The Evolution of Judicial Procedures in East-Syrian Canon Law after the Islamic Conquests: The Judicial Oath

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Eastern Christianity had judicial institutions before Islam. The system of *episcopalis audientia* that developed in the Roman Empire from Emperor Constantine onwards also existed in a comparable form in Sassanid territories. From the sixth century C.E. at least, the East-Syrian Catholicos had judicial authority over his community, which he delegated to the Church hierarchy, from bishops to village priests.[1] Theoretical reflection about procedures in ecclesiastical courts began in Antiquity during Oriental synods, whose canons were later gathered in the *Synodicon Orientale*.[2] This codification process continued during the Islamic period, especially by Christian jurists who lived in Iraq and Iran in the shadow of the Umayyad and Abbasid caliphates and whose works Eduard Sachau gathered in a three-volume edition in the early twentieth century.[3]

East-Syrian canon law thus developed over centuries marked by major political and social changes, most significantly the Islamic conquests and the formation of a new empire that created its own legal tradition. Muslim courts soon attracted non-Muslim subjects, as Uriel Simonsohn has clearly shown.[4] For his part, Gideon Libson argued that Muslim practices influenced Jewish law as implemented in Islamic lands.[5] However, the impact of Islamic law on the functioning of Christian courts remains so far unknown. To what extent did the new legal traditions affect East-Syrian canon law development? Can we detect changes resulting from adapting to the new context? I propose here to examine these issues through a particular aspect of the judicial process: the use of oath during a lawsuit.

An oath consists in taking God to witness that the speaker tells the truth.[6] It consequently engages his eschatological future and may appear a powerful means to obtain the truth.

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[1] On the *episcopalis audientia* in the Roman Empire, see the bibliographical references provided by J. Gaudemet, *L'Église dans l'Empire romain (IVe-Ve siècles)* (Paris, 1958), p. 230-1. For a more recent assessment, see J.C. Lamoreaux, 'Episcopal Courts in Late Antiquity', *Journal of Early Christian Studies*, 3 (1995), pp. 143-167. On episcopal courts in East-Syrian Christianity, see M. Tillier, *L'invention du cadi. La justice des musulmans, des juifs et des chrétiens aux premiers siècles de l'Islam* (Paris, 2017), pp. 434-443, 476-533.

[2] *Synodicon orientale ou Recueil de synodes nestoriens*, ed. J.-B. Chabot (Paris, 1902).

[3] *Syrische Rechtsbücher*, 3 volumes, ed. E. Sachau (Berlin, 1907-1914).

[4] U.I. Simonsohn, *A Common Justice. The Legal Allegiances of Christians and Jews under Early Islam* (Philadelphia, 2011).

[5] G. Libson, *Jewish and Islamic Law. A Comparative Study of Custom during the Geonic Period* (Cambridge, 2003).

[6] R. Naz, 'Serment', in *Dictionnaire de droit canonique*, vol. 7, ed. R. Naz (Paris, 1935-1965), pp. 975-980, on p. 975.

Therefore, various societies have used it as judicial evidence alongside other tools such as testimony, documentary, or circumstantial evidence. Depending on legal cultures, different litigants could be asked each evidentiary category according to their role in the lawsuit—i.e., the plaintiff, who files a complaint, and the defendant, the accused. To examine the evolution of East-Syrian legal theory regarding the judicial oath, I will consider two questions here: (1) Was the oath accepted as judicial evidence? (2) If so, to which party was it preferentially deferred?

1. Oath Theory In East-Syrian Law Before Islam

Based on what we know, the Sassanid court system allowed various forms of evidence, including the judicial oath. Depending on the case, the oath could be administered either to the plaintiff or to the defendant[7]—normally to the party considered most reliable.[8] A ritual accompanied the procedure: the litigant swore in a place dedicated to the oath, on a specific day of the month, under a controlling officer's (the *war-salār*) supervision. The ritual could also include an ordeal that was not supervised by a judge or a *mōbed*, but by another officer called *rat*. In some cases, the party who swore to the truth or falsehood of a situation underwent a physical test while taking the oath—like drinking sulfur, receiving molten copper on the chest, etc.[9] A document certifying that the oath procedure had been conducted according to the rules was then written down and sealed.[10] The litigant who refused to take the oath was considered guilty of obstruction and could be provisionally condemned.[11]

East-Syrian Church canonical texts, which began to develop in the shadow of the Sassanid dynasty, regularly mention the oath (syr. *mawmtā*) to forbid its practice. Early theoreticians of this Church rely on the Gospel of Matthew (5:34), in which Jesus rejects the oath and forbids his disciples to swear.[12] In a letter to Jacob, Bishop of Darai (an island in the Persian Gulf),[13] the late sixth-century Catholicos Ishoʿyahb condemns oath-taking, which he regards as a pagan and infidel practice.[14]

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[7] *The Book of a Thousand Judgements (A Sasanian Law-Book)*, ed. and trans. Anahit Perikhanian, translated from Russian by Nina Garsoïan (Costa Mesa, 1997), pp. 53, 55, 187.

