

IMPORTANT NEW MANUSCRIPT  
SOURCES FOR  
THE ISLAMIC LAW IN SYRIAC

CONTRIBUTIONS TO THE HISTORY OF JURISPRUDENCE  
IN THE SYRIAN ORIENT

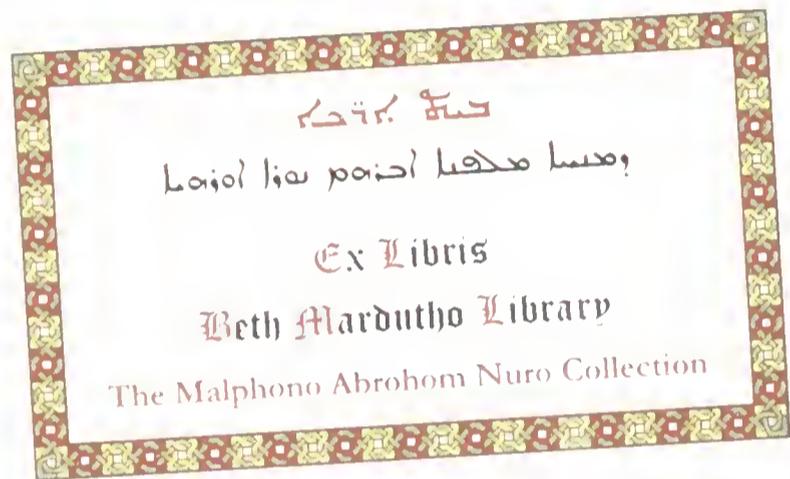
by

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STOCKHOLM  
1975



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ESTONIAN THEOLOGICAL SOCIETY IN EXILE

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## DEDICATION

This study is dedicated in loving memory to my father, the late Karl Eduard Vööbus, on the 100th anniversary of his birth.

His life was mangled by the calamity that struck our homeland through the conquest of the Soviets. When the last reserves of strength in defending our freedom were exhausted and when the front collapsed, contact with him could not be established under those tragic circumstances as this was the case in countless families. Thus we were not able to find ways to escape together.

He was dragged from the home he had built and from the garden which he had cultivated with deep love and affection. Bereft of family members and relatives, who were murdered, imprisoned, deported and exiled, his life was utterly despoiled by sufferings, harassment and persecution. He died on August 17 1955, joining all those who share the martyrdom of his nation in the Soviet hell, created in a land of freedom, prosperity and happiness.

To a man who had been an educator and servant of the community, and who had given his best to the society, all this was infamous and bestial. The love, kindness and affection he bestowed upon his family, and in a special way upon his daughter and son, is therefore all the more unforgettably durable and abiding.

June 15, 1975.



## INTRODUCTION

The matter of the origin and history of the genre of civil legal documents in Syriac has progressed much too slowly.

E. Carusi<sup>1</sup> has raised the claim that in the Syriac sources, i.e. in the Christian documents in general, no influence of Islamic law can be ascertained.<sup>2</sup> This is a strong position, but it can be taken only at serious cost. That this position was untenable had been demonstrated already by C. A. Nallino.<sup>3</sup> His evidence was based on known sources, mainly the Nomocanon of Bar ʿEbrāyā.<sup>4</sup>

Further, it has only been a few years since H. Kaufhold prepared an edition<sup>5</sup> of the Syriac documents from three manuscripts, one in Cambridge and two in London, furnished with a German translation accompanied by studies. However, one cannot be happy about this otherwise carefully prepared publication due to the fact that he under-

<sup>1</sup> "Pensare ad una derivazione di una dottrina qualunque di diritto siriano dal diritto musulmano sarebbe un concetto assurdo; se mai l'inverso," *Gli studi dei diritti orientali mediterranei* (Roma 1916), p. 34. "Poichè sarebbe un vero errore ed indice di ignoranza storica il pensare l'inverso, che cioè i traduttori abbiano potuto alterare il testo originario. . . introducendovi concetti estranei tratti dal diritto musulmano", "Sul frammento L.38 del libro di diritto siro-romano", in: *Bulletino dell'Istituto di Diritto Romano* XXVIII (1916), p. 311.

<sup>2</sup> "E, poichè sarebbe stolto, e contrario a tutti i fatti storici ed alle esplicite ripetute dichiarazioni degli scrittori, il pensare ad una possibile imitazione che i cristiani abbiano fatto dal diritto musulmano," *Il problema scientifico del diritto musulmano* (Roma 1919), p. 80.

<sup>3</sup> *Raccoltà di scritti editi e inediti* IV (Roma 1942), p. 179 ff.

