

# Muslims in canon law, 650-1000

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Scholars have devoted considerable attention to the place of Christians and Jews in Islamic law (see the following essay), as well as to the place of Jews in Christian legal literature. References to Muslims in Christian legal sources have not received comparable treatment. The present essay seeks to remedy this situation by surveying all such references dating from the seventh to the tenth centuries.<sup>1</sup> For reasons that will become clear in the paragraphs that follow, however, this essay doubtless falls short of the comprehensive coverage to which it aspires.

Canon law, the religious law of the Church, is an amorphous body of normative literature whose contents and contours differ from one Christian community to the next. Each major branch of Christianity developed its own corpus of canon law literature, in languages as varied as Latin, Greek, Syriac, Armenian, and Coptic. Many Greek texts from the first Christian millennium entered into Latin and Syriac legal corpora, but for the most part theological and linguistic divides prevented the dissemination of normative texts from one branch of Christianity to another. This essay focuses primarily on legal literature in Latin, Greek, and Syriac, which is to say the canon law of the Roman Catholic, Greek Orthodox (Chalcedonian), Syrian Orthodox (Jacobite), and Church of the East (Nestorian) traditions. The fact that other branches of Christianity receive less attention reflects both the author's linguistic limitations and the emphases of canon law scholarship more broadly.

Medieval Catholic authorities define the authoritative sources of canon law as scripture, normative statements of Church Fathers, canons promulgated by councils of bishops, and papal decrees. Normative statements by other ecclesiastical authorities, frequently in the form of *responsa*, figure prominently in the Eastern canon law traditions, and secular laws, especially from the Roman Empire, sometimes enter into

<sup>1</sup> On Muslims in Eastern (Greek and Syriac) canon law literature from 1000-1500, and Muslims in Western (Latin) canon law literature from 1000-1500, see later volumes.

canon law as well. Not every normative statement from an authoritative source, however, found its way into compilations of canon law; the classification of such statements for academic purposes as falling within or beyond the bounds of canon law depends on a decision by the researcher compiling these statements. The present study includes references to a few such normative statements, but for reasons of sheer practicality focuses primarily on material found in legal compilations.

For the same reason, this survey focuses almost exclusively on texts that exist in modern printed editions, thus ignoring a considerable proportion of canon law literature.

It is not always evident that any given statement about non-Christians in canon law refers specifically to Muslims. In addition to using such terms as 'Saracens', 'Hagarenes', and 'Arabs', Christian authorities regularly refer to Muslims as 'pagans', 'gentiles', and 'barbarians'; the latter terms, of course, are also used with reference to other non-Christian communities.<sup>2</sup> The variety and imprecision of these references further complicates efforts towards comprehensive coverage, even with the aid of digital search engines and prior surveys.<sup>3</sup> The present survey includes all canon law statements known to its author that plausibly refer to

<sup>2</sup>In Latin legal sources, the predominant term for Muslims is *sarracen*\* (sometimes *saracen*\*), although *agaren*\* is also attested. Latin canon law sources also refer to Muslims as *pagan*\*. Greek sources similarly employ *sarakēn*\*; the term *hagarēn*\* is unattested in legal literature from the period 650-1000 but appears in non-legal sources from this period and in later legal texts. The Greek term *barbar*\* is also employed in reference to Muslims, as is *ethnik*\* ('gentile'). Syriac sources make no use of the term 'Saracen', employing *mḥaggrā*\* ('Hagarene' or simply 'Muslim') instead.

These sources often refer to Muslims as *ḥanp*\* (translated in this essay as 'pagan', although 'gentile' is also appropriate) and, in canons that address Muslims in their capacity as overlords, as *ṭā yṡā*\* ('Arab'). On Syriac terms for Muslims, see S.H. Griffith, *Syriac writers on Muslims and the religious challenge of Islam*, Kottayam, 8-14.

Terminology that refers to Muslims is inconsistent even within texts ascribed to an individual author. Pope Hadrian I, for example, refers to Muslims as Saracens, Hagarenes, and pagans in different letters; see W. Gundlach (ed.), *Codex Carolinus*, in E.L. Dümmler et al. (eds), *Epistolae Merowingici et Karolini aevi*, 6 vols, Berlin, 1892 (MGH *Epistolae* 3), i, pp. 584, 588-89, 636, 643. All these letters are discussed in M. Rouche, 'Le pape face à l'islam au VIII<sup>e</sup> siècle', *Mélanges de la Casa de Velázquez* 32 (1996) 205-16; several are also addressed later in this essay.

<sup>3</sup>Electronic search engines employed in the preparation of this study include the *Library of Latin texts*, MGH and the *Thesaurus linguae Graecae*. In addition, the author conducted full-text searches of the *Decretum* of Gratian, ed. E. Friedberg, *Corpus iuris canonici*, 1879-81, i (electronic resource publicly available online through Columbia University Libraries); the *Decretum* of Ivo of Chartres, *Patrologia Latina* database, 161; and the *Decretum* of Burchard of Worms, *Patrologia Latina* database, 140.

Muslims, while consistently indicating the precise term used for the non-Christians in question; it does not include laws that reflect an Islamic milieu but contain no direct reference to Muslims.<sup>4</sup>

Two distinctions derived from the study of Jews in canon law literature and non-Muslims in Islamic legal literature further our own terminological precision when examining references to Muslims in Christian sources. Scholars of Christian attitudes toward Judaism helpfully distinguish between 'Jewish law', laws that developed within the Jewish tradition, and 'Jewry law', Christian laws relating to Jews.<sup>5</sup>

Similarly, we ought to distinguish 'Islamic law' from 'Saracen law'; this essay focuses exclusively on the latter, whereas the essay that follows addresses the former. Nurit Tsafrir, in her study of Islamic law regarding non-Muslims ('*dhimmī* law'), draws a further distinction between regulations imposed upon non-Muslims (e.g., clothing that Christians must wear) and regulations that apply to Muslims themselves (e.g., Christian food that Muslims may not eat).<sup>6</sup> This distinction between what we may call 'imposed law' and 'reflexive law' also exists within Christian Jewry law. Christian Saracen law from the seventh to the tenth centuries, in contrast, is exclusively reflexive in its orientation.