[8] J. Jany, *Judging in the Islamic, Jewish and Zoroastrian Traditions. A Comparison of Theory and Practice* (Farnham, 2012), p. 60.

[9] A. Perikhanian, 'Iranian Society and Law', in *The Cambridge History of Iran*, vol. 3(2), ed. E. Yarshater (Cambridge, 1983), pp. 627-680, on p. 679; M. Shaki, 'Judicial and Legal Systems ii.', in *Encyclopaedia Iranica*, ed. Ehsan Yarshater (electronic edition, 2009, http://www.iranicaonline.org/). Cf. *The Book of a Thousand Judgements*, p. 53. The same source suggests, in its English translation, that oath could also serve as an alternative to ordeal. *The Book of a Thousand Judgements*, p. 55 (§14, 2-5). On ordeal, see A. Christensen, *L'empire des Sassanides. Le peuple, l'État, la cour* (Copenhagen, 1907), p. 73. The application mode of ordeals depended on litigants' social position; individuals enjoying a good reputation escaped it. M. Shaki, 'Judicial and Legal Systems ii'.

[10] J. Jany, *Judging* (see n. 8), p. 60; *The Book of a Thousand Judgements*, p. 269.

[11] J. Jany, *Judging* (see n. 8), p. 61.

[12] *Synodicon orientale*, pp. 178/437; Ibn al-Ṭayyib (Ibn at-Ṭaiyib), *Fiqh al-naṣrānīya.* '*Das Recht der Christenheit*', vol. 1, eds. W. Hoenerbach and O. Spies (Louvain, 1956), p. 132. See *Evangelion Da-Mepharreshe*, ed. F.C. Burkitt (Cambridge, 1904), p. 24; *The Old Syriac Gospels or Evangelion Da-Mepharreshê*, ed. A. Smith Lewis (London, 1910), p. 12.

[13] See J. Dauvillier, 'Chaldéen (droit)', *Dictionnaire de droit canonique*, vol. 3, pp. 292-388, on p. 324.

[14] *Synodicon orientale*, pp. 178/438. Cf. Ibn al-Ṭayyib, *Fiqh al-naṣrāniyya* (see n. 12), vol. 1, p. 126; vol. 2, p. 71-3. See also H. Kaufhold, 'Sources of Canon Law in the Eastern Churches', in *The History of Byzantine and Eastern Canon Law to 1500*, eds. W. Hartmann and K. Pennington (Washington, 2012), pp. 215-342, on p. 303.

2. Oath-Taking In the Wake Of The Muslim Conquest: Ḥnānīshoʿ

While before Islam, East-Syrian sources only allow for reconstructing the canonical theory of judicial proceedings, sources from the second half of the seventh century offer a fresh look at ecclesiastical justice. Catholicos Ḥnānīshoʿ in particular left excerpts from his correspondence that were later collected for the sake of legal theory. He most probably wrote his judicial letters while as patriarch of al-Madā'in/Seleucia-Ctesiphon between 686 and 693 CE, or shortly thereafter, when, dismissed by the governor of Kūfa, he took refuge in a monastery near Mosul, from where he continued to exert spiritual leadership until his death in 700 CE.[15]

Several of his letters were written in a judicial context. Some appear as judicial rescripts, in which the Catholicos sent instructions to a judge. Others are edicts stating general rules. Although it is rarely mentioned, judicial oath occurs in at least two of his letters. In the first occurrence, relating to an inheritance case (No. 24), Ḥnānīshoʿ asks the judge to administer either a negative oath to the defendants—who will thus deny their adversaries' claim—or a positive oath to the plaintiff—who will swear to the truth of his claim.[16] In a second occurrence, a lacunar letter (No. 21$^{(6)}$), the defendant must take the oath. In case of dispute over a property in the hands of a defendant, whom the Catholicos presents as guilty ('unjust', *ṭlīmā*)—the claimant must provide documentary or testimonial evidence. If neither the plaintiff nor his opponent has such evidence, the defendant can take the oath (and swear that his father already possessed the disputed item).[17] According to this excerpt, certain types of evidence seem prioritized (testimony and documents should be first provided; oath only comes second), and each seems associated with one of the litigants (testimony and documents are produced by the plaintiff or, failing that, by the defendant; oath is taken by the defendant). What matters here is that the Catholicos advocates using the oath in a judicial context, contrary to pre-Islamic canon law requirements.

