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Law of Spirit and Flesh:
The *Law of Kings* and Legal Development
in Early-Modern, Christian Ethiopia

A dissertation submitted in partial satisfaction of the

requirements for the degree Doctor of Philosophy

in History

by

David Benjamin Spielman

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ABSTRACT OF THE DISSERTATION

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The *Law of Kings* and Legal Development

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Doctor of Philosophy in History

University of California, Los Angeles

Professor Ghislaine Lydon, Chair

This dissertation examines the history of the Ethiopian Orthodox legal text known as the *Fəṭḥa Nägäśt* (*Law of Kings*) and its practical application in early-modern Ethiopia. The *Fəṭḥa Nägäśt* is considered by many to be the principle legal text in the organization of Ethiopian Christian society. Yet scholarship on the *Fəṭḥa Nägäśt*'s role in Ethiopia is quite divided with many downplaying its importance. I argue that the *Fəṭḥa Nägäśt* is the foundational legal text in

a complex legal system that developed over centuries in Christian Ethiopia. First, I focus on the origins of the legal text, from its composition in the thirteenth century in Coptic Egypt, to the translation and adoption of the text in Ethiopia. Local stories of the origin of the code in Ethiopia, place its promulgation in the mid to late-fifteenth century. I consider an earlier date for the promulgation, in the early-fourteenth to early-fifteenth century. This is based on evidence drawn from a variety of sources, including Ethiopian Orthodox hagiographies and European travel narratives. Second, I explore the institutions that facilitated the adoption and integration of this text into the legal landscape of Ethiopia. The Ethiopian Orthodox Church developed centers of legal education where scholars were trained to deliver justice based on the provisions in the *Fəṭḥa Nägäśt.* Throughout the fifteenth and sixteenth centuries, complex interpretation systems developed out of the commentary traditions taught in the schools of the Ethiopian Orthodox Church. The scholars who were trained in the interpretation of the *Fəṭḥa Nägäśt* in the law school of the Church went on to fill the most important administrative positions in the kingdom. Finally, I look at case studies from the eighteenth to twentieth centuries. The case studies involve slavery, manumission, usury and property. These cases reveal a well-developed legal system heavily influenced by the *Fəṭḥa Nägäśt*. The system is blended and contains fluid boundaries between the 'secular' and 'religious,' and accordingly aligns with the Ethiopian Christian concept of law as intrinsically sacred in character.

The dissertation of David Benjamin Spielman is approved.

Habtamu Mengistie Tegegne

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2021

To my life,

Zinash, Abijah, Zoë & Zela

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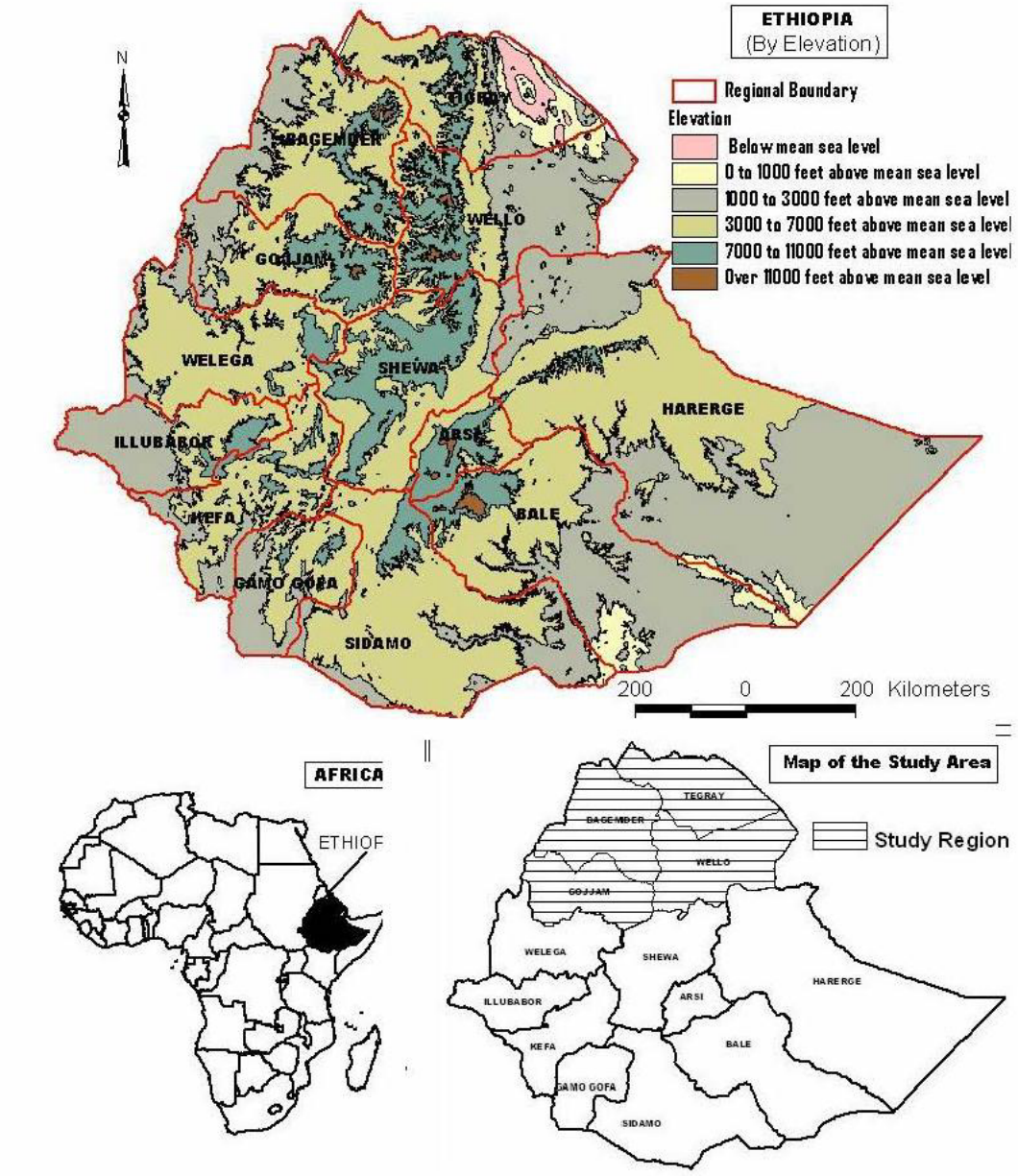
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Map 1. Map of the Study Area



Map of Study Area. From Habtamu Mengistie Tegegne, "Land Tenure and Agrarian Social Structure in Ethiopia, 1636–1900."

Chapter 1: Introduction

"Keep this Book of the Law always on your lips; meditate on it day and night, so that you may be careful to do everything written in it. Then you will be prosperous and successful."[1]

—Joshua 1:8

On August 24th, 1961, while addressing a group of judges on matters of the law, Ethiopian Emperor, *aṣe*[2] Ḫaylä Śəlasse I (r. 1930-1973), spoke reverentially of the Ethiopian Orthodox Täwaḥədo Church (EOTC) legal text known as the *Fətḥa Nägäśt* or *Law of Kings*.

> Our history shows that the Emperors and Kings decided cases and handed down judgements based on precedents and prevailing custom. They were assisted by the "Fetha Negest," a legal code composed by learned ecclesiastics. It was even a custom to bury a copy of this code with the Rulers—an act symbolizing the fact that while dispensing justice in their life-time they had not deviated from the provisions of the "Fetha Negest."[3]

Aṣe Ḫaylä Śəlasse's reverence for the *Fətḥa Nägäśt* proved to be more than just in word. As part of the modernization process that he embarked upon during his reign, a new penal code and constitution were drafted for the Ethiopian Empire in 1930, and later revised in 1957. *Aṣe* Ḫaylä Śəlasse relied upon several European advisors in the drafting of the first penal code, as well as in subsequent revisions. However, in addition to the European aspects, he drew partially from the *Fətḥa Nägäśt* to complete the 'modern' code.[4]

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[1] Joshua 1:8 NIV

[2] *Aṣe* is an honorific title loosely translated as 'your majesty' or 'his majesty.' In Ethiopian historiography it is used to reference past kings. See Denis Nosnitsin, "Aṣe," in *Encyclopedia Aethiopica*, ed. Siegbert Uhlig, Vol.1 (Wiesbaden: Harrassowitz, 2003), 364-365.