This orientation, while unsurprising in light of the political dynamics of the period under consideration, is significant nevertheless because it highlights the fact that Christian authorities felt a need to respond to – and erect internal defenses against – perceived threats posed by Muslims. Only in later centuries do some Christian authorities seek to impose Saracen law onto Muslims themselves.

These collections from the mid-twelfth, early twelfth, and early eleventh centuries respectively, preserve a large number of canons from earlier centuries. When a canon appears in more than one of them, generally only the latest collection is cited here.

Of particular value for the study of Eastern sources are M. Penn, 'Syriac sources for the study of early Christian-Muslim relations', *Islamochristiana* 29 (2003) 59-78; Hoyland, *Seeing Islam*; A. Voobus, *Syrische Kanonensammlungen. Ein Beitrag zur Quellenkunde*, Louvain, 1970.

<sup>4</sup> The author would be grateful to receive information about relevant sources absent from this survey, and wishes to thank Robert Somerville for his comments on an earlier draft of the essay.

<sup>5</sup> On this terminological distinction, see G. Kisch, *The Jews in medieval Germany. A study of their legal and social status*, Chicago IL, 1949, p. 7.

<sup>6</sup> N. Tsafrir, *Yahas ha-halakhah ha-muslemmit kelapei datot aherot: Inyanei sheitā h ve-nisu in*, Jerusalem, 1988 (MA Diss. The Hebrew University), p. 2. Tsafrir applies the term '*dhimmī* law' solely to laws imposed on non-Muslims.

Christian Saracen law of the seventh to the tenth centuries may be divided into two broad categories: laws that respond to Muslims as bearers of power, and laws that seek to regulate interaction between Christians and Muslims. Laws in the former category treat Muslims in political terms, as invaders or overlords; laws in the latter category treat Muslims in religious terms, as non-Christians most often imagined to be pagans. A subset of the latter category addresses situations in which a person or object crosses the border between these two religions.

This essay surveys each of these categories in turn and concludes with a brief comparison of the places occupied by Muslims and by Jews in early medieval canon law.

Muslims as bearers of power: Invaders and overlords Christians first encountered Muslims as invaders. Bishops convened in Constantinople by Justinian II at the Council in Trullo of 692 respond to these 'barbarian invasions' in several canons. They reiterate the requirement that bishops meet annually in provincial synods while acknowledging that barbarian incursions may prevent more frequent gatherings (c. 8), they demand that clerics who fled their churches in the wake of barbarian incursions return to their posts once the situation has calmed down (c. 18), and they praise John, Bishop of Cyprus, for migrating with his community to Christian territory because of 'barbarian attacks', thus freeing themselves 'from slavery to the gentiles [*ethnikēs . . . douleias*]' (c. 39).<sup>7</sup> The Fourth

<sup>7</sup> Text: H. Ohme (ed.), *Das Konzil Quinisextum*, Turnhout, 2006 (with introduction and German trans.); 'The canons of the Council in Trullo in Greek, Latin and English', in G. Nedungatt and M. Featherstone (eds), *The Council in Trullo revisited*, Rome, 1995, 41-186. On canons 8, 18, and 39, see Ohme, *Konzil Quinisextum*, pp. 126-28, 135; F.R. Trombley, 'The Council in Trullo (691-692). A study of the canons relating to paganism, heresy, and the invasions', *Comitatus* 9 (1978) 1-18, pp. 11-13. Although a number of the canons from the Council in Trullo entered into the Latin canon law tradition, these canons were not among them; see P. Landau, 'Überlieferung und Bedeutung der Kanones des Trullanischen Konzils im westlichen kanonischen Recht', in Nedungatt and Featherstone, *The Council in Trullo revisited*, 215-27.

Canon 39 clearly relates to the Arab conquest of Cyprus, but Muslims were not the only 'barbarians' to attack Byzantine territories in the seventh century; the authors of these canons may also have Slavic invaders in mind.

The Council in Trullo is closely associated with the Third Council of Constantinople (680-81). The proceedings of that council, which did not produce its own set of canons, include the text of a letter by Sophronius, Patriarch of Jerusalem (d. 638)

Council of Constantinople (86-120) similarly acknowledges 'pagan invasions', along with illness, as valid grounds for a bishop to ignore the summons of his patriarch.<sup>8</sup>

Christian authorities in Latin Europe also responded to the military threat posed by Muslim invaders.<sup>9</sup> Several of these responses appear in Gratian's *Decretum* (c. 1140), the most authoritative collection of early medieval canon law within the Catholic tradition.<sup>10</sup>

St Boniface, in a letter dated to 74-127, attributes the Saracen invasion of Spain, Provence, and Burgundy to the loose sexual mores of Christians in those regions, and he warns Christians in England and elsewhere to avoid the same fate.<sup>11</sup> An account by Pope Leo IV (r. 847-55), describing his evacuation of the Christian population of Rome in the face of the Saracen sack of 846, appears in the *Decretum* as an exemplar of how priests ought to eschew the use of armed force (C. 23 q. 8

(q.v.), describing the Saracen conquest of that city, and a call for an immediate attack on the 'impious Saracens'; text in R. Riedinger (ed.), *Concilium universale Constantinopolitanum tertium* (*Acta conciliorum oecumenicorum*, series 2, ii.1-2), Berlin, 1990, pp. 492, 614. The Lateran Council of 649 also cites part of a letter by Sophronius, and the closing prayer of its third session seeks divine salvation from 'the tyranny of the powerful, the insolence of the Persians, and, especially, the arrogance of the Saracens'; text in R. Riedinger (ed.), *Concilium Lateranense a. 649 celebratum* (*Acta conciliorum oecumenicorum*, series 2, i), Berlin, 1984, pp. 40, 172.