The meaning of Ḥnānīshoʿ's statements is difficult to assess. Are we to infer that the legal procedures evolved in East-Syrian Christianity in connection with the new Islamic context? It is necessary to recall that according to Ishoʿyahb, oath-taking was a deviant practice related to interactions with pagans and infidels. As Muslims largely used oaths in courts, could interactions between Christians and Muslims have caused this development? Yet, we cannot

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[15] About his life, see Eliae Metropolitae Nisibeni, *Opus chronologicum*, vol. 1, ed. E.W. Brooks (Paris-Lepzig, 1910), p. 55; ʿAmr b. Mattā, *Akhbār faṭārika kursī al-mashriq min Kitāb al-majdal*, in Maris Amri et Slibae, *De Patriarchis nestorianorum commentaria*, vol. 2, ed. H. Gismondi (Rome, 1896), pp. 59-60; Mārī b. Sulaymān, *Akhbār faṭārika*, in *Ibid.*, pp. 63-5; Bar Hebraeus, *Chronicon ecclesiasticum*, vol. 3, eds. Joannes Baptista Abbeloos and Thomas Josephus Lamy (Paris-Louvain, 1877), pp. 135-9. The principal modern biography of this Catholicos is from M. Tamcke, 'Henanischoʿ I', in *Studien zur Semitistik und Arabistik: Festschrift für Hartmut Bobzin zum 60. Geburtstag*, eds. O. Jastrow, Sh. Talay and H. Hafenrichter (Wiesbaden, 2008), pp. 395-402. See also W. Wright, *A Short History of Syriac Literature* (London, 1894), pp. 181-2; W. Selb, *Orientalisches Kirchenrecht, I. Die Geschichte des Kirchenrechts der Nestorianer (von den Anfängen bis zur Mongolenzeit)* (Vienna, 1981), p. 177; W.G. Young, *Patriarch, Shah and Caliph. A Study of the Relationships of the Church of the East with the Sassanid Empire and the Early Caliphates up to 820 A.D.* (Rawalpindi (Pakistan), 1974), pp. 103, 160; J.M. Fiey, *Assyrie chrétienne. Contribution à l'étude de l'histoire et de la géographie ecclésiastiques et monastiques du nord de l'Iraq*, vol. 2 (Beirut, n.d.), pp. 499-500; B. Landron, *Chrétiens et musulmans en Irak : attitudes nestoriennes vis-à-vis de l'Islam* (Paris, 1994), p. 29; S. Qāshā, *Aḥwāl naṣārā l-ʿIrāq fī khilāfat Banī Umayya*, vol. 2 (Beirut, 2005), p. 346 *sq*.

[16] *Syrische Rechtsbücher* (see n. 3), vol. 2, p. 48.

[17] Ibid., p. 40.

conclude with certainty that any actual evolution had happened at this stage. Ishoʿyahb's condemnation of oath-taking suggests that Eastern Christians actually resorted to the oath in the context of judicial proceedings before Islam; otherwise, there would have been no need to condemn it. Therefore, we cannot exclude that Ḥnānīshoʿ, while continuing to reject the oath in theory, accepted a few exceptions in practice as was already done before Islam.

3. Debates and Reluctances: Timothy and Ishoʿ bar Nūn

Theoretical canon law resurfaces a century later in the works of Catholicos Timothy I (r. 779-823)[18] and Ishoʿ bar Nūn (r. 824-828). Timothy, whose long reign covered more than forty-three years, is famous for his efforts to unify the East-Syrian Church, which were undermined by conflicts of authority. He transferred the patriarchal see of Seleucia-Ctesiphon (Ar. al-Madā'in) to Baghdad,[19] and the close relationship he maintained with five caliphs under whom he reigned (al-Mahdī, al-Hādī, al-Rashīd, al-Amīn, and al-Ma'mūn) made him a symbol of Muslim-Christian dialogue in early Islamic centuries.[20] He also wrote a legal treatise, entitled *Ṭaksē d-dīnē ʿi(d)tānāyē w-d-yārtwātā* (*Rules of Ecclesiastical Judgments and Inheritance*), probably composed in 804 or 805,[21] which includes a theoretical reflection on judicial procedures. His successor Ishoʿ bar Nūn[22] wrote another treatise known as the *Canons, Laws*