<sup>4</sup> Concerning this work, see A. VÖÖBUS, *Syrische Kanonensammlungen: Ein Beitrag zur Quellenkunde*. Band I: *Originalurkunden*, 1, B = *Corpus Scriptorum Christianorum Orientalium*, Subsidia XXXVIII (Louvain 1970), p. 506 ff.

<sup>5</sup> *Syrische Texte zum islamischen Recht: Das dem nestorianischen Katholikos Johannes V. bar Abgare zugeschriebene Rechtsbuch* = Bayerische Akademie der Wissenschaften, Phil.-hist. Klasse, Abhandlungen NF 74 (München 1971).

took the task in a customary way, using only what was handily available in the libraries in Europe and conveniently registered in the catalogues of manuscripts. To be sure such a procedure is customary but it involves the risk that conclusions may be based on haphazard witnesses. Therefore, some of his conclusions<sup>1</sup> invite us to take leaps in the dark. His reasoning for the authorship of Jōḥannān bar ʿAbgārē is premature and really cannot enlighten us.

In order to elucidate the literary and historical problems, it is necessary to dig deeper and search wider. According to my conviction this is the *conditio sine qua non* for any research which advances learning. As in other areas of my research, I have therefore also engaged myself in the research for hitherto unknown sources in this domain, and my efforts in this area have been crowned with success.

Such discoveries necessitate a special study. Since the edition<sup>2</sup> of the text of the Ms. Dam. Patr. 8/11 is in process and this priceless unicum makes it necessary to discuss its precious content the task is urgent. However, the present study can be only preliminary and a more complete investigation must follow later. According to my timetable it will take some time before it reaches its turn.

<sup>1</sup> *Ibid.*, p. 98.

<sup>2</sup> *The Synodicon in the West Syrian Tradition*, I-II = *Corpus Scriptorum Christianorum Orientalium, Scriptores Syri*.

# I

## THE UNEARTHING OF NEW EVIDENCE

### 1. MS. DAMASCUS PATR. 8/11

Of the cycle of discovered new documents the first to be introduced is Ms. Damascus Patr. 8/11. It is the earliest and also in other respects the most precious. Indeed, it is the prize of all the finds I was privileged to make in the area of ecclesiastical and civil jurisprudence.

This invaluable codex comes to us from the collection of manuscripts in the treasure house of the famous Monastery of Mār Ḥanānyā in the region of Ṭūr ʿAbdīn.<sup>2</sup> It is better known as Deir Zaʿfarān. Its fortress-like walls have made it a bastion in this area, and as such it has survived all the storms of devastation and destruction which have swept over Syrian Christianity and have destroyed almost all of its once flourishing life. In this way, unique literary records have been preserved in the treasure chamber of this monastery,<sup>3</sup> records which have not elsewhere survived.<sup>4</sup> Later on, this manuscript was kept in the library of the

<sup>1</sup> About the history of this important monastic and ecclesiastical center, see VÖÖBUS, *Syrische Kanonensammlungen: Ein Beitrag zur Quellenkunde*, I, 1, A, p. 113ff.; I, 1, B, p. 375ff.

<sup>2</sup> Regarding the discovery of an important document on the history of this monastery, see A. VÖÖBUS, "Eine wichtige Urkunde über die Geschichte des Mār Ḥanānjā-Klosters: Die von Jōḥannān von Mardē gegebenen Klosterregel," *Oriens Christianus* LIII (1969), p. 134ff.

<sup>3</sup> See A. VÖÖBUS, *Catalogues of Syriac Manuscripts of Unknown Collections in the Syrian Orient*, vol. III: *Syriac Manuscripts from the Treasury of the Monastery of Mār Ḥanānyā or Deir Zaʿfarān (in preparation)* = Papers of the Estonian Theological Society in Exile.

<sup>4</sup> A. VÖÖBUS, *New Important Manuscript Discoveries for the History of Syriac Literature* (in press) = Papers of the Estonian Theological Society in Exile.

archbishopric of the Syrian Orthodox Church in Mardin and from there it was brought to the collection of manuscripts of the patriarchate.

First the codicographical data. The codex, measuring  $23,5 \times 16,5$  cm. is written on soft Oriental paper of yellowish-brownish coloring. The text is arranged on the pages not only regularly and with care, but also in an arrangement which reveals good taste in execution on the part of the scribe. There are normally 27-28 lines per page.

The script used in the manuscript is the *serṭā* which is very attractive and neat and well executed calligraphically. It displays an artful, professional hand such as was cultivated in the scriptoria in the Syrian monasteries. Palaeographically its shape is most interesting since it does not fit the patterns which we usually encounter in manuscripts, or in the examples of dated manuscripts made available in the albums.<sup>1</sup> The examples to be found there do not even come near this form of the script. Indeed, this is further evidence for the observation that for extraordinary literary monuments specially qualified hands were used.<sup>2</sup> Thus the script is in every respect commensurate with the execution of a literary monument of extraordinary stature.