<sup>8</sup> G. Alberigo et al. (eds), *Decrees of the Ecumenical Councils*, trans. N.P. Tanner, London, 1990, p. 180. The canons of this council, originally produced in Greek, survive in full only in a contemporary Latin trans.

<sup>9</sup> The trope of Saracens as enemies of the Christians appears several times in Carolingian legal literature. See the capitulary of the Holy Roman Emperor Lothair I regarding a military expedition against 'the enemies of Christ, the Saracens and Moors' (October 846), in A. Boretius and V. Krause (eds), *Capitularia regum Francorum*, 2 vols, Hannover, 1883-97 (*MGH Leges* 2), ii, pp. 65-68. Louis the Pious (in 815 and 816) and Charles the Bald (in 844) both refer to the 'most cruel' Saracens in the prefatory remarks that accompany legal texts addressed to Christian refugees from Spain; see i, pp. 261-64; ii, pp. 258-60.

<sup>10</sup> The first portion of the *Decretum* consists of 'distinctions' (D.) and canons (c.), while the second portion consists of hypothetical legal 'cases' (C.), 'questions' associated with those cases (q.) and canons; the citations that follow refer to this organizational structure.

<sup>11</sup> D. 56 c. 10; the complete letter appears in M. Tangl (ed.), *Die Briefe des heiligen Bonifatius und Lullus*, Berlin, 1916 (*MGH Epistolae selectae* 1) pp. 146-55; E. Emerton (trans.), *The letters of Saint Boniface*, 1940, 102-8. Similarly, Pope Zachariah I warned the Franks in 745 that they would not succeed in defeating their pagan enemies until their priests, following Boniface's teachings, cleansed themselves of unchastity and ceased serving as soldiers (Tangl, pp. 125-27; Emerton, pp. 89-91). On these letters, see Rouche, 'Le pape', p. 211.

c. 7). Other canons justify the use of such force. Among the numerous acts of penance which Pope Nicholas I (r. 858-67) imposes upon those who kill members of their own family, such individuals may not bear arms; an exception, however, is granted to those who bear arms against pagans.<sup>12</sup> Nicholas is also lenient regarding clerics who, in self-defense, kill pagans (D. 50 cc. 5-6).<sup>13</sup> Similarly, Pope Stephen V (r. 885-91) excuses Christians who commit murder while in Saracen captivity (D. 50 c. 38).

The presence of Muslim political authorities in close geographical proximity to Latin Christian communities prompted Nicholas to remind priests to assign acts of penance judiciously, lest sinners 'in desperation' flee to pagan territory.<sup>14</sup> In Iraq, Muslim political authority posed more imminent concerns. The synod convened in 676 by George I, Catholicos of the Church of the East, instructed Christians awaiting judgment not to turn to judges from outside the Church (c. 6).<sup>15</sup> The Metropolitan Timothy I (d. 823) (q.v.) cites the fact that

<sup>12</sup> Ivo of Chartres, *Decretum*, Book 10, cc. 33, 163, 173, 180. Gratian's *Decretum* contains Ivo's c. 173 (C. 33 q. 2 c. 15), which refers solely to matricide. Ivo ascribes c. 163, the only one of these canons not authored by Nicholas I, to the Council of Tribur (895), but a footnote in Migne's text notes that this canon was first promulgated at 'the Council of Worms'; there were several such councils, one of which took place in 866, during Nicholas' reign. Canon 175, also ascribed to the Council of Tribur, addresses the proper penance for accidentally killing Christian captives in the course of attacking their pagan captors. Ivo's *Decretum* also includes two statements ascribed to Pope John VIII (r. 872-82) exhorting armed resistance to Saracens; these canons (Book 10, cc. 68, 71) constitute examples of licit homicide.

The *Decretum* of Burchard of Worms cites several of the canons that appear in Ivo's later compilation. Burchard also incorporates Nicholas' exception to the prohibition against bearing arms into his *Corrector*, a brief penitential manual within the *Decretum* (Book 19, ch. 5; PL 140, col. 953).

<sup>13</sup> Nicholas was actively involved in missionary efforts among the Bulgars, whom he may have in mind in addition to or instead of Muslims in this canon and those discussed in the prior note.

<sup>14</sup> C. 26 q. 7 c. 3; this canon is an extract from a letter written in 864 to a bishop in Aquitaine.