[18] On this Catholicos, see Eliae Metropolitae Nisibeni, *Opus chronologicum*, vol. 1 (see n. 15), pp. 58-9; Bar Hebraeus, *Chronicon ecclesiasticum*, vol. 3, p. 165 *sq*; ʿAmr b. Mattā, *Akhbār faṭārika* (see n. 15), pp. 64-6; Mārī b. Sulaymān, *Akhbār faṭārika* (see n. 15), pp. 71-5; R. Bidawid, *Les lettres du patriarche nestorien Timothée I* (Vatican, 1956), pp. 1-11; M. Allard, 'Les chrétiens à Baġdād', *Arabica*, 9 (1962), pp. 375-388, on pp. 377-8; H. Putman, *L'Église et l'Islam sous Timothée I (780-823). Étude sur l'Église nestorienne au temps des premiers 'Abbāsides* (Beirut, 1975), *passim*; J.-M. Fiey, *Chrétiens syriaques sous les Abbassides, surtout à Bagdad (749-1258)* (Louvain, 1980), pp. 38-9; A.-M. Eddé, F. Micheau and Ch. Picard, *Communautés chrétiennes en pays d'Islam du début du VII^e siècle au milieu du XI^e siècle* (Paris, 1997), pp. 142-5; B. Landron, *Chrétiens et musulmans* (see n. 15), pp. 46-53; R. Le Coz, *L'Église d'Orient. Chrétiens d'Irak, d'Iran et de Turquie* (Paris, 1995), pp. 157-60; R. Hoyland, *Seeing Islam as Others Saw It. A Survey and Evaluation of Christian, Jewish and Zoroastrian Writings on Early Islam* (Princeton, 1997), pp. 472-5; W. Baum and D. Winkler, *The Church of the East. A Concise History* (Abington-New York, 2003), pp. 60-3; S.H. Griffith, *The Church in the Shadow of the Mosque. Christians and Muslims in the World of Islam* (Princeton-Oxford, 2008), p. 45. For an exhaustive bibliography, see M. Heimgartner, 'Timothy I', in *Christian-Muslim Relations. A Bibliographical History. Volume 1 (600-900)*, eds. D. Thomas and B. Roggema (Leiden, 2009), pp. 515-9. See also W. Wright, *A Short History* (see n. 15), pp. 191-4. Timothy was elected patriarch at the end of the year 779 but he could not be consecrated as a Catholicos in al-Madā'in/Seleucia-Ctesiphon until a few months later in 780. See R. Bidawid, *Les lettres du patriarche*, p. 3.

[19] W.G. Young, *Patriarch, Shah and Caliph* (see n. 15), p. 133; B. Landron, *Chrétiens et musulmans* (see n. 15), p. 48; M. Heimgartner, 'Timothy I' (see n. 18), p. 516; S.H. Griffith, *The Church in the Shadow* (see n. 18), p. 45.

[20] The Catholicos evokes his theological discussions with the Caliph al-Mahdī in one of his letters. See R. Hoyland, *Seeing Islam* (see n. 18), pp. 473-5.

[21] *Syrische Rechtsbücher* (see n. 3), vol. 2, pp. 53-117. On the date of this book, see J. Dauvillier, 'Chaldéen (droit)' (see n. 13), p. 345; R. Bidawid, *Les lettres du patriarche* (see n. 18), p. 9; W. Selb, *Orientalisches Kirchenrecht*, vol. 1 (see n. 15), p. 174; R. Le Coz, *L'Église d'Orient* (see n. 18), p. 159.

[22] See Eliae Metropolitae Nisibeni, *Opus chronologicum*, vol. 1 (see n. 15), p. 58; Bar Hebraeus, *Chronicon ecclesiasticum*, vol. 3, pp. 184-7; ʿAmr b. Mattā, *Akhbār faṭārika* (see n. 15), pp. 66-8; Mārī b. Sulaymān, *Akhbār faṭārika* (see n. 15), pp. 75-6. Among modern studies, see W. Wright, *A Short History* (see n. 15), pp. 216-8; J. Dauvillier, 'Chaldéen (droit)' (see n. 13), pp. 348-9; Ed. A. Vööbus, *Syriac and Arabic Documents Regarding Legislation Relative to Syrian Asceticism* (Stockholm, 1960), p. 189; W. Selb, *Orientalisches Kirchenrecht*, vol. 1 (see n. 15), p. 178.

and Sentences (*Qānūnē w-nāmūsē w-psāq dīnē*),[23] probably written while he was Catholicos, and submitted to a synod for approval.[24]

These two books reveal that oath-taking was discussed at the turn of the ninth century. Timothy, for his part, totally condemns the judicial oath. He asserts that a Christian must never swear (*nīmē*) nor ask someone to swear (*nawmē*) and regards any breach of this double rule as a sin.[25] Conversely, not only does Ishoʿ bar Nūn accept the judicial oath, but he also repeatedly recommends it. If a man dies intestate and highly indebted, the jurist commends that his creditors, in addition to proving their rights by providing documents and witnesses, 'eventually swear that they have not been repaid any part of their money'.[26] Without the dead debtor, proving the existence of a debt is not enough; it is also necessary to prove that the debt has not been repaid (or that no guarantee has been given), and the claimants' oath is the only possible manner to accomplish this. This rule also applies when a person who died intestate has left partners with whom he shared a property, of which his heirs can only claim a portion. If the heirs doubt the truth of the partnership, the partners should take an oath—or alternatively, an anathema can be pronounced against them.[27] In all these cases, the claimant takes the oath. According to Ishoʿ bar Nūn, an oath can also compensate for the absence of any evidence provided by the plaintiff. If someone accuses another of having received a deposit (*gūʿlānā*) from him but cannot prove it through witnesses, the defendant may be asked to take an oath.[28]