[3] Haile Selassie, "Addressing Judges on Justice and the Law," In *Selected Speeches of His Imperial Majesty, Haile Selassie First, 1918-1967*, (Addis Ababa: Imperial Ethiopian Ministry of Information, Publications & Foreign Languages Press Department, 1967), 417.

[4] For more on the Ethiopian Penal Codes of 1930 and 1957 see Aberra Jembere, *An introduction to the legal history of Ethiopia, 1434-1974*, (Munster: LIT Verlag, 2000).

It is broadly accepted among scholars in the EOTC that the *Fətḥa Nägäśt* was transplanted into Ethiopia in the 15th c. during the reign of *aṣe* Zär'a Ya'əqob (r. 1434-1468), from Egypt where it was known as the *Nomocanon* of Ibn al-Assāl. Further, it is asserted that the *Fətḥa Nägäśt* has functioned as the textual foundation of the Ethiopian empire, specifically for the dynastic kings who claimed descent from King Solomon of Israel and the Queen of Sheba (Saba) Makädda.[5] In the preface to the first English edition of the *Fətḥa Nägäśt, aṣe* Ḫaylä Śəlasse I highlights the importance of the code to the key Ethiopian institution, aside from the Solomonic dynasty, namely the church. *Aṣe* Ḫaylä Śəlasse I states that "The Fetha Nagast has been venerated, supported, and applied by both the government of Our Empire and by the church."[6] A quick survey of the church history section on any EOTC text will corroborate this assertion. Indeed, the *Fətḥa Nägäśt* continues to be utilized by the church in its internal affairs, even though the 'secular' portion ceased to be used by the government with the adoption of the modern penal code in 1930.[7]

Scholarly opinion, on the other hand, is quite divided on the foundational role of this legal text. Famed Ethiopianist Richard Pankhurst takes what I call a maximalist approach when he posits that the *Fətḥa Nägäśt* is crucial to the maintenance of monarchal power labeling it as

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[5] Jean Graven, "The penal code of the Empire of Ethiopia," *Journal of Ethiopian Law* 1, no. 2 (1964): 269. The 'Solomonic' dynasty dates back to 1270 C.E. with *aṣe* Yekuno Amlak assuming the throne and ends with the deposition of Qedemawi Haile Selassie I in 1974 via a Marxist coup. The *Fetha Nägäst* is believed to have been transplanted into Ethiopia during the 'Solomonic' dynasty under the rein of Ats Zär'a Ya'əqob (1434- 1468 C.E.). For more see His Imperial Majesty Haile Selassie I, preface to the first printing of *The Fetha Nägäst: The Law of Kings,* ed. Peter Strauss, trans. Abba Paulos Tzadua, (Durham: Carolina Academic Press, 2009), v.

[6] His Imperial Majesty Haile Selassie I, preface to the first printing of *The Fetha Nägäst: The Law of Kings,* ed. Peter Strauss, trans. Abba Paulos Tzadua, (Durham: Carolina Academic Press, 2009), v.

[7] Aberra Jembere, *An Introduction to the Legal History of Ethiopia 1434-1974* (Münster: LIT Verlag, 2000), 36-37.

the "traditional legal code" which asserted the "divine right of kings."[8] Habtamu Mengistie Tegegne's work on a sixteenth-century edict on slavery has likewise has illustrated the importance of the code as legal precedent.[9] For his part, Ethiopian legal scholar Aberra Jembere has opted for a more moderate view asserting that the Christian code never fully displaced customary law but did receive a prominent place in Ethiopian legal history.[10] Jembere's stance is based primarily on the uncertainty of the exact time period the *Fəṭḥa Nägäśt* was introduced into the empire and how long it took for the code to be integrated into society. He also points to the fact that the code is only sparsely referenced in one of the main sources for Ethiopian history, the Royal Chronicles.[11]

On the other side of the scholarly spectrum are those who minimize the importance of the *Fəṭḥa Nägäśt* to varying degrees. Based upon the minimal references found in the Royal Chronicles, there is a tendency to assert the code was nothing more than a reference guide that had little influence beyond the royal courts. More extreme opinions illustrating a strong minimalist approach go so far as to asserting that the *Fəṭḥa Nägäśt* "never became binding law" and "it was to a large degree unintelligible…and has nothing to do with Ethiopian law."[12] Given the official stance of the EOTC, what explains these wide diversions in opinion about the historical importance of the *Fəṭḥa Nägäśt*? What sources are scholars relying on to come to such

[8] Richard Pankhurst, *A Social History of Ethiopia,* (Trenton: Red Sea Press, 1992), 23.

[9] Habtamu Mengistie Tegegne, "The Edict of King Gälawdéwos Against the Illegal Slave Trade in Christians: Ethiopia, 1548," *The Medieval Globe* 2, no. 2 (2016).

[10] Jembere, *An Introduction to the Legal History of Ethiopia,*189.

[11] Jembere, *An Introduction to the Legal,* 194.

[12] Manfred Kropp, "The Good Old Law: Literacy and Orality in the Practice of Ethiopian Royal Law," *Folia Orentalia,* vol. 49 (2012): 253-267.

wide-ranging conclusions? What sources can be used to examine whether the Jembere, *An Introduction to the Legal* had a broader influence beyond the courts of the kings? How did the EOTC come to have such a high reverence for this legal text?[13] What impact did the *Fəṭḥa Nägäśt* have on the development of the EOTC? What influence did Ethiopian customary and legal practices have on the formulation of *Fəṭḥa Nägäśt*? Moreover, what historical changes in the legal landscape of Ethiopia came as a result of the transplantation of the *Fəṭḥa Nägäśt?* Indeed, what were the historical modes of transmission that dispensed the law to those in the periphery? These are among the main research questions guiding this dissertation.

This dissertation examines the history of the *Fəṭḥa Nägäśt*, from its 'reception' in Ethiopia, to its practical application and influence on Ethiopian society. A wide variety of indigenous and foreign sources are examined in this study including, property documents, hagiographies, legal texts and European travel narratives. I seek to understand the influence of the code on the legal system and critically evaluate its application across Christian society. Evidence of this legal text in practical application is largely absent from the historical record or buried in unexpected and often ignored sources. This project required dedicated research to excavate critical textual and oral knowledge for understanding the historical development of the EOTC and the monarchy, the two historically dominant Ethiopian institutions. The perceived paucity of historical information documenting the *Fəṭḥa Nägäśt's* role in regulating and shaping the legal practices of Ethiopian society is the proverbial cornerstone of minimalist arguments.

[13] Currently it is custom that every church holds a copy of the *Fetha Nägäst.* Additionally, the EOTC has a school of which one branch is devoted to the study of the *Fetha Nägäst* and trains professional scholars known in Gə'əz as *liq* or *liqawənt* (chief, senior, old man, aged, elder, master, magistrate, learned man, presbyter) and are drawn only from the population of laymen. The *liqawənt* receive the title once they are able to recite the *Fetha Nägäst* from memory and are also the only scholars within the church that can offer interpretations on the statutes contained in the code. See *Liqä Śaltanat* Habtä Maryam Wärqnäh, *Ṭəntawi YäItyoṗiya Śər'atä Təməhrt* ጥንታዊ የኢትዮጲያ ሥርዓተ ትምህርት [*The Traditional School Curriculum of Ethiopia*] (Addis Ababa, 1971).

However, many interpretations stem from a misguided approach focused on the center of political power, namely the emperors and their royal courts, that tends to ignore the extended power of the church and its role in dispensing justice to the masses. The church, while an authoritative institution itself, likewise served as a conduit between the center and the periphery, and thus was key in the maintenance of the emperors' authority.[14] Utilizing the church as a starting point, this project will shed light on the fundamental role of the *Fəṭḥa Nägäśt* in the development of a legal culture within the church and state, and across Ethiopian society with a particular focus on the sixteenth- twentieth centuries.