Just how many quires the manuscript originally contained is impossible to say since the codex has not survived intact. In the present form the original codex ends with *kūrrāsā* 21 which is itself not complete. The manuscript is bound in brown leather.

In this codex we have to do with a priceless literary monument. In fact, in the entire genre of legislative sources it appears as a unicum. It presents a corpus of legislative documents which is a mine of unbelievable wealth. Besides the Syriac version of the acts of the ancient ecumenical councils,<sup>3</sup> the corpus contains heretofore unknown records of the conciliar acts of the West Syrian Church held in the later centuries of the first millennium.<sup>4</sup> This material of revelatory character has been supplemented by various kinds of legislative documents of great rarity most of which are entirely unknown.

<sup>1</sup> Cf. A. VööBUS, *The Hexapla and the Syro-Hexapla: Important Discoveries for Septuagint Research* = Papers of the Estonian Theological Society in Exile XXII (Stockholm 1971).

<sup>2</sup> Cf. *The Pentateuch in the Version of the Syro-Hexapla: A facsimile edition*, ed. by A. VööBUS (in press) = Corpus Scriptorum Christianorum Orientalium.

<sup>3</sup> Fol. 34a-56a.

<sup>4</sup> Fol. 109b-140b.

It must be regarded as a matter of good fortune, that in a manuscript which has been struck by calamities and in part been victimized by them, destiny has been more lenient regarding the colophon. It has been spared the fate of that rest of the manuscript which has fallen victim. Thus, we can rejoice that these folio-leaves<sup>1</sup>, with the colophon, so close to perdition, have narrowly escaped and that authentic information has come down to us about the origin of this unique literary monument. According to the colophon<sup>2</sup> the codex was completed on the 5th of 'Iyār in the year 1515 A. Gr., i.e. on May 5, 1204 A.D. This took place in the days of Mār Mīka'ēl, patriarch of Antioch,<sup>3</sup> Mār Iwanīs of Alexandria and all Egypt and Mār Grīgorīos, the maphrian of Tagrīt.

The scribe was a Presbyter Dani'ēl bar Jausep bar Sargīs bar Tūmā of the village of Bēt Sahrayē at Barṭellā.

As has already been said, this document is very extraordinary in every respect. It surprises us by its wide scope. Also in this respect the document is unique because the structure of the Synodicon heretofore available to us does not reveal any such horizon. This collection, however, includes other legislative sources from the domain of civil law of indigenous Syrian,<sup>4</sup> Byzantine,<sup>5</sup> and Islamic<sup>6</sup> origin. Here among other civil laws the Islamic laws have been hidden awaiting discovery.

It is a must that such a priceless literary monument should be made available in its entirety. The first part is in the process of being edited and will be out in the summer of 1975. The cycle of Islamic laws is located in the second part of the corpus whose edition is in preparation.

<sup>1</sup> Fol. 194-195.

<sup>2</sup> Fol. 194b.

<sup>3</sup> This Mīka'ēl is Īšō' Septānā, a nephew of Patriarch Mīka'ēl the Great. The time of his election has been placed in the year 1207 A.D., *Bibliotheca orientalis* II, p. 230ff.; A. BAUMSTARK, *Geschichte der syrischen Literatur* (Bonn 1922), p. 302. This, however, must be a mistake, since our colophon states that in May 1204 A.D. this Mīka'ēl must have already been in his office. Thus his election must have taken place still earlier, closer to the time of the death of his great uncle, Patriarch Mīka'ēl Rabā in November 1199 A.D. He ruled until 1214 A.D. when he died.

<sup>4</sup> Fol. 58a ff.

<sup>5</sup> Fol. 150a ff.

<sup>6</sup> Fol. 141a ff.

## 2. MS. MARDIN ORTH. 316

Great good fortune awaited me when I, in the pursuit of new sources reached Mardin. Here there was given us the second discovery in this area, and it too is very exciting. Ms. Mardin Orth. 316 conceals within its pages a very precious source in more than one respect.

This codex also comes to us from the collection of manuscripts kept in the treasure house of the famous Monastery of Mār Ḥanānyā,<sup>1</sup> known popularly as Deir Zaʿfarān. As we have already mentioned, this treasure house has preserved unique documents which have not survived elsewhere.

The codicographical data are as follows: the folio volume, 29 × 20,5 cm., bound in yellow cloth, comprises 16 *kūrrāsē* of Oriental paper. The volume is executed quite carefully. The text is written in two columns, arranged in good order. The script is *serṭā*, small and characteristic in appearance. There are regularly 37 lines pro folio-page written in black ink but the titles are in red.