Thus, we can note a tension between, on one side, Timothy who remained faithful to the tradition of the Gospels by his absolute condemnation of oath-taking, and, on the other, Ishoʿ bar Nūn who advocated oath-taking, either in addition to other evidence, or as self-sufficient proof. Perhaps because he was aware this violated the Gospels, Ishoʿ bar Nūn considered in certain circumstances replacing the oath with a conditional anathema (*ḥārmā*, *lūṭtā*) on the party who should have sworn.[29] A curse pronounced by a third party could then replace the swearer's self-curse, which suggests that a prejudice against oath-taking still imbued legal proceedings.

4. Ishoʿbokht and Oath-Taking As a Necessity

With Ishoʿbokht, Metropolitan of Rēv-Ardashir in Fārs,[30] the definition of legal procedures in the East-Syrian community reached a hitherto unknown degree of systematization. His *Book of laws* or *of judgments* (*Maktbānūtā d-ʿal dīnē*)[31] is structured around six chapters, the last of

[23] *Syrische Rechtsbücher* (see n. 3), vol. 2, p. 120. See also H. Kaufhold, 'Sources of Canon Law' (see n. 14), p. 306.
[24] ʿAmr b. Mattā, *Akhbār faṭārika* (see n. 15), p. 67. See also *Syriac and Arabic Documents* (see n. 22), p. 189.
[25] *Syrische Rechtsbücher* (see n. 3), vol. 2, p. 108 (§ 80). Cf. H. Kaufhold, 'Der Richter in den syrischen Rechtsquellen. Zum Einfluβ islamischen Rechts auf die christlich-orientalische Rechtsliteratur', *Oriens Christianus*, 68 (1984), pp. 91-113, on p. 93.
[26] *Syrische Rechtsbücher* (see n. 3), vol. 2, p. 154 (§ 82).
[27] *Syrische Rechtsbücher* (see n. 3), vol. 2, p. 155 (§ 83). Cf. Ibn al-Ṭayyib, *Fiqh al-naṣrāniyya* (see n. 12), vol. 1, p. 202.
[28] *Syrische Rechtsbücher* (see n. 3), vol. 2, p. 156 (§ 87). Cf. Ibn al-Ṭayyib, *Fiqh al-naṣrāniyya* (see n. 12), vol. 1, pp. 202-3; vol. 2, pp. 57, 149.
[29] *Syrische Rechtsbücher* (see n. 3), vol. 2, p. 156 (§ 87).
[30] On this city, see J.M. Fiey, 'Diocèses syriens orientaux du Golfe Persique', in *Communautés syriaques en Iran et Irak des origines à 1552* (London, 1979), pp. 177-219, on p. 179 *sq*.
[31] *Syrische Rechtsbücher* (see n. 3), vol. 3, pp. 1-201. N. Pigulevskaja found alternative titles in the text: *Ktābā d-dīnē* (*The Book of Laws*), *Ktābā d-ʿal gzārdīnē* (*The Book of Legal Solutions*), *Gzārdīnē* (*Legal Solutions*).

which is entirely devoted to procedural law.[32] Unfortunately, it is difficult to date precisely this treaty, for its author is poorly known. The date of his death does not appear in the sources, and modern historians believe he wrote in the late eighth or early ninth century—around the year 800.[33] He was presumably appointed as metropolitan by Catholicos Ḥnānīshoʿ II (r. 773-780),[34] and was probably active during the first part of Timothy I's reign. Ishoʿbokht originally wrote his book in Pahlavi/Middle Persian and the title page of the manuscript edited by Sachau mentions that Catholicos Timothy ordered the Syriac translation.[35]

From a strictly chronological point of view, Ishoʿbokht's book probably predates those of Timothy and Ishoʿ bar Nūn. Yet, in many respects, it appears to be a more accomplished theoretical systematization. The author, who seems to have received a solid education in philosophy,[36] wrote an original and largely pragmatic work. Regarding procedures, Timothy and Ishoʿ bar Nūn's books remain highly dependent on earlier synods and the legal issues they address case by case seek to clarify or supplement traditional canonical legislation. For his part, Ishoʿbokht needed to manage provincial ecclesiastical administration and had to meet his flock's daily concerns. Therefore, while drawing on East-Syrian canon law, his 'synthesis'[37] also incorporates many specific rules from the Zoroastro-Sassanid tradition, still very much alive at his time on the Iranian plateau, as well as rules from Syro-Roman law and legal solutions adopted by Muslims.[38] In some respects, his pragmatism can be compared to Ḥnānīshoʿ I's a century earlier—with the difference that his book offers an unprecedented degree of systematization.