Legal Institutions and Transmission

According to Pankhurst, the church was an important unifying factor during times when the Solomonic monarchy was experiencing a degree of instability.[15] Further, the historical record reveals the vast network of churches in existence by the seventeenth century. Accounts indicate that nearly every settlement outside the center had at least one church.[16]

[14] Historically the EOTC and the State were heavily intertwined from the Medieval period on. The church is credited with sanctioning the rise to power of the Solomonic dynasty. Further, regional rulers would often sit on church councils and played a role in bringing Patriarchs supplied by the Coptic church of Egypt to serve over the EOTC. Conversely the church was key in choosing successors to the throne as well as ritually anointing the successors once they had been chosen. In addition, despite the Patriarchs of the church coming from Egypt, the Emperors served as both the *de facto* and *de jure* leader of the church. The Coptic bishops, who did not understand Gə'əz or Amharic and were not familiar with the EOTC liturgy, primarily served as the nominal leader of the church. Ephraim Isaac, *The Ethiopian Orthodox Täwahïdo Church*, (Lawrenceville, NJ: Red Sea, 2013); Harold G. Marcus, *A history of Ethiopia*, (Berkeley: University of California Press, 2002); Richard Pankhurst, *A social history of Ethiopia: the northern and central highlands from early medieval times to the rise of emperor Téwodros II*, (Trenton, NJ: Red Sea Press, 1992).

[15] Pankhurst, *A social* history, 74-75.

[16] Pankhurst, *A social* history, 96.

This project will document the important role of the church in the transmission of the law and training legal agents who dispensed justice. My approach is guided by the recognition of a key factor regarding the church. Historically, the church not only functioned as place of worship, but also as an institution of higher learning that dispensed legal and spiritual knowledge. The church school system included the institution of the *Mäṣḥaf Bet* (House of Books) for the study of literature, and the branch known as *liqawənt,* devoted to study of the *Fəṭḥa Nägäśt* and producing scholars and interpreters of the law.[17] These scholars and interpreters of the law were drawn exclusively from the laymen of the church and often served the parish to which they belonged. These legal scholars, known as *liq* or *liqawənt*, were trained to recite the *Fəṭḥa Nägäśt* from memory. This was a key modality in transmission of the law to the parish, given that literacy as well as knowledge of Gə'əz language were historically reserved for the church and royal elites.

Legal Theories, Methods and Approaches

In studying the *Fəṭḥa Nägäśt*, my work aligns with maximalist assertions, such as Pankhurst's views on the social relevance of the code. However, it expands upon maximalist arguments by broadening the interpretive scope to include the EOTC and the role of its vast network of churches in maintaining law and order across society. In addition, my preliminary research on the topic has yielded substantial evidence that the *Fəṭḥa Nägäśt* was being utilized in dispensing justice in the periphery as early as the fourteenth-fifteenth centuries. Still, I do not

[17] *Liqä Śaltanat* Habtä Maryam Wärqnäh, *Ṭəntawi YäItyoṗiya Śər'atä Təməhrt* ጥንታዊ የኢትዮጲያ ሥርዓተ ትምህርት [*The Traditional School Curriculum of Ethiopia*] (Addis Ababa, 1971), 227, 233.

assert that the code completely replaced Ethiopian legal systems, rather that they were mutually complimentary and developed according to the needs of society.

In dealing with the reception of law, Alan Watson's theory of legal change which he calls 'legal transplant' is often discussed in relation to the 'reception' of law. A key aspect of 'legal transplant' and 'reception' is that while it is possible for entire legal systems to be procured by one society from another, it is also possible to borrow only portions of law or a legal system.[18] In fact, Watson argues that it is "economically efficient" for societies to borrow laws and legal systems since it saves the lawmaker "the awful labor of thought."[19] This is a problematic approach towards 'legal transplant', especially in the case of African societies who have been historically framed as incapable of legal thought.[20] Therefore, I reject the notion that 'legal transplant' "saves the labor of thought," but accept the idea of economic efficiency on the grounds that that it served another purpose, such as establishing precedent where it was lacking. Further, it is my view that 'legal transplant' and 'reception' are more often than not, born out of legal thought and strategy by lawmakers. While it is absolutely a fair characterization to describe the *Fəṭḥa Nägäśt* as a borrowed code, it is also important to note that the text was not imported into a legal vacuum. Contrarily, the ecclesiastical portion was already known in the forms of the *AD* and the *Sənodos.* In addition, both Jewish and Islamic legal traditions were practiced in Ethiopia and contained rules comparable to

[18] Alan Watson, "Aspects of Reception of Law," American Journal of Comparative Law 44, no. 2 (Spring 1996): 335.

[19] Watson, "Aspects of Reception," 336.

[20] Georg Wilhelm Friedrich Hegel, *The Philosophy of History*, trans. J. Sibree, (Kitchener: Batoche Books, 2001), 110-111.

the *Fətḥa Nägäśt*.[21] Thus, it is fair to assert that the *Fətḥa Nägäśt* does not represent a significant point of departure from Ethiopian legal norms and systems, but rather would have resonated with existing traditions. Further, it is also important to delineate my position from that of Watson on 'legal transplant.' My use of the term is deployed in its purest form where it is defined simply as moving or transferring something from one place to another. In this case, the adoption of the *Fətḥa Nägäśt* represented knowledge transfer from Coptic Egypt to Orthodox Ethiopia.

In other words, I take the word transfer to simply refer to the transmission of a physical book from one place to the other. What is more, the *Fətḥa Nägäśt* did not arrive in Ethiopia completely translated into Gə'əz and bestowed with its Gə'əz title. It was an Arabic text that was later translated. The Coptic *Nomocanon,* according to Ethiopian tradition, would have been transferred into the nation by the fifteenth century, at the latest. Historical records show that it was translated from Arabic into Gə'əz and in use by the early sixteenth century.[22] Thus, there is undoubtedly a certain time lapse between reception and translation of the code. In my view, the translation is the most important aspect for 'indigenization'. 'Indigenization' represents the adaptation or transformation of foreign knowledge, in this case legal knowledge, into knowledge reflecting indigenous or local values.[23] Its translation into Gə'əz, therefore, was the starting point for the 'indigenization' of the book of laws.

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[21] David Benjamin Spielman, "One Law For Us All: A History of Social Cohesion through Shared Legal Tradition Among the Abrahamic Faiths in Ethiopia," Master's Thesis, University of California, Los Angeles, 2015.

[22] Tegegne, "The Edict," 80-81.

[23] Mel Gray and John Coates, "'Indigenization' and Knowledge Development: Extending the Debate," *International Social Work* 53, no. 5 (2010): 613-614; Danielle M. Conway, "Indigenizing Intellectual Property Law: Customary Law, Legal Pluralism, and the Protection of Indigenous Peoples' Rights, Identity, and Resources," *Tex. Wesleyan L. Rev.* 15 (2008): 207.

In his criticism of Watson, Pierre Legrand asserts that 'transplant' is impossible since the law inevitably leaves behind its meaning and takes on a new meaning based upon the host culture's "distinctive cultural logics."[24] Legrand essentially is arguing that the borrowed law is nothing but a set of words since the meaning will inevitably change and adjust according to the host culture's values. Watson on the other hand, argues that the law is autonomous and thus the idea of the law mirroring a culture is false and essentially makes 'legal transplant' a relatively straightforward and frequent process.[25] My approach is somewhere in the middle of these two arguments, by which I assert that the *Nomocanon* was transplanted into Ethiopia in part because of the relationship between the Coptic and the Ethiopian Church. Accordingly, it was able to retain a significant portion of its original meaning while also being integrated into its Ethiopian cultural setting. The process of translation and interpretation into Gə'əz make the legal text culturally Ethiopian.

