 14, 18 <sup>(3)</sup> , 24
3	نحسك نحن	he wants us	7, 8, 11, 12, 14
4	كما سجدنا، (نرسله) تلج	as soon as you read this letter	7, 11, 24, 25
	نحسك كما سجدنا لحي	as soon as it reaches you	8
	كما سجدنا، تلج	as soon as you receive this letter	5, 12
	كما سجدنا، تلج	as soon as you read our present letter	14
5	ميو (ميو)، فل لحي	summon before you	7, 11
	كل من من نحن	summon before you	5, 8, 14

The last sections are less standardised since the formulae and the terminology largely depend on the procedure that must be applied (i.e. audition of the defendant’s statement, enquiry, testimonial evidence, etc.). Some enforcement rescripts requesting the implementation of a previous judgement appear to bear different formulae; for instance the addressee is not asked to summon the litigants but to “remember” (‘*ōhed a(n)t*, or ‘*ahīd a(n)t*) the case in question.<sup>53</sup>

On the whole, Hēnanisho’s letters appear to resort to standard formulae as much as Qurra’s. Standard formulae usually refer to different topics in the two corpora, except the transitional

<sup>53</sup> E. Sachau (ed.), *Syrische Rechtsbücher*, II, n<sup>os</sup> 15, 22.

ones introducing the sender's instructions to the addressee, which are very close in Arabic and in Syriac: "when this letter of mine reaches you" (Qurra) / "as soon as you read/receive this letter" (Ḥenanisho').

Unlike Qurra's letters, the administrative context of Ḥenanisho's correspondence can hardly be reconstructed. No copyist is ever mentioned. It is possible that scribes or copyists wrote these letters, but if they ever mentioned their names at the end like in Qurra's, these mentions appear to have been deleted by East-Christian jurists who collected these documents as they deleted the dates. Although we cannot exclude that Ḥenanisho' wrote his letters himself, it is more likely that, as a catholicos, he had a chancellery with scribes. The possible use of scribes does not conceal the catholicos' personal intervention; whereas Qurra's surviving letters are mostly a succession of standard formulae, reflecting very routine procedure carried on mainly by professional scribes, Ḥenanisho's personal involvement in defining rules for each case seems much more significant. However, this could once more be a distortion caused by the nature of the sources, with ordinary cases being kept for Qurra as a coincidence, and extraordinary cases being collected deliberately for Ḥenanisho'.

### 2.3. Procedures at Ḥenanisho's court

Ḥenanisho's judicial rescripts (type 2) are part of judicial proceedings that can be described as follows. A litigant comes to the catholicos' court to file a complaint against an adversary. Ḥenanisho' writes a letter to one or more persons in the plaintiff's locality and makes the latter responsible for bringing it to the addressee(s). In his letter, the catholicos orders to summon the defendant and to examine the dispute. The letter ends with a conditional decision that depends on the result of investigations carried out by the addressee(s). Enforcement rescripts (type 3) are mere variants of this scheme: either the decision previously sent by the catholicos has not been implemented yet and Ḥenanisho' commands its execution, or the plaintiff provides evidence at the catholicos' court, according to which the latter pronounces an unconditional decision and orders his addressee(s) to execute it.<sup>54</sup>

Judicial rescripts (type 2) were usually sent to persons called "priest" (*qashīshō*) or "judge" (*dayōnō*) (n<sup>os</sup> 11, 14, 18<sup>(3)</sup>). In this procedure, priests would be asked by the catholicos to act as deputy judges. Not all judges were ecclesiastics, however. In letter n<sup>o</sup> 18<sup>(3)</sup>, the judge is a layman (*mhaymnō*, litt. "believer"), perhaps one of the little-known local judicial authorities who remained in Mesopotamia after the Islamic conquest.<sup>55</sup> Enforcement rescripts (type 3) could also be addressed to priests (n<sup>os</sup> 5, 15, 18<sup>(3)</sup>), but some of them are sent to laymen

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<sup>54</sup> The value of the catholicos' decision is a debated issue. According to Richard Payne, Ḥenanisho's letters were non-binding *responso*, and the catholicos acted primarily as a mediator in disputes between elites (R. Payne, *Christianity and Iranian Society*, 237-8). It is true that in some letters, the catholicos' word is called "advice" (*melkō*) or "exhortation" (*martyōnūtō*). However, in most of Ḥenanisho's judicial letters examined here, terms like "judgement" (*dīnō*), "sentence" (*hūrquōnō*), "decision" (*pōsūqō*, *pūsquōnō*), "order" (*pūqdōnō*) and "decree" (root *g.z.r.*) are used to define his instructions. Furthermore, the absence of compliance to his orders was to be sanctioned by excommunication – which shows that the catholicos regarded his word as binding. It seems therefore justified to consider his decisions as actual judgements. For more details on this issue, see M. Tillier, *L'invention du *cadi*. La justice des musulmans, des juifs et des chrétiens aux premiers siècles de l'Islam* (Paris: Publications de la Sorbonne, 2017), 497-9.