As we saw, oath-taking was still controversial in the late eighth century, between Timothy who irremediably condemned it, and Ishoʿ bar Nūn who recommended it in certain circumstances. For his part, Ishoʿbokht is fully aware of the usefulness of such evidence in court proceedings and undertakes to justify it:

> Regarding oaths, Moses gave the following law: "You shall not swear falsely" (Lev. 19:12). Then our Lord commanded: "Make no oath at all!" (Matt. 5:34). As for us, however, for reason of necessity (*ananqī*), we sometimes prescribe the use of oaths. It does not mean that we oppose the command of our Lord. Paul the Apostle himself did not oppose our Lord

N. Pigulevskaja, *Les villes de l'État iranien aux époques parthe et sassanide. Contribution à l'histoire sociale de la Basse Antiquité* (Paris-La Haye, 1963), p. 109.

[32] *Syrische Rechtsbücher* (see n. 3), vol. 3, pp. 182-201. See H. Kaufhold, 'Der Richter' (see n. 25), p. 94.

[33] R. Duval, *La littérature syriaque* (Paris, 1907), p. 171; J. Dauvillier, 'Chaldéen (droit)' (see n. 13), p. 340; W. Selb, *Orientalisches Kirchenrecht*, vol. 1 (see n. 15), p. 177. Ishoʿbokht wrote also geography books. R. Duval, *La littérature syriaque*, p. 280.

[34] J. Dauvillier, 'Chaldéen (droit)' (see n. 13), p. 340.

[35] *Syrische Rechtsbücher* (see n. 3), vol. 3, p. 2. See also Sachau's introduction, *ibid*., pp. IX, XV; J. Dauvillier, 'Chaldéen (droit)' (see n. 13), p. 340; N. Pigulevskaja, *Les villes de l'État iranien* (see n. 31), p. 106. On Ishoʿbokht, see also R. Hoyland, *Seeing Islam* (see n. 18), pp. 205-9; H. Kaufhold, 'Sources of Canon Law' (see n. 14), p. 305. On the use of Pahlavi in Christian communities of the oriental coast of the Persian Gulf, see F. Briquel Chatonnet, 'L'expansion du Christianisme en Arabie: l'apport des sources syriaques', *Semitica et Classica*, 3 (2010), pp. 177-187, on p. 181.

[36] J. Dauvillier, 'Chaldéen (droit)' (see n. 13), p. 340.

[37] Ibid.

[38] C.A. Nallino, 'Sul Libro siro-romano e sul presunto diritto siriaco', in *Raccolta di scritti editi e inediti. Vol. IV, Diritto musulmano, diritti orientali cristiani* (Rome, 1942), pp. 513-584, on p. 573; J. Dauvillier, 'Chaldéen (droit)' (see n. 13), p. 341.

when he said that "men swear by One greater than themselves, and with them an oath given as confirmation is an end of every dispute" (Heb. 6:16).

Our Lord did not institute this rule for worldly affairs, nor for judges dispensing justice in this type [of dispute]. You can see that He commanded: "Whoever slaps you on your right cheek, turn the other to him also. If anyone wants to sue you and take your shirt, let him have your cloak also!" (Matt. 5:39-40). This does not mean that, if a man comes to us and complains that another slapped him, we order him to turn the other cheek. Nor that we order someone who was taken his shirt to give his coat. Indeed, our Lord prescribed this rule to His apostles, who were perfectly aware of all the affairs of this world, and to whom He also asked to carry their cross and follow him.[39]

[This rule] is offered to the will of those who wish to approach absolute perfection. The same applies when He recommends: "Make no oath at all!" [This injunction] does not mean that it is forbidden [to swear] during lawsuits between men, for it would be impossible to complete these lawsuits without using oaths. He addressed this recommendation to His disciples because they were fair and did not need to resort to oaths. They said what was as it was, and what was not as it was not.

However, because we deal with worldly matters in courts, for our part we cannot do without oaths when dispensing justice among human beings. Therefore, we need to admonish litigants as much as possible: we [ask them] not to take or administer the oath if they can avoid it, to reconcile and to behave with integrity during the trial. A plaintiff who sues his fellow often inclines to ask him to take the oath. We advise him to avoid asking him to swear, as much as possible, and to bear the injustice that was done to him, confident in God's retribution. However, if the judge wishes [to use the oath], we do not prevent him from doing so.