The concept of 'legal hybridity' often appears in discussions and studies on colonial legal systems. It refers to the incorporation of indigenous law (often reinvented in the process of colonial codification) into colonial court systems characterized by 'legal pluralism'.[26] My approach is centered on the concept of Ethiopian custom being a determinant of law alongside the *Fəṭḥa Nägäśt.* Indeed, Ethiopian customary laws often were taken into consideration in legal interpretations of the statutes in the *Fəṭḥa Nägäśt* as they are acknowledged to have been

[24] Pierre Legrand, "The impossibility of 'legal transplants'," *Maastricht journal of European and comparative law* 4, no. 2 (1997): 118-119.

[25] William Ewald, "Comparative jurisprudence (II): the logic of legal transplants," *The American Journal of Comparative Law* 43, no. 4 (1995): 489-510

[26] Lauren Benton, *Law and colonial cultures: Legal regimes in world history, 1400-1900*, (Cambridge: Cambridge University Press, 2002).

"constructed within the framework of Ethiopian life and customs."[27] Further, my approach towards the *Fəṭḥa Nägäśt* and 'legal hybridity' is grounded in an acknowledgement, as described by Nora Demleitner, that

> all legal systems are mixed—derived from imported structures, concepts and ideas but also emanating from different normative systems which are based on customs, religions and languages, habitat and natural resources, families, geography and climate, conceptions of morality, and other features.[28]

Thus, by 'legal hybridity' I draw attention to both the adoption of a foreign legal manual, the *Fəṭḥa Nägäśt*, and the preexisting legal and customary landscape of this region of the Horn of Africa which boasted Coptic, Jewish, Islamic, Byzantine, and Ethiopian influences.[29]

My dissertation is motivated by an understanding of how laws originate and how they evolve. It also considers "the reciprocal influences of different legal systems…and the spread of legal ideas from culture to culture."[30] In the case of the *Fəṭḥa Nägäśt* it is important to understand why the code was transferred from Egypt to Ethiopia. As noted above, the code contains both secular laws and ecclesiastic laws. Ethiopia already had access to the ecclesiastical portion of the code in the *Senodos* but required a unifying Christian 'secular' law, and this is apparently what motivated a request for the text to brought from Egypt by *aṣe* Zär'a Ya'əqob (1434-1468).[31] As

[27] Ghislaine Lydon, "Islamic Legal Culture and Slave-Ownership Contests in Nineteenth-Century Sahara," *The International Journal of African Historical Studies* 40, no. 3 (2007): 396; Tzadua, *The Fetha*, xx.

[28] Nora V. Demleitner, "Combating Legal Ethnocentrism: Comparative Law Sets Boundaries," *Ariz St. LJ* 31 (1999): 748-749.

[29] Jembere, *An Introduction to the Legal History of Ethiopia,*1; Tegegne, "The Edict," 74-75.

[30] Ewald, "Comparative jurisprudence," 510

[31] Tegegne, "The Edict," 80.

this is the accepted idea among most scholars as to the origin of the *Fəṭḥa Nägäśt,* I will critically examine the social, political, and religious environment during the reign of *Negus* Zär'a Ya'əqob.

Pre-Colonial African/Ethiopian Legal Histories

In the last few decades, there has been a surge in scholarly interest in the legal history of Africa.[32] The interest has resulted in the publication of several important monographs and edited volumes on the subject. These works generally have fallen into two categories. The first is legal histories dealing with the colonial and post-colonial periods that examine how colonialism shaped the legal landscapes of Africa. The second are studies about the practice of *sharī'a* law in African societies. Richard Roberts has been at the forefront of scholars utilizing colonial court records as a source for writing social history, primarily in West Africa.[33] Likewise, Ghislaine Lydon has produced some notable works on Islamic law in the Sahara in Mali and Mauritania in the precolonial period.[34]

As with much of African history, there is a paucity of legal histories of Africa prior to European colonialism in the late 19th century. Much of the same is true of Ethiopia, with a good

[32] I have chosen to ignore the popular term Sub-Saharan Africa based upon the way the term has been historically deployed. The term has been used to draw an artificial 'civilizational' and 'racial' boundary which removes the Northern portion of the continent and labels the tremendous historical developments and contributions of Egypt for example, as non-African. The division of Africa is attributed to Hegel who asserted that south of the Sahara is 'Africa proper' geographically isolated and devoid of 'civilization', north Africa is 'European Africa', and Egypt and the Nile valley is placed in Asia and an isolated civilizational anomaly. Georg Wilhelm Friedrich Hegel, trans. J. Sibree, *The Philosophy of History,* (Kitchener: Batoche Books, 2001), 109-117.

[33] See Richard Roberts and Kristin Mann, *Litigants and Housholds: African Disputes and Colonial Courts in the French Soudan, 1895-1912* (Portsmouth: Heinemann, 2005) among others.

[34] See Ghislaine Lydon, *On Trans-Saharan Trails: Islamic law, trade networks, and cross-cultural exchange in nineteenth-century Western Africa* (Cambridge University Press, 2009); "Slavery, exchange and Islamic law: a glimpse from the archives of Mali and Mauritania." *African Economic History* 33 (2005): 117-148, among others.

portion of scholars focusing on the modern period and the changes the modernization process has had on 'customary law'. With the exception of Jembere's *Introduction to the Legal History of Ethiopia*, which covers the 15th century to the fall of the Solomonic dynasty in 1974, and Habtamu Mengistie Tegegne's work on land deeds in Gondar in the 18th and 19th centuries and a royal edict on slavery in the 17th century, few studies examine Ethiopia's legal history of the early-modern or medieval periods.[35] Further, outside a handful of articles and short sections in books, there has been no work dedicated to an in-depth examination of the *Fəṭḥa Nägäśt*, and more broadly Christian law in Ethiopia. My dissertation project seeks to redress this scholarly gap by simultaneously shedding light on the history of Christian law in Ethiopia, and more broadly on law and justice in Africa outside of the colonial experience.

Further, this dissertation stands to make an original contribution to the broader field of legal history dominated by works centered on European and specifically Roman institutions and traditions. Legal theories in general, are laid out in a language centered on concepts of 'civilizational development' which in western academic tradition automatically excludes Africa. Thus, legal theory produces a dichotomy containing 'law proper' on one side, with stratified social structures within state frameworks and Europe at the apex of development, versus 'customary law' with loosely organized societies and Africa at the nadir of development.[36] Complicating the issue is where Ethiopia fits in this dichotomy. As odd as it seems to discuss how 'African' a nation

[35] See Habtamu Mengistie Tegegne, "Recordmaking, Recordkeeping and Landholding–Chanceries and Archives in Ethiopia (1700–1974)," *History in Africa* 42 (2015): 433-461; "Dispute over precedence and protocol: Hagiography and forgery in 19th-century Ethiopia," *Afriques. Débats, méthodes et terrains d'histoire* 07 (2016);" The Edict of King Gälawdéwos Against the Illegal Slave Trade in Christians: Ethiopia, 1548," *The Medieval Globe* 2, no. 2 (2016): 5 among others.

[36] Geoffrey M. Hodgson, "On the Institutional Foundations of Law: The Insufficiency of Custom and Private Ordering," *Journal of Economic Issues* 43, no. 1 (2009): 143-146.

geographically located in Africa is, based upon narratives of Ethiopian exceptionalism and the so-called 'Semitic paradigm' that dominate studies of Ethiopia, these paradigms must be confronted in order to truly contribute to a broader more inclusive legal history.

Sources for African Law

African legal historians generally have access to a limited pool of written sources to draw upon. African written legal sources have primarily been drawn from two areas, European colonial documents and studies, and Islamic works composed by African Muslims. In colonial discourse, African law was thought to exist in a frozen state at the earliest stages in universal linear development with European law occupying the end of the progression.[37] Further, Africans at best only consulted in the composition of colonial sources and thus those sources are bound to fall short in our understanding of the African legal systems they are referencing. Islamic sources written by African Muslims have been far more useful in documenting African legal histories. African legal historians have utilized these sources to identify 'legal hybridity' in that customary law or the law of the land was often consulted alongside or within Islamic legal frameworks.[38] Accordingly, the *Fəṭḥa Nägäśt* provides an opportunity for a unique contribution to African legal history in that it is an African source, composed in an African language to govern over African peoples. Further, the Christian traditions from which the *Fəṭḥa Nägäśt* are drawn are both African in origin, springing from Coptic Egyptian and Ethiopian Orthodox *Täwahədo*.