<sup>55</sup> See Ch. Robinson, *Empire and Elites after the Muslim Conquest. The Transformation of Northern Mesopotamia* (Cambridge: Cambridge University Press, 2000), 54-7.

(*mhaymnē*) who are not referred to as “judges” (n<sup>os</sup> 10, 12, 14),<sup>56</sup> two of them are in actual fact exclusively addressed to laymen (n<sup>os</sup> 10, 12). The Persian names they often bear (n<sup>os</sup> 4, 10, 12, 15) suggest they were local Persian elites. They probably did not hold any official judicial authority, but were powerful enough to impose the Church’s decisions in judicial matters. In one case, we even see Ḥenanishoʿ asking layman Dādā to use his secular authority (*shūlṭōnō ʿōlmōnōyō*) to execute his judgement (n<sup>o</sup> 14).<sup>57</sup> In most cases, it is likely that the laymen solicited by the catholicos did not need to use coercive measures, and that their local influence and social authority were efficient instruments of persuasion. Some judicial rescripts (n<sup>os</sup> 14, 18<sup>(3)</sup>) were sent to both an ecclesiastic and a layman, probably in order to give more weight to the decision and increase social pressure on the convicted person.<sup>58</sup>

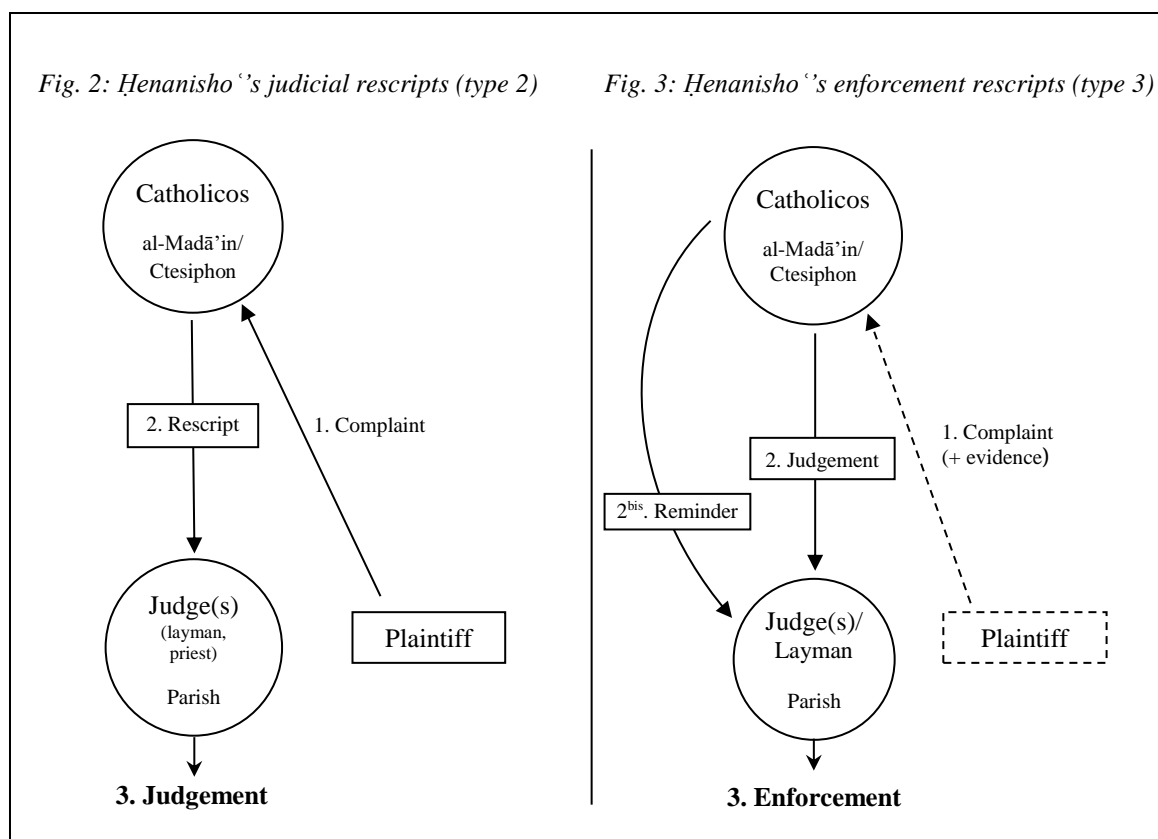
In Ḥenanishoʿ’ s letters, justice appears thus as a two-level system which can be summarised as in the following scheme. On the local level, justice was dispensed by priests or laymen who were supposedly appointed by a bishop or by the catholicos himself, or whose position was at least recognised by the catholicos. For unknown reasons, some plaintiffs chose to turn to the catholicos, perhaps because they were denied justice by their local judge, or because the amount of money at stake was particularly high, or simply because they believed that their rights were more likely to be restored if they addressed the highest authority. They came to Ctesiphon alone, without their adversaries – who evidently would have refused to accompany them – and lodged their complaint. If a plaintiff could not prove his case, the catholicos sent a rescript to the local judge containing instructions concerning the procedure to be followed and a conditional judgement. If he could produce evidence of his claim, the catholicos could render judgement and condemn the adversary in his absence. Then he sent a rescript to the plaintiff’s locality, in which he asked local authorities to apply his decision. In certain cases, this first rescript had no noticeable effect and the catholicos sent a reminder to the same authorities (n<sup>os</sup> 15, 22), requesting actual execution of his judgement.