<sup>15</sup> J.B. Chabot, *Synodicon orientale*, Paris, 1902, pp. 219-20; trans. (French) pp. 484-85. Also noteworthy in this context is c. 19 (pp. 225-26/489-90), which instructs Christians responsible for collecting the poll tax and other tributary payments on behalf of Muslim overlords not to exact such payments from bishops. On these texts, see Hoyland, *Seeing Islam*, pp. 193-94; M.G. Morony, 'Religious communities in late Sasanian and early Muslim Iraq', *Journal of the Economic and Social History of the Orient* 17 (1974), pp. 125-28 (repr. in R. Hoyland (ed.), *Muslims and others in early Islamic society*, Aldershot UK, 2004); and the entry 'Ghiwargis I' in this volume. Hoyland, *Seeing*

Christians turn to foreign courts, claiming that they cannot resolve their disputes within the Church, as a reason for promulgating a new collection of 99 canons; c. 12 explicitly forbids recourse to such courts.<sup>16</sup> The Syrian Orthodox Patriarch Ignatius of Antioch (r. 878-83) addresses Christians who, after being assigned appropriate punishments by Christian authorities for their transgressions, ask 'secular rulers, Arab generals, or Christian thugs' to coerce clerics into relaxing these penalties. Ignatius warns such audacious flouters of the law that Jesus will not absolve them of their guilt.<sup>17</sup>

Canonists also address situations in which Muslims interfere in Christian affairs without the solicitation of Christians. The Syrian Orthodox Jacob of Edessa (d. 708) (q.v.), by far the most prolific pre-1000 legal authority on the subject of Muslims, responds leniently to a query regarding a cleric who, pressed into the defense of a besieged city by its Arab rulers, kills one of the invaders scaling the walls.<sup>18</sup>

*Islam*, p. 194, n. 70, notes that an unedited canon by Jacob of Edessa also exhorts Christians not to use secular authorities or pagans as judges; an abridged version of this canon, referring to clerics who appeal to the judgment of 'outsiders', appears in A. Voobus (ed.), *The Synodicon in the West Syrian tradition*, 2 parts in 4 vols, Louvain, 1975 (CSCO 367-68, 375-76), i/1, p. 272 (ed.), i/2, p. 247(trans.), c. 24.

<sup>16</sup> 'Canones Timothei', in J. Labourt, *De Timotheo I Nestorianorum patriarcha*, Paris, 1904, pp. 52, 57-58. A. Fattal, 'How dhimmīs were judged in the Islamic world', in Hoyland, *Muslims and others in early Islamic society* (trans. of 'Comment les Dhimmis etaient juges en terre d'islam', *Cahiers d'histoire egyptienne* 3 [1951] 321-41) p. 85, observes that Timothy's successor, among other Eastern Christian authorities, excommunicated Christians who turned to Muslim judges.

<sup>17</sup> Canon 4 of the synod convened by Ignatius (878), in Voobus, *Synodicon*, ii/1, p. 53 and ii/2, p. 57(trans.).

<sup>18</sup> Responsum 80 to Addai, as translated from unpublished manuscripts by Hoyland (*Seeing Islam*, p. 606). See also the previous question in which a cleric, out of work and facing hunger, joins a band of soldiers (whose religious affiliation is unidentified) for the duration of the famine; Hoyland does not translate Jacob's answer, but implies on p. 162 that Jacob is lenient in this situation as well. An abbreviated form of responsum 80 appears in Gregorius Barhebraeus, *Nomocanon*, ed. P. Bedjan, Paris, 1898, p. 42; the question and answer, both formulated slightly differently, also appear in Voobus, *Synodicon*, i/1, pp. 268-69 and i/2, p. 244(trans.) as responsum 51. See also Voobus, *Syrische Kanonensammlungen*, p. 279, n. 61.

On these and other responsa by Jacob of Edessa regarding Muslims, see the entry on Jacob in this volume and the bibliography cited there. Jacob of Edessa authored approximately 200 surviving legal responsa, most of which were addressed to Addai, a priest, or to John the Stylite of Litarb. Unfortunately, no single text contains all of these responsa, and numbering consequently differs from one manuscript to the other. Hoyland employs a uniform numbering system incorporating canons from a variety of sources.

In a similarly lenient ruling that may also have Muslim overlords in mind, Pope Stephen V allows those who have been mutilated against their will by Norman captors, slave masters, doctors, or pagans to become priests (Gratian, *Decretum*, D. 55 c. 11).

The canon law collection of Gabriel of Basra (composed 884-91), a metropolitan within the Church of the East, requires the eucharist to be celebrated on an altar but allows for alternatives in periods of oppression; the reign of the 'Abbasid Caliph al-Mutawakkil (r. 847-61) is cited as an example.<sup>19</sup> Jacob of Edessa similarly allows for dispensing with proper ecclesiastical procedure in this regard when one is in 'a town of barbarian pagans' where there is no altar.<sup>20</sup>

Christian-Muslim interaction: Muslims as non-Christians

Ancient spokesmen for Christian orthodoxy conceptualized outsiders as belonging to one of three categories, heretics, Jews, and pagans, although they frequently blurred the distinctions between these groups.<sup>21</sup>

It is unsurprising, therefore, that Christian authorities thinking within traditional categorical boxes regarded Muslims as pagans: they clearly were neither Jews nor heretical Christians. It is also no surprise that

This essay cites both Hoyland's numbers and those found in Voobus' edition of the *Synodicon*, the most accessible and most complete collection of Jacob's responsa.

<sup>19</sup> H. Kaufhold, *Die Rechtssammlung des Gabriel von Basra und ihr Verhältnis zu den anderen juristischen Sammelwerken der Nestorianer*, Berlin, 1976, pp. 286-89 (Syriac with German trans.); see also p. 50. I am grateful to Barbara Roggema for drawing to my attention this and other relevant passages from Gabriel's work.

<sup>20</sup> Responsum 1 in the first letter to John the Stylite found in Voobus, *Synodicon*, i/1, p. 234 and i/2, p. 216 (trans); Hoyland identifies this as 'Letter II' or 'B'. H. Teule, 'Jacob of Edessa and canon law', in R.B. ter Haar Romeny and K.D. Jenner (eds.), *Jacob of Edessa and the Syriac culture of his day*, Leiden, forthcoming, n. 70, states that Jacob does not refer to Muslims as 'pagans' (*hanpē*); I am grateful to the author for providing a pre-publication copy of this essay. Teule may be correct in general, but I am not convinced that this rule applies in all cases. Manuscript variations occasionally affect the terminology used to refer to non-Christians (an example appears in n. 44 below), and in some cases it is quite possible that Jacob refers to Muslims as 'pagans' because that is the term used in the source underlying Jacob's opinion (see, for example, n. 25 below). This survey therefore includes responsa referring to pagans that could plausibly be directed toward Muslims.