[37] Martin Chanock, "A Peculiar Sharpness: An Essay on Property in the History of Customary Law in Colonial Africa," *The Journal of African History* 32, no. 1 (1991): 69.

[38] Lydon, "Islamic Legal Culture."

Sources and Methodology

This project began in 2015, while attending the master's program in African Studies, in the International Institute, at the University of California, Los Angeles. I incorporate a wide variety of primary sources in this study, many of which are either related to, or belong to the EOTC, some of which are held by EOTC libraries. My research draws upon sources gathered in Ethiopia as well as digitized sources housed in European and U.S. institutions, and private collections. In 2015, 2017, and February 2020-February 2021, I gathered data in Ethiopia that greatly augmented my dissertation. In 2015, my field work was mainly restricted to the Institute of Ethiopian Studies (IES) at Addis Abba University (AAU).

In 2017, my field work took me to several monasteries and churches in Northern Ethiopia. I experienced some success at the Lake Ṭana island monastery of Daga Ǝsṭifanos, where I collected data from oral and written sources. My greatest success occurred in Gondär at the famous Däbrä Bərhan Śəlasse, where I gathered key oral data from highly trained legal scholars. There exist many challenges to conducting research in church and monastery archives. Obtaining official letters of authorization from the Patriarchy Office in Addis Ababa, in many cases did little to nothing in providing access to church and monastery archives in the Amhara and Tigray regions of Northern Ethiopia. Accordingly, many of the Churches and monasteries I was scheduled to conduct research at, I was turned away.

In 2020, my research was severely limited due to travel restrictions associated with the COVID-19 pandemic, political violence, and war in Tigray and the Amhara regions. Accordingly, I shifted my approach and gathered a wealth of data through informant interviews. I interviewed church officials, legal scholars, and teachers in the EOTC traditional schools in Addis Ababa and Gondär. These interviews were primarily focused on the *Fəṭḥa Nägäśt* and the scope of its

influence. This oral data was key in filling gaps in the written records in relation to legal education and procedure. They additionally corroborated data found in manuscripts in relation to the *Fəṭḥa Nägäśt* and its practical application.

In addition to the oral sources, I also made use of the digitized manuscripts housed in the British Library, as well as the Gallica digital library, which is part of the National Library of France. The most important contributions to this project came from Habtamu Mengistie Tegegne, who graciously provided me with a wealth of digital material, including unpublished manuscripts that he has digitized and used in his own research. These documents are primarily legal documents that range from the sixteenth to the early-twentieth century, and deal with land, inheritance, adoption, slavery and manumission among others. Manuscripts from Däbrä Marqos and Atkäna Giyorgis churches in Goğğam and Farṭa are rich in detail dealing with legal transactions and procedure.[39]

Many past approaches to the study of the history of the *Fəṭḥa Nägäśt* have been centered on searching for direct references to the text in practical application, which in many cases are few and far between.[40] The Däbrä Marqos and Atkäna Giyorgis manuscripts are composed in Amharic and Gə'əz, and contain both detailed direct and indirect references to the use of the *Fəṭḥa Nägäśt* in the organization of Ethiopian Christian society, as well as indirect evidence, that requires comparison to the provisions in the *Fəṭḥa Nägäśt*. I also found European and Egyptian translated sources helpful in filling gaps and providing indirect evidence dealing with the reception and

[39] *Tarikä Nägäśt* (Private Collection: Habtamu Mengistie Tegegne); *Wängel ZäWärq Atkäna Giyorgis* (Private Collection, Habtamu Mengistie Tegegne); *Yädäbru Yäkəbrä Mäzgäb*, Däbrä Marqos (Private Collection: Habtamu Mengistie Tegegne); *Yärəst Mäzgäb*, Däbrä Marqos (Private Collection: Habtamu Mengistie Tegegne).

[40] Peter H. Sand, "Roman law in Ethiopia: traces of a seventeenth century transplant," *Comparative Legal History* 8, no. 2 (2020): 116-143

application of the law in Ethiopia. Time and circumstances seriously limited the opportunity to conduct research in the manner I wished.[41] However, I will hold onto the goals of expanding this research for the book manuscript version of this dissertation.

Preview of the Dissertation

Much of this dissertation focuses on the history of the EOTC legal text, the *Fəṭḥa Nägäśt*. Chapter two is an examination of the conversion of the Aksumite kingdom to Christianity (4th c.), and literary traditions that were born out of the relationship and knowledge exchange between the Coptic church of Egypt, and Ethiopia. Here, I consider how a semi-subordinate relationship to the Coptic church influenced much of the Christian Ethiopian literary traditions and the sources of law adopted into the Ethiopian tradition. This chapter also critiques scholarship on the legal systems of Ethiopia and offers in its place, an Ethiopian Christian centered concept of law. This concept deconstructs the false barriers between so called 'secular,' and spiritual or canon law, and replaces it with a blend of the two categories in a way that reflects historical Ethiopian Christian realities.

Chapter three traces the history of the legal text, from its composition in Coptic Egypt in the thirteenth century, to its reception and application by the early fifteenth century. In particular, I focus on the circumstances surrounding the composition of the text in Egypt. This context is critical to my argument, that the composition was motivated, in part, by the Copt's desire to control the Ethiopian church and state. This chapter further examines trace evidence of the *Fəṭḥa Nägäśt* in practical application, in the fourteenth through early-sixteenth centuries. This evidence calls for

[41] The global pandemic, violence and government crackdowns in Ethiopia, as well as the war, which began in November 2020, all limited my research greatly. However, my research goals are insignificant in the broader picture of the pandemic and the ongoing conflict in northern Ethiopia. Many friends, colleagues, and family have been, and continue to be severely impacted by the conflict. Above all I hope that the conflict can come to an end and peace can prevail.

a reassessment of Ethiopia's estimated reception of the legal text took place. Accordingly, I utilize it to assert an earlier reception, between the early-fourteenth and early-fifteenth centuries.

Chapter four probes the institutional history of the EOTC school system and the training of legal scholars and judges to interpret and apply the law in the *Fəṭḥa Nägäśt*. The higher schools of education which focused on law, among other subjects, developed complex commentary traditions in the fifteenth and sixteenth centuries. The commentary traditions provided methods of legal interpretation used when adjudicating legal disputes. The chapter then carries the discussion to an examination of the administrative roles and the legal scholars who would occupy them. It closes by examining documented evidence of the process of appointing legal positions in the kingdom, as well as the roles these individuals would fill.

Chapter five examines case studies across the eighteenth and nineteenth centuries that spotlight the *Fəṭḥa Nägäśt* in practical application. The various case studies examined deal with slavery, manumission, usury and inheritance. I argue that these cases affirm a well-developed legal culture centered on the provisions in the *Fəṭḥa Nägäśt*, and additionally highlight its influence in the social life of the Christian kingdom. The rich sources further reveal a complex legal system where lines between 'secular' and religious are blurred. The prominent role the *Fəṭḥa Nägäśt* plays in manumission charters, wills, and various other types of legal contracts underpins the main argument of this dissertation.

In summary, considerable strides forward have been made in the study of African legal systems. In the case of Ethiopia, the *Fəṭḥa Nägäśt* has been central to much of the work, yet there remains a great deal of exploring that needs to be done regarding the influence of the text across society. In sum, this study seeks to expand our understanding of the complex legal system of Christian Ethiopia, and its principal legal text, the *Fəṭḥa Nägäśt*.