It is very fortunate that we are kept informed also about the origin and background of this codex, thanks to a colophon added to the text. According to this the manuscript was written in the year 1972 A. Gr., i.e. 1661 A.D.<sup>2</sup> The scribe was ʿAphrēm Kaserbaos of the Monastery of Mār ʿAbai on the lower parts of Ṭūr Birtā.

This heavy codex in the folio format has stored up documents of church legislation and as such represents a corpus of legislative sources. The greater part of the manuscript is taken by the Nomocanon of Bar ʿEbrāyā, representing the codification of ecclesiastical and civil law.<sup>3</sup> The rest of the codex is devoted to other legislative records of Syrian,<sup>4</sup> Byzantine<sup>5</sup> and Islamic<sup>6</sup> origin. Very rare documents have been salvaged in this selection. Examination of this part of the manuscript led to the discovery of another precious source for the Islamic laws.

<sup>1</sup> See note 1.

<sup>2</sup> Quire 14, fol. 9b.

<sup>3</sup> Quire 1, fol. 1a ff.

<sup>4</sup> See footnote 3.

<sup>5</sup> Quire 14, fol. 7b-9b; quire 14, fol. 9b-16.

<sup>6</sup> Quire 14, fol. 2a ff.

## 3. MS. MARDIN ORTH. 323

Third discovery concerns Ms. Mardin Orth. 323. This is a volume of medium size, 25 × 17 cm., bound in red leather, containing altogether 184 pages. The volume is executed very carefully written regularly, 19 lines pro page in an attractive handwriting. The codex is a modern copy. No date for its execution is given. However, the script indicates that the codex was written by the hand of Jōḥannān Philoxenos Dōlabāni.<sup>1</sup>

A great part in the collection is occupied by legislative<sup>2</sup> sources augmented by the laws of Syrian,<sup>3</sup> Byzantine<sup>4</sup> and Islamic<sup>5</sup> origin.

The content of this manuscript is so unique with respect to the legislative documents incorporated that only one codex can come into account as the *Vorlage*, namely the unique Ms. Damascus Patr. 8/11. To be sure, Ms. Mardin Orth. 323 also contains texts which must have been derived from other sources.

<sup>1</sup> He became later archbishop of Mardin († 1969).

<sup>2</sup> This material includes the corpus of the conciliar acts of the West Syrian Church, fol. 1a ff.

<sup>3</sup> Fol. 55b ff.

<sup>4</sup> Fol. 125b ff.; 131ff.

<sup>5</sup> Fol. 171a ff.



## II

### UNKNOWN LEGAL DOCUMENTS

#### 1. A CYCLE OF RULES FOR THE RIGHT OF INHERITANCE

Our search has been rewarded beyond every expectation. As a result unknown sources have come into our hands. There is even a cycle of them. And each is the deposit of an hitherto unknown tradition.

The first piece of new evidence is introduced with the title: "Other questions on the inheritance of the Arabs." This is a document whose text has been preserved in Ms. Dam. Patr. 8/11,<sup>1</sup> Ms. Mardin Orth. 316<sup>2</sup> and in Ms. Mardin Orth. 323.<sup>3</sup> In the following, we give a translation of this document.

(1) When a man or a woman or a boy or a girl dies and leaves after him (or her) a father, he inherits the whole heritage when the deceased leaves no progeny.

(2) If (he leaves) a brother, he equally inherits the whole heritage.

(3) Likewise a grandfather, a grandson or an uncle (on the father's side) when there are no children.

(4) These do not inherit when there is a close heir: the aunt on the father's and the aunt on the mother's side.

(6) And not the son of the daughter.

(7) When a man dies and leaves a mother, she inherits a third of his goods when he has no brothers or children.

(8) If he has, she inherits one sixth.

(9) If someone dies and leaves a grandmother, she inherits from the deceased one sixth and nothing else is added to her.

<sup>1</sup> Fol. 148b-149a.

<sup>2</sup> Quire 14, fol. 6b.

<sup>3</sup> Fol. 182a-182b.

(10) The rest is to his close relatives, to everyone according to his right.

(11) When a man or a woman dies and leaves a daughter, she inherits half of his goods.

(12) If there are two daughters or three or as many as there are, they inherit two thirds and nothing else is added to them.

(13) The rest (belongs) to the close relatives, each one according to his right.

(14) The sisters inherit equally according to the degree of the daughters when there are no sons or daughters.

(15) If the deceased shall have daughters and sisters, the daughters inherit first.

(16) If (he has) one daughter, she inherits the half.

(17) The daughter of the son is of the degree of the daughter.

(18) If a man dies and leaves a wife, she inherits the fourth part of his goods.

(20) The husband inherits from the wife a half when she has no children.