<sup>21</sup> On these categories in the pre-Islamic Near East, see A. Cameron, 'Jews and heretics.

A category error', in A.H. Becker and A.Y. Reed (eds), *The ways that never parted: Jews and Christians in late antiquity and the early Middle Ages*, Tübingen, 2003, pp. 345-60.

even Christians who were familiar with the monotheistic tenets of Islam treated Muslims as equivalent to pagans for legal purposes.

These authorities applied to Christian-Muslim relations the same reflexive restrictions that already existed to regulate Christian-pagan (and Christian-Jewish) relations: Christians may not share meals with non-Christians or consume non-Christian foodstuffs of ritual significance, they may not engage in sexual intercourse with non-Christians, and they may not adopt distinctive practices associated with non-Christian communities.<sup>22</sup>

Precisely because of the continuity between Saracen law and laws regarding other groups of non-Christians, however, it is sometimes impossible to determine with certainty that restrictions articulated in Islamic lands in fact refer to Muslims rather than members of other religious communities. A letter by Athanasius of Balad, Syrian Orthodox Patriarch of Antioch (dated to 684), illustrates this ambiguity.<sup>23</sup>

Athanasius decries the fact that Christian men take part in pagan feasts, that Christian women are sexually intimate with pagans, and that Christians eat the meat of pagan sacrifices; such behavior, Athanasius asserts, contravenes the Apostolic Decree of Acts 15:29. According to a title appended to this letter by an eighth-century copyist, Athanasius refers specifically to 'the sacrifices of the Hagarenes'. It is quite possible that Athanasius himself had Muslims in mind when penning this letter, but we cannot be certain.

Several Christian authorities from the seventh to the tenth centuries rearticulate traditional prohibitions regarding the food of non-Christians in contexts that implicitly or explicitly address Muslims.

Jacob of Edessa affirms the prohibition against Syrian Orthodox clerics sharing meals with heretics but, citing grounds of necessity, he excuses those clerics ordered by heretical rulers to partake of a common meal. Jacob then extends the same exemption to clerics imposed upon them by an 'emir', taking for granted that commensality between

<sup>23</sup> On Athanasius of Balad and this letter, with complete bibliography, see the entry in this volume.

<sup>22</sup> On Christian prohibitions against commensality with non-Christians and the consumption of non-Christian foodstuffs, see D.M. Freidenreich, *Thou shalt not eat with them. Foreigners and their food in Jewish, Christian, and Islamic law*, Berkeley CA, forthcoming, a revision of *Foreign food. A comparatively-enriched analysis of Jewish, Christian, and Islamic law*, New York, 2006 (Diss. Columbia University).

clerics and Muslims is normally forbidden.<sup>24</sup> Jacob does, however, permit Christians to eat the meat of animals which pagans slaughter in non-sacrificial contexts when meat prepared by Christians is unavailable, citing Paul's words on the subject in 1 Corinthians 10:25.<sup>25</sup>

The Armenian Synod of Partaw (768) addresses the proper penance for one who, by accident or out of necessity, consumes the impure meat of 'the impious', a term which in this canon is apparently synonymous with pagans (c. 22).<sup>26</sup> In two letters sent to clerics in Spain, Pope Hadrian I (r. 77-125) (q.v.) bemoans the fact that 'many who call themselves Catholics carry on public life with Jews and unbaptized pagans, sharing in food and drink alike and also straying into error in several ways while saying that they are not defiled'.<sup>27</sup>

Sexual intercourse with non-Christians is a subject addressed frequently by Christian authorities in the lands of Islam. The Nestorian Synod of George I condemns unions with 'pagans' in strong terms (c. 14), as does the Armenian Synod of Partaw (c. 11).<sup>28</sup> George, the Syrian Orthodox Patriarch of Antioch, prohibits marrying one's daughter to a pagan, a Muslim, or a Nestorian, and forbids both

<sup>24</sup> Responsa 56-57 to Addai, in T.J. Lamy, *Dissertatio de Syrorum fide et disciplina in re eucharistica*, Leuven, 1859, pp. 154-57 (with Latin trans.), and A.P. de Lagarde (ed.), *Reliquiae iuris ecclesiastici antiquissimae*, Leipzig, 1856, pp. 139-40; French and German translations of these works are listed in the entry in this volume on Jacob of Edessa. Teule, 'Jacob of Edessa and canon law', understands the issue at hand to be specifically one of association with secular rulers, but see also responsum 53, which offers a similar condemnation of commensality between orthodox and heretical clerics.

<sup>25</sup> Responsum 17 in the second letter to John the Stylite found in Voobus, *Synodicon*, i/1, p. 254 and i/2, p. 232 (trans); Hoyland identifies this as 'Letter I' or 'A'.

<sup>26</sup> I rely here on the translation of A. Mardirossian, 'Les canons du Synode de Partaw (768)', *Revue des Etudes Armeniennes* 27 (1998-2000) p. 126. Mardirossian, p. 131, understands this canon to refer specifically to *ḥalāl* meat. J.P. Mahe raises this as a possibility but seems to prefer to interpret the canon as referring to the meat of animals regarded by Armenian Christians as impure ('L'église arménienne de 611 à 1066', in G. Dagron, P. Riche and A. Vauchez (eds), *Histoire du christianisme des origines à nos jours. Tome IV: Evêques, moines et empereurs (610-1054)*, Paris, 1993, p. 478, n. 278).