Chapter 2: From the Time of Aksum to the *Fəṭḥa Nägäśt*: Conceptualizing Law in Christian Ethiopia

A variety of terms that dominate the conversation the history of law in Africa. Of these terms, scholars frequently employ 'custom' and 'tradition' as their key descriptors of the legal systems and normative orders found on the African continent prior to the period of European colonialism. Both terms carry unfavorable baggage packed full of disparaging implications. The often-unstated implication of 'custom' and 'tradition' are that they are "relatively unchanging [and] the modality of primitive society" while law is viewed as its antithesis, "the instrument of civilization."[42] The concepts of 'custom' and 'tradition' were born out of the colonial period in Africa when European conquerors sought stable traditions in which to legitimize their rule.[43] Richard Roberts and William Worger note that the idea of "'customary' law and 'traditional' authorities fit [European colonizer's] needs well…because they meshed with European notions of African changelessness."[44] Accordingly, when we strip down 'customary' and 'tradition' we are left with the far too common trope of 'civilized' Europe versus its antithesis, 'uncivilized' Africa.

The legal history of Ethiopia has in some cases been treated as an exception in this paradigm, owed in great part to the principles of law and legal systems that developed out of Christianity that governed the spiritual and temporal lives of peoples living in the Christian areas

[42] Stanley Diamond, "The Rule of Law Versus the Order of Custom," in *The Social Organization of Law*, ed. Donald Black and Maureen Mileski (New York: Seminar Press, 1973), 332.

[43] Richard Roberts and William Worger, "Law, Colonialism and Conflicts Over Property in Sub-Saharan Africa," *African Economic History*, no. 25 (1997): 1.

[44] Roberts and Worger, "Law, Colonialism," 1.

of the kingdom.[45] Most contemporary scholars, while not completely removing it from African classification, assert Ethiopian exceptionalism due to a 'mixed' or 'hybrid' legal system partaking in civil, common, and indigenous African law.[46] Finally, there is a third argument which asserts Ethiopian exceptionalism on a grander scale, claiming that it should be classified as a separate category of law.[47]

This chapter will examine the characteristics of the law, legal texts and legal systems of Christian Ethiopia and engage the debates on the development of law in the kingdom. Taking a *longue durée* approach, special attention is given to the Aksumite and Solomonic literary periods and the introduction of Christian legal texts into Ethiopia primarily from Coptic Egypt, as well as political and religious change which came with the rise of Christian Aksum (4th century) and expanded during the Solomonic dynasty (13th century). This chapter will demonstrate that Aksum's adoption of Christianity as well as the Ethiopian church's semi-dependent relationship to the Coptic church of Alexandria significantly influenced literary traditions and adopted sources of law (*Fəṭḥa Nägäśt*), that developed in Christian Ethiopia over the greater part of thirteen centuries.

The first section of the chapter will provide a background on the Christianization of Aksum and literary development in order to contextualize the discussion of law in Christian Ethiopia. The second half will engage the debates on the place of law in Ethiopia and construct a

[45] Jembere, *An Introduction to the Legal History of Ethiopia*, 35; Zuzanna Augustyniak, "The Genesis of the Contemporary Ethiopian Legal System," *Studies in African Languages and Cultures* 46 (2012): 112,113.

[46] Peter H. Sand, "Roman Law in Ethiopia: Traces of a Seventeenth Century Transplant," 140, 141.

[47] Zuzanna Augustyniak, "The Genesis of the Contemporary Ethiopian Legal System, *Studies in African Languages and Cultures* 46 (2012): 112,113.

framework with which to examine the history of the *Fətḥa Nägäśt* and its application in Christian Ethiopia.

The Christianization of Aksum and the Development of Gə'əz Literature

The Gə'əz writing system and body of Christian literature have been the subject of both internal and external inquiry for centuries. Thousands of centuries-old manuscripts can be found in both private and public collections around the world as well as hundreds of thousands in Church and library collections throughout Ethiopia and Eritrea. Surveys of the considerable corpus of Christian Gə'əz literature are generally presented chronologically, as well as categorized according to dynastic periods in Ethiopian history.[48] The first literary period corresponds with the adoption of Christianity by the Aksumite emperor 'Ezana mid-fourth century, to the decline of Aksum c. 900 A.D. This period is generally classified as the 'Greek period' due to Copto-Greek literature being the main source of Christian texts coming into Ethiopia. [49] Significant texts of the Aksumite corpus include the biblical books of both the New Testament and Old Testament, as well as the *Ascension of Isaiah*, and the books of *Jubilees* and *Enoch*, the last three of which, thanks to Gə'əz, exist in any language.[50]

[48] Getatchew Haile, "Gə'əz Literature" in *Encyclopedia Aethiopica*, ed. Siegbert Uhlig and Alessandro Bausi, Vol. 2 (Wiesbaden: Harrassowitz, 2005), p. 736-741.

[49] Haile, "Gə'əz Literature," 736-741. Most of the Eastern Churches including the Coptic church used Greek as their main written language during this period.

[50] Haile, "Gə'əz Literature," 736-741. Alessandro Bausi, "Ethiopic Literary Production Related to the Christian Egyptian Culture" in *Coptic Society, Literature and Religion from Late Antiquity to Modern Times: Proceedings of the Tenth International Congress of Coptic Studies, Rome, September 17th-22th, 2012 and Plenary Reports of the Ninth International Congress of Coptic Studies, Cairo, September 15th-19th, 2008* Vol. 1*,* eds. Paola Buzi, Alberto Camplani & Federico Contardi, (Leuven: Peeters Publishers, 2016), 505-506.

The conversion of Emperor ‘Ezana is generally viewed as the start of the Aksumite or Greek literary period. Indeed, the development of the Aksumite church in this period had a lasting effect on literature, politics, and Christianity in Ethiopia for the next millennium plus. In particular, the influence of foreign evangelists set the stage for the development of church hierarchal traditions as well as source material for literary and translation traditions. The influence of foreign evangelists in the shaping of the church starts with the well-known story of the conversion of ‘Ezana by St. Frumentius, a Syrian Christian who was captured as a boy in the Aksumite port city of Adulis.[51] The account of St. Frumentius has been well documented in several Ecclesiastical literary traditions including Greek, Latin, and Gə’əz. The narrative appears in a variety of literature, which despite differences in language and composition, substantially agree with each other on the basics of the story with a few minor exceptions.[52]

The story goes that Frumentius, along with his brother Aedesius, were traveling through the Red Sea with their uncle Meropius, a philosopher from Tyre. When the group stopped in the Red Sea port of Adulis they were attacked and the entire crew of their vessel were massacred, except for Frumentius and Aedesius, allegedly spared because of their young age. The two were enslaved and brought to the court of Emperor Èllä ‘Amida (‘Lord of the stele’) in Aksum where over time they earned the trust of the emperor and were assigned distinguished roles in his

[51] Adulis was the main port of Aksum at the height of its power. Aksum maintained extensive trade networks through Adulis and traded with numerous powerful partners including Southern Arabia, India, and the Roman and Byzantine empires. David W. Phillipson, *Foundations of an African Civilization: Aksum & the Northern Horn, 1000 BC-1300 AD* (Rochester: James Currey, 2012); Stuart Munro-Hay, *Aksum: An African Civilization of Late Antiquity*, (Edinburgh: Edinburgh University Press, 1991).

[52] The oldest account of which the others are thought to be based is that of Rufinus of Aquileia in *Historia Ecclesiast*. See Massimo Villa, “Frumentius in the Ethiopic Sources: Mythopoeia and Text-Critical Considerations,” *Rassegna Di Studi Etiopici Vol. 1* (2017): 87-111.

court.[53] Upon the death of Èllä ‘Amida, his young son ‘Ezana ascended the throne of Aksum, and at his mother’s request, he was educated by Frumentius and Aedesius. Thus ‘Ezana was converted to the Christian faith, although as Taddesse Tamrat underscored, his conversion my not have been completely free of political as well as diplomatic considerations. Further, ‘Ezana’s conversion did not instantly open up Aksum to Christianity and might even have ignited opposition from conservative forces.[54] Nonetheless when ‘Ezana came into adulthood he granted Frumentius and Aedesius a request to depart Aksum for their native land. While Aedesius did indeed depart for Tyre, Frumentius for his part journeyed to Alexandria where he sought out Archbishop Athanasius and expressed his enthusiasm regarding the recent conversions and the need for bishops and priests in Aksum.[55]

Athanasius was of the opinion, that based on his experience, Frumentius was best suited for the job and appointed him as first bishop of Aksum. The account is recorded in the Gə’əz Homily of Frumentius contained in a 14th century homiliary entitled the *Rəut‘a Haymanot* (lit. ‘the Orthodox’) preserved in the island monastery Ṭana Qirqos:

> **ወተሠይመ፡ ፍሪሜንጥዮስ፡ በከመ፡ ይደልወ፡ ጵጵስና፡ ወፍጡነ፡ በጽሐ፡ ብሔረ፡ አግዓዜ፡ ወሰብኬ፡ ኮነ፡ ለ ሃይማኖተ፡ ክርስቶስ።**
>
> Frumentius was appointed as one who was worthy of the episcopate. He then came at once to the land of Agʿaze and became a preacher of the religion of Christ.[56]

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[53] According to the Ethiopian *Synaxarium,* Aesdesius was assigned as “director of the household” and Frumentius as “keeper of the Laws and archives of Aksum.”