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<sup>56</sup> We probably have to add letter n<sup>o</sup> 4, sent to four addressees bearing Persian names who were probably laymen although they are not called *mhaymnē*.

<sup>57</sup> Cf. U. Simonsohn, *A Common Justice*, 104 (who transcribed by mistake *shulṭānā ʿidnāyā* instead of *shulṭānā ʿalmanayā*).

<sup>58</sup> It is noticeable that Late Antique bishops had sometimes lay assessors, and could ask local elites to help them adjudicating difficult cases. C. Humfress, *Orthodoxy and the Courts*, 170; Cl. Rapp, *Holy Bishops*, 246-7; J.C. Lamoreaux, “Episcopal Courts in Late Antiquity,” *Journal of Early Christian Studies*, 3 (1995), 160. A papyrus from Petra also shows that, in sixth-century Palaestina Tertia, disputes could be arbitrated simultaneously by an ecclesiastic and a layman (in the documented case, a priest and a soldier). M. Kaimio, “P.Petra inv. 83: A Settlement of Dispute,” in *Atti del XXII Congresso Internazionale di Papirologia* (Florence: 2001), 721.



### Conclusion: a common background?

Judicial letters of both Qurra b. Sharīk and Ḥenanisho' reveal the existence of very close procedures in two different institutions and two distant provinces of the early caliphate. How can we explain such similitude between institutions and provinces that maintained very few contacts with one another?

The Egyptian governorate and the East-Syrian patriarchate were not part of the same *administrative* tradition. As we have seen, Qurra b. Sharīk's letters suggest that the governor may have adapted a Byzantine procedure that was used in Egypt before Islam. There is no evidence, however, that this rescript procedure had spread from Byzantium to the Sassanian Empire. One could venture the hypothesis that the Byzantine procedure expanded in the East-Syrian church through contacts between West-Syrian and East-Syrian ecclesiastics. However, this is very unlikely, since a direct influence of Roman law on East-Syrian procedures can only be detected one century after Ḥenanisho'.<sup>59</sup> As the Sassanian legal system remains little known compared to the Byzantine or the Islamic systems, it is not inconceivable that a kind of rescript procedure also existed in the Eastern Empire characterized by a very hierarchic administrative structure. However, there is no evidence of common administrative roots to Qurra and Ḥenanisho's practices.

It is possible, however, that both procedures were based on deeper common ground. Geoffrey Khan and Gladys Frantz-Murphy have convincingly argued that different regions and

<sup>59</sup> W. Selb and H. Kaufhold (ed.), *Das Syrisch-Römische Rechtsbuch* (Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 2002), I, 54, 60.

cultures of the Middle-East shared legal traditions, with striking similitude in contractual formulae.<sup>60</sup> Perhaps a formula like “as soon as you read this letter” to introduce instructions, which appears in both correspondences, belongs to this common formulaic tradition. More generally, we can suspect that the petitioning process was not of Roman specificity, but implemented in other areas of the Middle-East.

It is often taken for granted that the perpetuation of administrative practices resulted from a deliberate choice by rulers. The examples examined here suggest that it was not always the case. According to both Qurra b. Sharīk and Ḥenanisho’s letters, litigants submitted their petitions to the highest authorities on their own initiative, and it is unlikely that they complied with a mandatory procedure. The Egyptian governor as well as the East-Syrian catholicos probably kept using the rescript procedure because they had to deal with a constant influx of petitions. If these judicial practices indeed had ancient roots, they were probably perpetuated as much by the litigants as by the rulers. This conclusion may provide a new element of answer to the complex question of the origins of Islamic law, which researchers like Benjamin Jokisch explain as a direct borrowing of previous or neighbouring imperial traditions.<sup>61</sup> Within the limited sphere of judiciary institutions, the comparison between Qurra b. Sharīk and Ḥenanisho’s letters show that no “external” model needs to be found to explain the functioning of the Islamic one.

The rulers’ role should not of course be underestimated. The way they oriented procedures and judicial practices, as well as the rules they decreed, were of utmost importance and original in each legal culture. It is necessary to highlight, however, that the specificity of each institution resulted from interactions between subjects and their authorities. From this point of view, it is likely that many practices shared before Islam by people with different cultural backgrounds living in separate territories contributed to the emergence of an Islamic imperial culture.

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<sup>60</sup> G. Khan, “The Pre-Islamic Background of Muslim Legal Formularies,” *Aram*, 6 (1994), 193-224; G. Frantz-Murphy, “A Comparison of Arabic and Earlier Egyptian Contract Formularies, Part V: Formulaic Evidence,” *Journal of Near Eastern Studies*, 48 (1989), 97-107.

<sup>61</sup> B. Jokisch, *Islamic Imperial Law. Harun-Al-Rashid’s Codification Project* (Berlin: Walter de Gruyter, 2007), 51-260.