<sup>27</sup> Gundlach, 'Codex Carolinus', pp. 636, 643; on this text, see Rouche, 'Le pape', pp. 213-14. Hadrian's concern about commensality with pagans is atypical of Latin authorities from this period, who tend to focus solely on shared meals with Jews. These letters, to the best of my knowledge, did not find their way into canon law literature.

<sup>28</sup> Synod of George I, in Chabot, *Synodicon orientale*, pp. 223-24 (trans., p. 488); Synod of Partaw, in Mardirossian, 'Synode de Partaw', p. 124.

the father who does so and his daughter from entering the church (cc. 12-13).<sup>29</sup> Jacob of Edessa, however, permits offering communion to Christian women who marry Hagarenes, lest they choose to convert to Islam.<sup>30</sup>

In addition to their efforts to prevent commensual sharing and sexual intercourse between Christians and Muslims, Christian authorities in or near Islamic lands sought to prevent their followers from adopting practices deemed to be 'non-Christian'. Justinian II convened the Council in Trullo for the express purpose of uprooting 'any remnant of gentile or Jewish perversity' within the Church;<sup>31</sup> although the canons from this council that refer to pagans do not appear to refer to Muslims, it seems likely that at least some canons from Syriac language synods during our period do have Islamic practices in mind.

Several councils from both the Syrian Orthodox Church and the Church of the East specifically forbid the adoption of pagan funeral customs, and a number of the relevant canons also condemn the adoption of pagan dress or hair styles.<sup>32</sup> It is unclear whether or not

<sup>29</sup> Voobus, *Synodicon*, ii/1, p. 4 and ii/2, p. 5 (trans.). Canon 23 from the synod of Patriarch John III (846) imposes the same penalty for marriage to pagans, Jews, and Magians; see ii/1, p. 44 (trans. ii/2, p. 47). See also responsum 7 of Sewira (c. 850), described in Voobus, *Syrische Kanonessammlungen*, p. 300, n. 7. Pope Hadrian also decries sexual relations with Jews and pagans in the letters cited in n. 27.

<sup>30</sup> Responsum 75 to Addai, translated in Hoyland, *Seeing Islam*, pp. 604-5; see also Barhebraeus, *Nomocanon*, p. 41, trans. in Hoyland, p. 163. Jacob also recommends the imposition of lighter penalties for acts of interfaith adultery if doing so will lead the unbeliever towards faith in Christ; see responsum 69 to Addai, in de Lagarde, *Reliquiae*, p. 143; Lamy, *Dissertatio*, pp. 166-69.

<sup>31</sup> Nedungatt and Featherstone, 'Cannons of the Council in Trullo', p. 53. The 'gentile perversity' which this council addresses includes the swearing of pagan oaths (c. 94) and what in modern times would be considered carnival behavior: keeping bears, causing deception and mischief, fortune-telling, acrobatics, and the like (cc. 61, 71).

<sup>32</sup> Syrian Orthodox prohibitions against the adoption of pagan funeral customs appear in the canons of the Antiochene Patriarchs John III (c. 22), Ignatius (cc. 8-9), and Dionysius II (r. 896-909, c. 23); see Voobus, *Synodicon*, ii/1, pp. 44, 55, 63 and ii/2, pp. 47, 59, 67-68 (trans.). Jacob of Edessa allows Christian women to attend the funeral processions of Jews or 'pagans of harrān' when doing so out of a spirit of love or neighborliness, and raises no objection to the presence of such non-Christians at Christian funeral processions (responsa 62-63 to Addai, in de Lagarde, *Reliquiae*, p. 141; Lamy, *Dissertatio*, pp. 162-63; see also Barhebraeus, *Nomocanon*, p. 70); Jacob does not address Muslims in this context. On Syrian Orthodox prohibitions against pagan customs, see also Voobus, *Syrische Kanonessammlungen*, p. 213. For sources from the Church of the East, see the following note.

these councils had Muslim practices in mind. Of particular interest is Gabriel of Basra's statement on the subject, which singles out, among other practices, hiring a woman 'who is called a *nawwāḥa*' to wail at a funeral. Gabriel employs an Arabic term in an otherwise Syriac text, which may indicate that he regards this practice as common to Muslims; Islamic authorities, however, also condemned this practice as pagan, and it is possible that Christian and Muslim jurists of the period saw themselves fighting a common battle against an entrenched folk custom.<sup>33</sup> Dionysius I (Patriarch of Antioch, r. 817-45) forbids Christians from practicing circumcision, a practice he associates with pagans as well as Jews.<sup>34</sup> A synod convened in southern Italy around the year 900 prohibits clerics and priests from having sex with female slaves, sneering that those who do so 'observe the law and custom of the Hagarenes, whose pseudo-prophet Muameth, who is called by the incorrect name Machameta, is said to have taught that one may licitly enjoy any maid-servant, however she is acquired'.<sup>35</sup>

Jacob of Edessa explains that church doors must be locked during the eucharistic service lest Hagarenes mock the holy mysteries,<sup>36</sup> though he allows and even encourages priests to offer blessed objects to Hagarenes and pagans in need of healing, explaining in one version of this responsum that these objects constitute a demonstration of Christianity's power.<sup>37</sup> Jacob also allows priests to teach the children of Hagarenes when necessity demands.<sup>38</sup>

<sup>33</sup> Kaufhold, *Rechtssammlung des Gabriel von Basra*, pp. 294-97; Kaufhold suggests that Gabriel here paraphrases canons 9 and 18 of the Synod of George I (Chabot, *Synodicon orientale*, pp. 221-22, 225; trans. pp. 486, 489). On Islamic attitudes towards this practice, see T. Fahd, art. 'Niyāḥa' in *El2*.