[54] Taddesse Tamrat, *Church and State,* 22-23.

[55] E.A. Wallis Budge trans., *The Book of the Saints of the Ethiopian Church: A Translation of the Ethiopic Synaxarium: Made from the Manuscripts Oriental 660 and 661 in the British Museum* (Cambridge: University Press, 1928), 669-670.

[56] Villa, “Frumentius in the Ethiopic Sources,” 94; See also Getatchew Haile, "The Homily in Honour of St. Frumentius Bishop of Axum (EMML 1763 ff. 84v-86r." *Analecta Bollandiana* 97, no. 3-4 (1979): 309- 318.

According to Ethiopian tradition, Frumentius becomes known as *abba* Sälama Käśate Bərhan (‘the Revealer of Light’) for his role as bishop and evangelizer of Christianity in Aksum.

The importance of this event cannot be overstated. The appointment of *abba* Sälama as bishop of Aksum by the Coptic patriarchate set important precedence as many of his successors for a considerable portion of the Ethiopian Orthodox Church’s history were appointed by the patriarchate of the Coptic Church. Generally, *abba* Sälama’s succors were Egyptian monks selected to lead the Ethiopian Church in a tradition that lasted well over 1500 years, until 1959 when the church became autocephalous through the efforts of emperor *aṣe* Ḫaylä Śəlasse I. It must be noted that while the Alexandrian patriarchate did control the appointment of a metropolitan over the Ethiopian church for the better part of two millenniums, the duties of the metropolitan extended only as far as the consecration of priests and deacons to serve in the churches as well as ensuring the faith was being observed according to the norms of the Coptic Church, which were often a point of contention between the two churches. An additional fact of importance regarding the arrangement is that typically the Egyptian metropolitan bishop would have no knowledge of local languages, customs, or politics and thus would be at the mercy of the *de facto* leader of the Ethiopian church, the emperor.[57] This tradition impacted the Ethiopian church in several key areas. The Ethiopian church accepting a Coptic metropolitan meant theoretically it was in agreement in the theology and Christology of the Alexandrian Church and

[57] Steven Kaplan, “Dominance and Diversity: Kingship, Ethnicity, and Christianity in Orthodox Ethiopia,” *Church History and Religious Culture* 89, no. 1 (2009): 294.

the rest of the so called Oriental Orthodox Churches.[58] This included agreeing with the first three ecumenical councils (Nicea-325, Ephesus-342, & Constantinople-381) and rejecting the Council of Chalcedon (451) which accepted a dual nature of Christ or *physeis*, the belief that Christ' nature is composed of both God and man.[59] In addition the Coptic influence on the Ethiopian church can be found in the liturgical, canonical, and literary sources, a great number of which entered Ethiopia via Egypt.

In this early period of evangelization and church development in the Aksumite empire, the first literature that was procured from Alexandria was certainly the bible. Although it is certain that the sources for these translations must have been Copto-Greek works, there is no way to connect them to specific codices since the full translation was not completed at the same time or place.[60] *Abba* Sälama initiated these first translations of portions of the Psalms and other books of the bible but did not translate the complete bible.[61] The literature at this early stage of Christianization in Aksum was by no means the peak of the Aksumite period. It is not until a century later in the fifth century and the coming of additional evangelist, that Aksum would experience a high point in procuring and translating works from Egypt. This zenith in literature

[58] The block of churches currently known as the Oriental Orthodox include the Syrian, Armenian, and Malankara (Indian) Orthodox Churches aside from the Coptic, Ethiopian, and the Eritrean Orthodox who broke off from the Ethiopian Orthodox church in 1993. This block of six churches is also variously referred to as non-Chalcedonian, pre-Chalcedonian, anti-Chalcedonian, Lesser Eastern, and Monophysite. Monophysite is considered derogatory as it implies a heretical understanding of the humanity of Christ and should be avoided. Aram Keshishian, "The Oriental Orthodox Churches," *Ecumenical Review: A Quarterly* Vol. 46, No. 1, January 1994 (1994): 103-108; John Binns, *An Introduction to the Christian Orthodox Churches* (Cambridge: Cambridge University Press, 2002).

[59] Keshian, "The Oriental Orthodox Churches," 104.

[60] Ugo Zanetti, "The Ethiopian Church, an Adult Daughter of the Coptic Church," *Journal of the Canadian Society of Coptic Studies* 8 (2016): 15.

[61] Sergew Hable Selassie and Tadesse Tamrat, *The Church of Ethiopia: A Panorama of History and Spiritual Life* (Addis Ababa: Ethiopian Orthodox Tewahedo Church, 1970).

and translation corresponds to an important event in the Ethiopian church, the coming of the nine saints.

The fifth century is one of the most critical time periods in Christian history as the century was marked by several important Christological debates which had a lasting impact on the young faith. The Council of Chalcedon in 451 was a watershed moment for the Christian Churches. The Church fathers used the Council to issue a 'Definition of faith,' which among other things, declared an 'epitome of faith' affirming the union of the divine nature and the human nature in the one person of Christ.[62] The doctrine on the nature of Christ had far reaching consequences for the Ethiopian Church, both in terms of their individual doctrine and literary culture moving forward. First, the Ethiopian along with the Eritrean, Coptic, Armenian, Syrian, and Indian Orthodox Churches reject the Chalcedonian Creed based on dyophysitism or the two-nature doctrine. The Ethiopian along with the other Churches embraced a doctrine that emphasized that "Christ is perfect God and perfect man, at once consubstantial with the Father and with [humanity]; the divinity and the humanity continuing in Him without mixture or separation, confusion or change. He is one and the same person…the indivisible state of union of Godhead and manhead."[63] This disagreement ultimately created a schism in the Eastern Churches with the Ethiopian along with the other four Churches being accused of heresy. This block of Churches which at present are known as the Oriental Orthodox Churches, have

[62] Andrew Louth, "Christology in the East from the Council of Chalcedon to John Damascene," in *The Oxford Handbook of Christology*, ed. Francesca Murphy (Oxford: Oxford University Press, 2015), 139-140.

[63] Christine Chaillot and Alexander Belopopsky, ed., *Towards Unity: The Theological Dialogue Between the Orthodox Church and the Oriental Orthodox Churches* (Geneva: Inter-Orthodox Dialogue, 1998), 82-83; "Part III: The Issue Between Monophysitism and Dyophysitism," *The Ethiopian Orthodox Tewahedo Church Faith and Order*, Ethiopian Orthodox Tewahedo Church (2003).

maintained their anti-Chalcedon stance for the last fifteen hundred plus years into our present time.[64] Thus, the Chalcedonian schism inextricably bound the Coptic and Ethiopian Churches along with the others, together in faith and further paved the way for the Coptic Church to exercise a level of influence on the Ethiopian Church and vice versa.