As for the defendant, we cannot often forbid him to take the oath. Indeed, [his adversary] often demands of him something that is above his strength, or that he does not understand. Even to him, we recommend whenever possible not to swear. If there is no alternative, however, we do not oppose his right [to take the oath].[40]

Although the oath is morally wrong in theory, it is nonetheless essential to the good functioning of the judicial system. Here Ishoʿbokht uses the concept of 'necessity' (*ananqī*), equivalent to *ḍarūra* that developed in Islam.[41] Judicial practice required adopting pragmatic solutions, even if they failed to follow God's dictate.

According to Ishoʿbokht, the oath must then be accepted as evidence if the claimant cannot produce witnesses or documentary evidence,[42] or, in some cases, when presumptions are not

[39] Cf. Simeon of Rēv-Ardashir in *Syrische Rechtsbücher* (see n. 3), vol. 3, p. 213.

[40] *Syrische Rechtsbücher* (see n. 3), vol. 3, pp. 197-8 (§§ 1-5). Cf. Ibn al-Ṭayyib, *Fiqh al-naṣrāniyya* (see n. 12), vol. 2, p. 72.

[41] See Y. Linant de Bellefonds, 'Ḍarūra', *EI²*, vol. 2, p. 163. The concept of *ḍarūra* was already in use in Muslim legal sources from the late second/eighth century. See for example al-Shaybānī, *Kitāb al-aṣl al-maʿrūf bi-l-Mabsūṭ*, éd. Abū al-Wafā' al-Afghānī (Beirut, 1990), vol. 2, pp. 483, 497; vol. 3, p. 34. Note that in the eleventh century, Ibn al-Ṭayyib translates *ananqī* by *ḍarūra*. Ibn al-Ṭayyib, *Fiqh al-naṣrāniyya* (see n. 12), vol. 2, p. 72.

[42] *Syrische Rechtsbücher* (see n. 3), vol. 3, p. 198 (§ 6). An oath was also required when a strong presumption neutralized documentary evidence, as in a case when a property dispute pitted a claimant who presented authentic documents against a defendant who had been in possession of the property for more than fifty years. A long possession represented a strong presumption in favor of the defendant, who could take an oath that outweighed the documentary evidence. *Syrische Rechtsbücher* (see n. 3), vol. 3, p. 198 (§ 8).

irrefutable.[43] In theory, Ishoʿbokht recommends administering the oath first to the defendant who may, in turn, ask the judge to refer it to the plaintiff.[44] In some cases, however, the burden of oath could not be shifted to the other litigant, e.g., when a deposit's custodian was brought to court after losing the deposit (due to his own negligence or to others' mischief, such as a theft). In the absence of witnesses in such a situation, the judge could only ask the defendant to swear to his honesty.[45]

In practice, the oath could be administered either to the plaintiff or to the defendant, depending on the case. When a husband accused his wife of adultery without evidence, the husband (plaintiff) needed to take an oath only if his wife had a bad reputation, otherwise the wife (defendant) had to swear.[46] If a husband claimed that his wife was no longer a virgin at the time of the marriage, the burden of oath was upon the wife (defendant).[47] In case of a dispute over a property, the oath could indistinctly be administered to one party or the other.[48] As a rule, the oath-taker was not chosen according to his role in the lawsuit (plaintiff or defendant), as in classical Islamic law, but according to presumptions: the party that was most likely to tell the truth was called to swear, and the oath was shifted only if the first party refused to take it.[49]

To Ishoʿbokht, oath-taking took on the appearance a Christian ritual. When a husband claimed his wife was no longer a virgin at the time of the marriage, she could be asked to take an oath in church, 'before the holy altar (*madbḥā*),[50] the Gospels and the sign of the cross'.[51] This jurist thus recognized oaths as part of East-Syrian judicial procedures.

CONCLUSION

This examination of canonical literature suggests that *episcopalis audientia* judicial proceedings as practiced in East-Syrian Christianity evolved with the Muslims' arrival. Sassanid-era jurists advocated a literal reading of Jesus's injunction in the Gospel of Matthew forbidding oaths. In practice, things were perhaps more complicated, but legal theory refused

[43] See for example *Syrische Rechtsbücher* (see n. 3), vol. 3, p. 80. Presumptions could be sufficient to result in a judgment. In case of ownership disputes, for example, it is thus only in the absence of presumptions allowing 'a clear appreciation/knowledge (*qriḥāyt*)' of the truth that a judge must require an oath. *Syrische Rechtsbücher* (see n. 3), vol. 3, p. 190 (§ 2).

[44] *Syrische Rechtsbücher* (see n. 3), vol. 3, p. 198 (§ 6). Cf. Ibn al-Ṭayyib, *Fiqh al-naṣrāniyya* (see n. 12), vol. 2, p. 70. When a defendant confesses that he owes something but pretends he has already given it, the roles are reversed (the defendant claims something) and the oath is deferred to his adversary. *Syrische Rechtsbücher* (see n. 3), vol. 3, p. 198 (§ 7); see also vol. 3, pp. 198-9 (§§ 8-9)—where an oath is mostly deferred to the defendant.