<sup>34</sup> Canon 5 of Dionysius' synod of 817, in Voobus, *Synodicon*, ii/1, p. 30 and ii/2, p. 33 (trans.).

<sup>35</sup> *Capitula Casinensia*, c. 9, in P. Brommer, R. Pokorny and M. Stratmann (eds), *Capitula episcoporum*, 4 vols, Hannover, 1995 (MGH), iii, p. 326.

<sup>36</sup> Responsum 9 in the first letter to John the Stylite found in Voobus, *Synodicon*, i/1, p. 237 and i/2, p. 219 (trans., which misleadingly suggests that Jacob refers specifically to former Christians).

<sup>37</sup> Responsum 6 in the first letter to John the Stylite found in Voobus, *Synodicon*, i/1, p. 249 and i/2, pp. 228-29 (trans.); see also responsum 3 in K.-E. Rignell, *A letter from Jacob of Edessa to John the Stylite of Litarab concerning ecclesiastical canons*, Malmö, 1979, pp. 52-53, along with Rignell's discussion of this responsum, pp. 83-84.

<sup>38</sup> Responsum 58 to Addai, in de Lagarde, *Reliquiae*, p. 140; Lamy, *Dissertatio*, pp. 158-59; see also Barhebraeus, *Nomocanon*, p. 380, n. 1. In the following responsum, Jacob states that there is no harm in priests teaching Jews and Ḥarrānian pagans how to read by using the Psalms and other scriptural texts.

## Crossing the line between Islam and Christianity

A number of legal sources address procedures related to people or objects crossing the boundary separating Christianity and Islam. The Greek Orthodox Church, apparently in the ninth century, developed a lengthy Ritual of Abjuration (q.v.) to be recited by those who renounce Islam in favor of Christianity. The convert anathematizes the Saracen religion, 'Moamed also known as Mouchoumet', along with a number of his wives, descendants, and successors, the Qur'ān, Mecca, and even 'the God of Moamed', along with a substantial number of specific teachings ascribed to Islam. The title of the surviving texts of this ritual refers to Saracens who 'return' to Christianity, implying that most converts to Christianity were originally Christians, but Daniel J. Sahas observes that some aspects of the ritual seem to have new Christians in mind.<sup>39</sup> Jacob of Edessa addresses the scenario of re-conversion in two canons. He prohibits the rebaptism of a Christian who 'becomes a Hagarene or a pagan' and then repents, apparently because Jacob believes that such a person never really ceased being a Christian and that the original act of baptism retains its force.<sup>40</sup> And for the same reason, it would seem, he allows priests to accept deathbed confessions from such lapsed Christians and to bury them, although he prefers the penitent to be brought before the bishop for the determination of an appropriate penance.<sup>41</sup>

The transfer of objects from Christians to Muslims or back is filled with legal significance. The Nestorian Metropolitan 'Ishobokht (d. 780) addresses in various permutations the issue of inheritance when the

<sup>39</sup> D.J. Sahas, 'Ritual of conversion from Islam to the Byzantine Church', *Greek Orthodox Theological Review* 36 (1991) 57-69. The text of the ritual of abjuration appears in PG 140, cols 124-36; a critical edition of the anathemas was prepared by E. Montet, 'Un rituel d'abjuration des musulmans dans l'église grecque', *Revue de l'Histoire des Religions* 53 (1906) 145-63. On this ritual, see also Hoyland, *Seeing Islam*, pp. 517-18; J. Meyendorff, 'Byzantine views of Islam', *DOP* 18 (1964) pp. 123-25 (repr. in M. Bonner (ed.), *Arab-Byzantine relations in early Islamic times*, Aldershot UK, 2004, pp. 225-27), and also the bibliography cited in the entry below.

<sup>40</sup> Responsum 15 in the second letter to John the Stylite found in Voobus, *Synodicon*, i/1, p. 253 and i/2, pp. 231-32 (trans.). Hoyland (*Seeing Islam*, pp. 162-63) translates the version of this responsum (which he numbers as 13) preserved in Barhebraeus, *Nomocanon*, p. 22.

<sup>41</sup> Responsum 21 to Addai, in Voobus, *Synodicon*, i/1, p. 261 and i/2, p. 238 (trans.); Hoyland, *Seeing Islam*, numbers this reply as 116.

children or spouse of a Christian has converted out of the faith or when the heirs of a pagan are Christian converts.<sup>42</sup> Timothy I rules that a bequest by a Christian to a Muslim should be honored only if the Muslim is God-fearing and no God-fearing Christians live in the vicinity.<sup>43</sup> On the subject of ritual objects, Jacob of Edessa rules that portable altars which pagans have used as platters for their own food and thus profaned may no longer be used for the Eucharist, although they may be washed and put to secular use by clerics.<sup>44</sup> Similarly, cloth embroidered with the 'Hagarene profession of faith' may not be used for sacral purposes.<sup>45</sup> Jacob does not, however, believe that the possession of Christian relics by Muslims renders them profane, as he reports that he repatriated a Greek Orthodox relic returned to him by Hagarenes from among the spoils of war.<sup>46</sup>

#### The distinct places of Muslims and of Jews in canon law

The *Liber pontificalis* (q.v.) reports that Pope Zacharias (r. 741-52) interceded to prevent Venetian merchants from selling fellow Christians into slavery to 'the pagan people in Africa . . . judging it wrong for those washed by Christ's baptism to be the slaves of pagan peoples'.