As the title expressly says, this document represents the law of the Arabs. This is substantiated by the content of the cycle. It is instructive to realize that the legal basis for the laws is drawn from the injunctions for inheritance of the Koran. Thus it is obvious that there stands before us a legal text which is derived from the Islamic legislature, translated into Syriac.

## 2. ANOTHER CYCLE OF RULES FOR THE RIGHT OF INHERITANCES

The second cycle is introduced under the title: "Another chapter about this (matter): who does not inherit with one who inherits." This document too appears in all three codices, in Ms. Dam. Patr. 8/11,<sup>1</sup> Ms. Mardin Orth. 316<sup>2</sup> and in Ms. Mardin Orth. 323.<sup>3</sup>

In translation the text is as follows:

(1) The grandfather does not inherit with the father.

(2) The father inherits one sixth with a son.

<sup>1</sup> Fol. 149a-149b.

<sup>2</sup> Quire 14, fol. 6b-7a.

<sup>3</sup> Fol. 182b-183a.

- (3) The grandmother inherits nothing with the mother.
- (4) The mother inherits one sixth with the children or the brothers.
- (5) A (half) kinsman from the mother (only) inherits one sixth either male or female.
- (6) If they are numerous they inherit one third without any addition.
- (7) (Half) kinsmen<sup>1</sup> who are from the mother (only) do not inherit with children (of the deceased) when there is a son among the children nor with the son of the son.
- (8) The father and the mother inherit one third for both, one sixth to each. The rest is to the children, two parts to the male and one to the female.
- (9) Thus to all sons and daughters.
- (10) When a man or a woman dies and leaves a daughter and a daughter of the son, the daughter inherits the half and the daughter of the son inherits the one sixth (thus), completing the two thirds. And the rest is to the close heirs according to their rights.
- (11) When a man dies and leaves his father and mother, two thirds to the father and one third to the mother.
- (12) If he leaves his father and his wife, the fourth of his goods (goes) to the wife and the rest to his father.
- (13) If he leaves a brother and a son of the brother, the brother inherits the whole heritage and the son of the brother inherits nothing with him.
- (14) If he leaves a son of the brother and an uncle on the father's side, the son of the brother inherits the whole heritage.
- (15) If he leaves a son of his son and the son of his brother, the whole heritage goes to the son of his son.
- (16) If he leaves a son of his son and brothers, the son of the son inherits the whole heritage.
- (17) If he leaves uncles on the father's side, uncles on the mother's side, daughters of the daughter, grandparents on the side of the mother, all these do not inherit with the closer heirs.
- (18) If he leaves a father, a brother, a wife and a son, the father inherits one sixth, the wife one eighth and what remains is to the son. The brother inherits nothing with these.

<sup>1</sup> Or: family members.

(19) When the wife dies and leaves her parents, her husband, and her son, a fourth (goes) to the husband, one sixth to her father, one sixth to her mother, and the rest to her son.

(20) If she leaves her grandfather on the father's side, and her husband, her husband (inherits) the half of her heritage and her grandfather the rest.

Also in this case, the title of the cycle points in the same direction, namely, that the laws are of Islamic provenance. The term employed in the title of the cycle is *tar'ā*. This is very telling. Its peculiar meaning here as "a chapter," obviously goes back to the *Vorlage* of the document. In Arabic the term *bāb* means both "the gate" as well as a "chapter" and in this way most naturally explains its function here.

### 3. A CYCLE OF INJUNCTIONS FOR THE COMPUTATION OF THE QUOTAS IN INHERITANCE

The third document bears the title: "The computation of the inheritance of the Arabs and their distribution among the heirs." This document, too, appears in all three codices, in Ms. Dam. Patr. 8/11,<sup>1</sup> Ms. Mardin Orth. 316<sup>2</sup> and in Ms. Mardin Orth. 323.<sup>3</sup>

In translation the cycle is as follows:

(1) When there is among the heirs one who inherits one sixth, the heritage is divided into six parts, because a half of six constitutes three parts and the third consists of two parts and the sixth of one part.

(2) If it shall be that among the heirs there are many in numbers, so that the parts must be (further) divided, and thereby there shall be a half of a part, double these six parts which constitute the foundation according to the number of these heirs who cause to break these parts.

(3) A man dies and leaves a mother and two daughters and three sisters. The mother inherits one sixth, the two daughters two thirds, and one part remains to the three sisters. This part is divided into fractions in order to be distributed among the sisters. Then multiply these six parts, which constitute the basis, three times conforming to the number of the sisters and (so) they become eighteen. Divide them

<sup>1</sup> Fol. 149b-150a.

<sup>2</sup> Quire 14, fol. 7a-7b.

<sup>3</sup> Fol. 183a-184b.

among them: one sixth of eighteen, that is three parts, to the mother; three parts to the three sisters; two thirds, which are twelve parts, to both daughters; and three parts to the three sisters, one part to each sister, and the computing comes out.