[45] *Syrische Rechtsbücher* (see n. 3), vol. 3, p. 200 (§ 10). Cf. Ibn al-Ṭayyib, *Fiqh al-naṣrāniyya* (see n. 12), vol. 2, p. 71.

[46] *Syrische Rechtsbücher* (see n. 3), vol. 3, p. 64.

[47] Ibid., p. 80.

[48] Ibid., p. 190 (§ 2). Cf. Ibn al-Ṭayyib, *Fiqh al-naṣrāniyya* (see n. 12), vol. 2, p. 68.

[49] Transposed into Islamic law, this rule would amount to making the defendant swear in priority. Indeed, the defendant's possession of the object of the dispute (the claim of the object being made by someone who does not possess it) made it more likely that he was the owner. See for example al-Jaṣṣāṣ, in al-Khaṣṣāf, *Kitāb Adab al-qāḍī*, ed. Farḥāt Ziyāda (Cairo, 1978), p. 393.

[50] Note that *madbḥā* can also designate a church's apse. See E.A.W. Budge, in Thomas of Margā, *The Book of Governors*, vol 2. (London, 1893), p. 431.

[51] *Syrische Rechtsbücher* (see n. 3), vol. 3, p. 80. In the Arabic version of the life of Egyptian bishop Pisentius (d. 631), revised in Islamic times, a woman accused of adultery is asked as an ordeal to drink holy oil in front of the cross. De Lacy O'Leary, 'The Arabic Life of S. Pisentius', *Patrologia Orientalis*, 22 (1930), pp. 315-488, on pp. 440-1.

to let this dogma go. Tensions between theory and practice appear particularly at the end of the eighth century, in Catholicos Timothy and Ishoʿ bar Nūn's books. While the first is still reluctant to admit oath-taking, the latter seems ready to accept it. This development finds its highest expression in the work of Ishoʿbokht, who not only recognizes the use of an oath, but also provides it theoretical foundations by assessing the historical significance of Jesus's requirements and by appealing to the concept of necessity.

The gradual acceptance of oath-taking by East-Syrian Christians may have been motivated by the need to adapt to the new context. Since the seventh century, oaths played an essential role in Muslim courts as forensic evidence.[52] Christians involved in litigation with Muslims had to appear before Muslim judges. Depriving them of this evidence type would have severely undermined their ability to defend their rights.

To what extent can we also consider this evolution a result of intellectual interactions between East-Syrians and Muslims? It should be noted that Ishoʿbokht justifies his position by using the concept of necessity (*ananqī*), echoing *ḍarūra*, on which Muslim jurists began to rely during the same period. Moreover, Ishoʿbokht's theory on oath—even if it partially differs from practical cases he exposes—is consistent with Islamic law. Those of his predecessors who tolerated the oath ignored the litigants' positions and administered the oath indifferently to the plaintiff or the defendant—albeit with a certain preference for the plaintiff in Ishoʿ bar Nūn's work. Ishoʿbokht makes a sharper distinction between the two by placing the burden of the oath on the defendant, corresponding exactly to Muslim jurists' teaching on this subject since the first half of the eighth century.

It is impossible to prove that Muslim legal doctrine or practice in courts inspired Ishoʿbokht's doctrine. However, once using judicial oath was accepted it needed to be inserted into a theoretical framework that canonical tradition could not provide. It is therefore likely that Ishoʿbokht's pragmatism prompted him to search for a model in the dominant, Islamic system, which enabled his flock to better defend their interests before Muslim institutions.

Abstract: From the seventh century C.E. on, canonical East-Syrian law developed in the shadow of Islamic rule as Islamic courts imposed new standards for dispute resolution. Yet, interactions between Muslim practices and East-Syrian law in the first centuries of Islam remain little studied. This article examines the evolution of East-Syrian canon law regarding oath-taking up to the early ninth century. It argues that formal oath prohibition, formulated by canon law based on the Gospel of Matthew, became controversial among jurists. At the end of the eighth and the beginning of the ninth century, Ishoʿ bar Nūn authorized this procedure, while Ishoʿbokht gave it theoretical foundations by assessing the historical significance of Jesus's requirements and by appealing to the concept of necessity. The integration of oath-taking into the East-Syrian judicial process can therefore be interpreted as a response to its widespread use in Islamic courts, allowing Christians to better defend their cases.

Keywords: East-Syrian canon law; Islamic law; courts; judicial procedures; oath; Iraq; Iran; Catholicos.

[52] M. Tillier, *L'invention du cadi*, p. 321-348.