<sup>42</sup> Pope Hadrian also objects to the practice of selling Christians

<sup>43</sup> Cited in Kaufhold, *Rechtssammlung des Gabriel von Basra*, pp. 160-61.

<sup>44</sup> C. 75, in Labourt, *De Timotheo I*, pp. 80-81. The following canon permits Christian courts to accept the testimony of pious Muslims. (Labourt does not provide the Syriac original, so it is unclear what terms Timothy uses to refer to Muslims in these canons.)

<sup>45</sup> Responsum 25 to Addai, in Lamy, *Dissertatio*, pp. 126-29, and de Lagarde, *Reliquiae*, p. 128. Note that responsum 26 to Addai addresses marble altars that have been broken by 'enemies'. In the text of Lamy and de Lagarde, q. 25 refers to 'Arabs' and the answer to 'pagans'. Slightly different versions of this responsum, whose texts refer solely to 'pagans', appear as number 42 to Addai in Voobus, *Synodicon*, i/1, p. 266 and i/2, p. 242 (trans.) and number 3 to John the Stylite in Rignell, *Letter from Jacob of Edessa*, pp. 60-63; see also Barhebraeus, *Nomocanon*, p. 14. On the altars in question, see the discussion in Rignell, pp. 95-96.

<sup>46</sup> Barhebraeus, *Nomocanon*, p.12, discussed in Hoyland, *Seeing Islam*, p. 161.

<sup>47</sup> Responsum 23 in the first letter to John the Stylite found in Voobus, *Synodicon*, i/1, pp. 243-44 and i/2, p. 224 (trans.).

<sup>48</sup> L. Duchesne (ed.), *Le Liber pontificalis*, 1886 (repr. Paris, 1955), p. 433; R. Davis (trans.), *The lives of the eighth-century popes*, Liverpool, 1992, p. 47 (the cited trans. is by Davis). On the *Liber pontificalis*, see the entry in this work; on this passage and the letter cited in the following note, see Rouche, 'Le pape', pp. 212-13.

into slavery to Saracens.<sup>48</sup> In doing so, Zacharias and Hadrian apply in a new manner the long-standing prohibition against the sale of Christians as slaves to Jews.<sup>49</sup> For the most part, however, canon law sources from the period 650-1000 do not equate Muslims and Jews directly; Saracen law and Jewry law correspond to one another only to the extent that both Muslims and Jews are non-Christians. Medieval Christian authorities, however, regard Jews as more than merely non-Christians: they portray Jews as anti-Christians, foils set in diametrical opposition to Christianity in the service of Christian self-definition.

For that reason, Christian authorities are especially concerned about the phenomenon of 'judaizing', the adoption by Christians of Jewish practices.<sup>50</sup> Christians do not grant Muslims comparable symbolic significance and do not employ terms such as 'paganizing', 'saracenizing', or the like.

Agobard, Archbishop of Lyons (r. 816-40), pointedly declares that Jews are more abhorrent than either biblical unbelievers such as the Amalekites and Midianites or contemporary unbelievers such as 'Hagarenes, who are known by the incorrect term Saracens'.<sup>51</sup> We have observed that Jacob of Edessa disapproves of commensality with Muslims but allows Christians to eat the meat they slaughter in non-sacrificial contexts. Jacob, however, prohibits consumption of all foods touched by 'the impure hands of the Jews'; with an exception for cases of necessity, he declares, those who eat such food 'shall be cast out from the Church of God and from association with the faithful as one who

<sup>48</sup> See the letter of 776 from Hadrian to Charlemagne, numbered 59 in *Codex Carolinus*, pp. 584-85. To the best of my knowledge, no statement by either of these popes regarding slavery to Muslims appears in canon law literature.

<sup>49</sup> On laws regulating Jewish slave ownership, see W. Pakter, *Medieval canon law and the Jews*, Ebelsbach, 1988, pp. 84-142. An interdiction against selling Christian slaves to non-Christians – apparently Muslims no less than Jews – also appears in c. 77 of Timothy I's collection; see Labourt, *De Timotheo I*, p. 81.

<sup>50</sup> On the history of this term, see S.J.D. Cohen, *The beginnings of Jewishness. Boundaries, varieties, uncertainties*, Berkeley CA, 1999, pp. 176-97; R. Dan, "Judaizare".

The career of a term', in R. Dan and A. Pirnat (eds), *Antitrinitarianism in the second half of the sixteenth century*, Budapest, 1982, 25-34. On the charge that Muslims themselves judaize, see D.M. Freidenreich, 'Sharing meals with non-Christians in canon law commentaries, circa 1160-1260. A case study in legal development', *Medieval Encounters* 14 (2008) 41-77.

<sup>51</sup> Agobard, *De Iudaicis superstitionibus* 21, in L. Van Acker (ed.), *Agobardi Lugdunensis: Opera omnia*, Turnhout, 1981 (Corpus Christianorum Continuatio Mediaevalis 52), pp.215-16. The term 'Saracen' is incorrect, according to various medieval Latin authorities, because Muslims descend from Hagar, not from Sarah.

is impure and despised and abominable, and they shall be numbered among the Jews until they purify themselves through repentance'.<sup>52</sup>

The kind of charged, impurity-oriented rhetoric, which Agobard, Jacob, and many other Christian authorities employ with respect to the Jews, is not applied to Muslims in legal documents from the period under consideration here. Muslims are significant in the context of canon law both because of their military might and political power and because they constitute non-Christians with whom Christians interact. However, Christian authorities neither define Christianity in opposition to Islam nor do they ascribe symbolic significance to Muslims as they do to Jews.

<sup>52</sup> Responsum 3 to Thomas, in Voobus, *Synodicon*, pp. 257-58; cf. trans., p. 235.