(4) If there shall be three daughters or five and as many as they are, and it shall be similarly that they will break the computing as in the case of the sisters: multiply these first six parts by the number of (the heirs in a) category, the daughters if you want or the sisters if you want, and see what is the account which is obtained; then multiply that (sum) which has been brought out by you by the number of those others, either sisters or daughters. The division among the heirs comes out correct and without any fraction of a half or third or fourth, or anything else.

(5) If among the heirs there shall be an heir who inherits one fourth and another one sixth, the heritage is divided into twelve parts because a quarter does not come out of the six parts without a fraction. For this reason it comes out that this heritage should be divided into twelve parts, due to the fact the quarter of twelve is three, one sixth is two and the rest is to the others.

(6) If it shall be among the heirs that some fraction (occur) with these twelve parts, multiply them as delineated by us for you in the first computing of six parts.

(7) If among the heirs there shall be one who takes an eighth, another a fourth, and another one sixth, the heritage is divided into twenty-four parts, because an eighth does not come out from twelve for the reason that it is one (part) and a half. But from (twenty-four) it comes out that one eighth consists of three (parts) and one sixth consists of four parts. (Thus) this entire computing comes out (well) but does not exceed beyond twenty-four.

(8) If among the heirs there shall be heirs who break the parts into some (fraction), multiply these twenty-four according to the number of those heirs who divide in fractions so as we already demonstrated in the first computing of six parts, which is the basis. And so the whole computing of the inheritances of the Arabs is straight.

(9) If it shall be that there is a male among these heirs who breaks (the parts into some fraction), these parts shall be multiplied two times because of him for the male takes two parts and the female one. For

example (the case of) three daughters and one son: because of them the parts are multiplied by five.

(10) The same when there is a brother with the sisters.

The end of the computing of the inheritances according to the laws of the Arabs as to how heritages are to be divided.

Also in this case, the evidence regarding the origin and background is unequivocal. The title as well as the subject matter insist that the legal traditions are from the Arabs.

### III

#### NEW LIGHT ON THE KNOWN SOURCES

A cycle of laws about the calculation of inheritances and other subjects is introduced under the title: "A foundation of the calculation of inheritances according to the law of the Arabs, and the emancipation of slaves, and all their laws and sentences." The document appears in Ms. Dam. Patr. 8/11,<sup>1</sup> Ms. Mardin Orth. 316,<sup>2</sup> and in Ms. Mardin Orth. 323.<sup>3</sup>

Several aspects must be brought out in this connection in order to delineate the importance of the new discoveries.

First of all, the place of the new find in the history of the transmission of the text should be noted. What was available to us in manuscripts up to now was of later origin. Ms. Cambr. Add. 2023 has been thought to have been of the 13th cent.<sup>4</sup> but may be younger. The age of Ms. Br. Mus. Add. 18, 715 is not certain but may be of the same age as the previous one.<sup>5</sup> The third, Ms. Br. Mus. Add. 18,295 was written in the year 1914 A. Gr., i.e. 1602/3 A.D.,<sup>6</sup> and was employed by Kaufhold as the basis for the edition<sup>7</sup> since the other manuscripts were inferior.

In view of this situation what has emerged is the oldest witness. The evidence of Ms. Dam. Patr. 8/11, which is dated, was written in 1204

<sup>1</sup> Fol. 141a-147a.

<sup>2</sup> Quire 14, fol. 2a-5b.

<sup>3</sup> Fol. 171a-180b.

<sup>4</sup> Cf. W. WRIGHT and A. COOK, *A Catalogue of Syriac Manuscripts in the Library of the University of Cambridge*, II (Cambridge 1901), p. 601.

<sup>5</sup> Cf. W. WRIGHT, *Catalogue of Syriac Manuscripts in the British Museum*, I (London 1870), p. 19f.

<sup>6</sup> *Ibid.*, III, p. 1183.

<sup>7</sup> *Syrische Texte zum islamischen Recht*, p. 126ff.

A.D. It is a gain of no little importance to have reached an earlier stratum in the transmission of the text.

With regard to the physiognomy of the new sources, it must be said that in general there is a common substratum with the recensions in Ms. Br. Mus. Add. 18,295 and Ms. Cambr. Add. 2023. On the one hand the structural contours in the main are the same. The title is almost<sup>1</sup> the same. The document begins with the instructions regarding the division of inheritance into six parts. The same intercalation<sup>2</sup> appears in both recensions. On the other hand, however, there are differences in the structure. One section of the text exhibits an entirely different arrangement. This rearrangement of the material involves such sections as those on wills,<sup>3</sup> the emancipation of slaves and the questions regarding their inheritance<sup>4</sup> and a section entitled: "Other questions"<sup>5</sup> which comprises questions on inheritance, the testaments, the marriage of the slaves and bearing of that on inheritance, special regulations for the last will, and injunctions on the deposit. Here laws emerge which up to now appeared only<sup>6</sup> in the recension in Ms. Cambr. Add. 2023, and in one case only in Ms. Br. Mus. Add. 18,715.<sup>7</sup> Thus the new sources open up new opportunities to investigate anew the question of the relationship between these recensions. Several types of text were developed in ways that we were not then able to follow but upon which new light has now been thrown, so that we can to an extent illumine the course of the tradition somewhat more clearly.

Now we turn to the evidence which brings the character of the new sources into relief. This concerns the question of the quality of the text. Hitherto known sources are marked by readings which owing to mutilation of the text or misunderstanding of these laws have not been

<sup>1</sup> The title in Ms. Br. Mus. Add. 18, 295 is inferior; "the inheritance" in the singular is certainly secondary.

<sup>2</sup> Between § 29 and § 30 according to my own division; cf. *The Synodicon in the West Syrian Tradition II*.

<sup>3</sup> Fol. 147a.

<sup>4</sup> Fol. 147a-147b.

<sup>5</sup> Fol. 147b-148a.

<sup>6</sup> However in the cycle on fol. 139a the first section on the inheritance of the closest relatives of the father and mother appears in Ms. Br. Mus. Add. 18,295 and in Ms. Cambr. Add. 2023.

<sup>7</sup> Namely the paragraph about the relatives of a Muslim who do not belong to his faith; cf. § 160 in KAUFHOLD, *Syrische Texte zum islamischen Recht*, p. 186.

correctly preserved in the process of transmission. There are renderings of such a kind that they have given rise to a number of surgical efforts. There is a category of such paragraphs where instead of the mutilated, corrupt and enigmatic renderings the new sources render the paragraphs in their complete, lucid, clear and meaningful way. In these cases, the question of quality becomes tangible. A further observation should be made at this point. There is another category of renderings which are less certain but about which one may be reasonably sure that they flow from a better tradition. Thus there is an important gain in unearthing the oldest witness to the text. The oldest text has preserved also a better textual tradition. These are facts which deserve to be followed up, but in a special study. This will show that we are enabled through these finds to gauge the quality of these texts in many defective renderings so that they will contribute to our understanding of these laws in many instances.

Before we go further, in connection with the question of quality, our sources provide us with evidence which constitutes a special category of renderings. Indeed, they deserve our particular attention. This evidence is so important that it must be handled separately in connection with important historical questions which they put into a new perspective.



## IV

### LITERARY HISTORICAL QUESTIONS IN A NEW LIGHT

There is a category of data which make the new discoveries particularly precious. They present evidence which, when viewed from the angle of the literary historical aspect of these documents advance our knowledge.

It is time to introduce a select cycle of such texts. First the evidence that comes to the fore already in the titles. The fact is very significant that among the three new documents, the first and the second expressly state in their titles that they present the laws of the Arabs.

Further, our attention is caught by the steady increase of certain elements which are very telling. A few details may be given here to characterize the phenomenon.

First there is a paragraph about the emancipation of the slaves. In Ms. Cambr. Add. 2023<sup>1</sup> a text appears which should be translated as follows: "If he is freed a half, he inherits a half; if he has a (half) brother from the father (only) who is (entirely) freed, they inherit equally."<sup>2</sup> In the newly discovered sources, we realize how miserably defective this text is, having suffered so much that its meaning has become entirely confused. Here we recover the lost part of the text in this paragraph and it tells us what a half brother is entitled to inherit. It is entirely different: "He takes the rest of the inheritance; if he is half freed, he takes the half of what remains, i.e. the fourth, and the rest is for the patrons, i.e. his masters."<sup>3</sup> Besides this recognition, there is another fact which is as important as the one already acknowledged.

<sup>1</sup> Fol. 17b.

<sup>2</sup> Cf. KAUFHOLD, *Syrische Texte zum islamischen Recht*, p. 192.

<sup>3</sup> Fol. 147b.

The term translated as “patrons” in the new sources is taken from the Arabic, namely *maula*.<sup>1</sup> Obviously in this context it has been taken over from the original text which must have existed in Arabic.

There is yet another text waiting which points to the same observation just made. A paragraph about the slaves in Ms. Cambr. Add. 2023<sup>2</sup> represents another corrupt text, as demonstrated by the translation given this puzzling passus.<sup>3</sup> The new sources again offer something entirely different: “About a slave who takes a free woman (for his wife): his children are free and the clients of the family members of their mother; if the slave is freed, his children become clients for the patrons of their father.”<sup>4</sup> Besides the clarity in the meaning gained by the new discovered sources, the same feature emerges, namely Arabic terminology, which is here employed twice, first translated by “clients” and then by “patrons.” This is the Arabic word *maula*.<sup>5</sup>

Before we take leave of the texts with the same kind of evidence, we must take a look at another one. In the injunction about the negative rule regarding the inheritance for a Mohammedan of a Christian and vice versa, Ms. Br. Mus. Add. 18,295<sup>6</sup> states at the conclusion the strength of this legal axiom: “About this law all the knowers (of the law) agree.”<sup>7</sup> What lies behind the text emerges in the new sources<sup>8</sup> where instead of “knowers,” the term *qadi* emerges.<sup>9</sup> This again is an Arabic technical term for judges.

Instances like these—and this list can be extended—demonstrate that we have picked up an important clue. It is in a variety of ways, such as those above noted, that it becomes possible to make advances in our inquiry. The more new sources emerge to the light the more we begin to see the contours of the stratum which underlies the recensions

<sup>1</sup> Cf. fol. 148a.

<sup>2</sup> Fol. 18a.

<sup>3</sup> “Über den Sklaven, der eine Freie (zur Frau) nimmt. Seine Kinder sind Freie und Herren, zusammen mit den Familienangehörigen ihrer Mutter. Wenn aber ihr Vater freigelassen wird, werden sie alle zu Herren,” KAUFHOLD, *Syrische Texte zum islamischen Recht*, p. 191.

<sup>4</sup> Fol. 148a.

<sup>5</sup> Cf. fol. 147b.

<sup>6</sup> Fol. 146b.

<sup>7</sup> Cf. KAUFHOLD, *Syrische Texte zum islamischen Recht*, p. 186, §159.

<sup>8</sup> Fol. 148a.

<sup>9</sup> § (16).

which were known to us. What begins to emerge is the Arabic substratum which in the gradual process of transmission in Syriac had become discolored by the media through which it had passed, a quite normal process in the history of transmission.

Nor is this all. We make still further progress through the new sources when we find something that surpasses all that we have been allowed to see up to now. There are several texts which are very revealing but the most revealing is a paragraph which deserves special attention. In order to bring out the evidence as it deserves, it is advisable to set it over against the background provided by manuscripts which had been known. In Ms. Cambr. Add. 2023<sup>1</sup> the text in translation reads: "When a slave during his life time has built his own church, it belongs to his inheritance and not as the rest."<sup>2</sup> This text is corrupt.<sup>3</sup> Ms. Br. Mus. Add. 18,715<sup>4</sup> contains the same paragraph but leaves out this particular part.<sup>5</sup> Now we are prepared for the surprise which the new sources have in store for us.<sup>6</sup> The paragraph which has luckily escaped the scalpel reads in translation: "And when he makes this during his life time, namely, builds a church, it belongs to the inheritance between the heirs, not as the rest of the bequests; likewise is (this) valid for the Jews and the Magi who bequeath to a synagogue or to the firetemple."<sup>7</sup>

Here we must pause for a moment over this kind of evidence. It is, indeed, a very astounding piece of evidence. The first and obvious remark to be made is that this is a juridical dictum which speaks unequivocally for itself. Such a formula is not thinkable in a legal document which comes from the Christians who could not possibly include the Jews and the adherents of Zoroaster into their legislation. The solution stares us in the face. It forcefully points to the only source which can come into account here, namely Islamic law. The logic of the evidence is compelling. Only in this way can the situation displayed in the sources become understandable, that such law made provision also for the Jews and the Magi.

<sup>1</sup> Fol. 8a.

<sup>2</sup> Cf. KAUFHOLD, *Syrische Texte zum islamischen Recht*, p. 124, §49.

<sup>3</sup> Kaufhold emends the text so that out of the "slave" he makes a "church" but this is very dubious. Then he speculates about "die Eigenkirchen," *ibid.*, p. 210.

<sup>4</sup> Fol. 250a.

<sup>5</sup> Cf. KAUFHOLD, *Syrische Texte zum islamischen Recht*, p. 124, 126.

<sup>6</sup> Fol. 148a.

<sup>7</sup> § (13) - (14).

We have now arrived at the point from which we can begin to draw all the threads together gained through the new sources. A flood of light has been thrown on this genre of legal records. In this light, we begin to realize that in the sources which were known to us up to now, it is in the main only the second stage in the transmission of the text with all of its respective symptoms that is in view. However, we are very fortunate that, thanks to the search for new manuscript sources and its results the contours of the substratum of these legal records has become discernible. Moreover, in very interesting instances its profile can be more finely chiseled out. And this is of great importance for understanding and evaluating these sources historically. This we welcome with satisfaction which every lifting of the horizon in knowledge occasions. It has now become possible to write a new page in the history of the genre of legal documents in the Syrian Orient.

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