Towards the end of the 5th century, a few short decades after the Council of Chalcedon, groups of evangelists arrived in Aksum from the Byzantine empire. It is widely suggested by scholars that the arrival of these evangelists is directly connected with the Council of Chalcedon and the subsequent persecutions that those who rejected the Chalcedonian Creed experienced in the Byzantine empire.[65] According to Ethiopian Orthodox tradition these persecuted anti-Chalcedonian Christians went first on pilgrimage to the 'holy land' of Jerusalem and subsequentially to evangelize the fertile fields of Aksum which was not yet fully Christianized. Ultimately those who fled into Aksum are referred to by their honorary title, the *sadqan* which literally translates to "the righteous ones', a title bestowed upon them for their obedience to the unionist Christological formula.[66] There is no exact number given in any text for the *sadqan*, except they are reported to be as numerous as an army and to have proselytized from modern

[64] The Christological doctrine of the inseparability of the divine and human nature in the person of Christ is a key element of the Ethiopian and Eritrean Orthodox Churches to the extent that the Gə'əz word ተዋሕዶ (täwaḥədo) meaning oneness, unity, union, orthodoxy was included in the official title of the Church since the 19th century. Wolf Leslau, *Comparative Dictionary of Ge'ez* (Weisbaden: Harrassaowitz Verlag, 2006), s.v. "wḥd/tawāḥədo."

[65] Tamrat, *Church and State,* p. 23.

[66] David Appleyard, "Ethiopian Christianity," in *The Blackwell Companion to Eastern Christianity*, ed. Ken Parry (Hoboken: Wiley-Blackwell, 2010): 119.

Northern Eritrea, all the way to Lasta, Ethiopia, covering a territory of nearly one thousand kilometers.[67]

In addition to the 'righteous ones' there is the tradition of the 'Nine Saints,' a group of monks from various regions in the Byzantine empire. According to Ethiopian traditions the 'Nine Saints' arrived in Aksum toward the end of the fifth century around the same time as the *Sadqan* and evangelized the non-Christian areas of Aksum, translated the bible, and imported monasticism into the empire.[68] The 'Nine Saints' according to Ethiopian Orthodox tradition are Alef from Cesaria, Afṣe from Asia Minor, Guba from Cylitia, Ṣəḥma from Antioch, Yəm'ata from Cosia, and Zämika'el Arägawi, Gärima, Liqanos and Päntälewon from Constantinople.[69] The Ethiopian and Eritrean Orthodox Täwaḥədo Church tradition hold that the 'Nine Saints' were all Syrian in origin and translated the entire bible from a Syrio-Greek source. The Syriac origin thesis is primarily grounded in Syriac terms that were adopted into Gə'əz, such as **ሃይማኖት**- *haymanot* (belief, creed, faith, religion) and **ቀሲስ**- *qäsis* (presbyter, priest, elder), and the personal names of the 'Nine Saints'. These arguments were primarily pushed by Italian Orientalist Ignazio Guidi and Conti Rossini. However, recent philological studies have cast doubt on the Syriac origins thesis.

[67] Sergew Hable-Selassie, "Sadqan," in *The Dictionary of Ethiopian Biography: From Early Times to the End of the Zagwé Dynasty c. 1270 A.D.*, vol. 1, ed. Belaynesh Michael, Stanislaw Chojnacki, and Richard Pankhurst (Addis Ababa: Institute of Ethiopian Studies, 1975): 140.

[68] See Paolo Marrassini, "Some Consideration on the Problem of the 'Syriac Influences' on Aksumite Ethiopia," *Journal of Ethiopian Studies* 23 (1990): 35-46; Harold G. Marcus, *A History of Ethiopia* (Berkeley: University of California Press, 1994), 8.

[69] Krzysztof Piotr Blażewicz, "Ethiopian Monasticism," *Warszawskie Studia Teologiczne* 12, no. 2 (1999): 36-37.

Their importance to the production of a wide range of Christian literature in Ethiopia, including legal texts can only be described as monumental. With the establishment of a monastic order, the groundwork for indigenous literary production, education, and institutional development was firmly laid in Aksum and in greater Ethiopia for the next sixteen hundred plus years. In particular, the monastery of Däbrä Damo, which *abba* Aregäwi is credited with founding, is one of the most important monastic centers in the history of Christianity in the region.[70] Since its establishment Däbrä Damo has served the Church as a renowned center of learning and production center for its literature. Further, the monks of Däbrä Damo have the reputation as some of the most skilled copyist in the region, producing numerous illuminated manuscripts resulting in Däbrä Damo boasting one of the most impressive Church libraries to date. The great importance of Däbrä Damo is illustrated in Getatchew Haile's description of the ancient monastery as "the backbone of the Ethiopian Orthodox Church."[71]

In addition to establishing the monastic order and allegedly translating a complete copy of the bible, the 'Nine Saints' are also credited with translating a number of important works into Gə'əz. One of the earliest and most important works they are credited with translating into Gə'əz is *The Rules of Pachomius*, a book of rules governing monastic life composed by the Egyptian Abbot St. Pachomius the father of coenobitic monasticism. It is alleged that *abba* Arägawi was a disciple of St. Pachomius and it is tradition that each of the 'Nine Saints' established monasteries in the Aksumite empire organized according to *The Rules of Pachomius*.[72] This according to

[70] Däbrä Damo is also referred to as Ènda or Abuna Arägawi, after its canonized founder *abba* Arägawi.

[71] Getatchew Haile, "Ethiopian Monasticism," *HMML Lectures* 5 (2012).

[72] Enrico Cerulli, *Storia Della Letterature Etiopica (Storia Della Letterature di Tutt oil Mondo)* (Milan: Nuova Accademia Editrice, 1956), 25-6.

Ethiopian Orthodox traditions, is the first of many legal texts that would be adopted into the Ethiopian Church from external (mainly Egyptian) sources. *The Rules of Pachomius,* along with subsequent legal texts deal primarily with spiritual matters or rules and regulations to guide worship and the organization of the Church and monastic life. However, *The Rules* do contain references to Ethiopian cultural norms pertaining to mourning the dead as well as it most notably seems to be favorable to the Sabbath day, which will be discussed further later in the next chapter. As with subsequent canonical texts, *The Rules* does not contain any so-called 'secular' code. It is not until the second period of Gə'əz literature that Ethiopian monarchs and the Church would adopt a code that contained secular law, and this was the *Fətḥa Nägäśt*. A great number of scholars consider local regional indigenous law as governing the secular affairs of the Kingdom until the *Fətḥa Nägäśt* was adopted.

With the establishment of monasticism came the development of an important trend in organizational development in Aksum that would carry over into the Zag^{w}e and Solomonic periods. Monasteries evolved from being spiritually centered communities of Christian ascetics, to literary and educational centers, as well as centers of political and religious power within Ethiopia.[73] There are three types of monastic institutions in Ethiopia: *gädam, däbr,* and *mahbär.* Out of these three *däbr* is the type which served as a center of education as well as political and religious power. The *däbr* is described by Belcher as having substantial and established churches with extensive Church organization and royal patronage. A *däbr* may or may not have an actual monastery but have always been referred to as monasteries as they are the most formal institutions of the three.

[73] Galawdewos, *The Life and Struggles of Our Mother Walatta Petros,* trans. & ed. Wendy Laura Belcher & Michael Kleiner (Princeton: Princeton University Press, 2015).

The monastery and church schools would develop to offer students everything from basic literacy, *zema* (chanting) and *qəne* (poetry), to history, astronomy, as well as civil and canon law.[74] The influence monasteries had on their regional populations as well as the role they played in evangelizing the borderlands of the Christian kingdom made them an invaluable asset to the monarchy as they worked hand in hand in controlling the people and land over which they governed.[75] In particular the educational feature of the monasteries and churches has been described as "the main missionary factor" in the peripheral regions.[76] They also became centers of legal culture as not only were various codes composed, translated, and copied, but legal scholars and judges were also trained in these monastic and church schools. Thus, the importance of the 'Nine Saints' to Ethiopian monasticism can best be expressed in the words used by Leclercq to describe St. Antony; they were "a living text, a means of formation of monastic life."[77] The formation of monastic life thus had a broader impact on the Ethiopian Christian social order and legal culture.

Gə'əz Literature: The Solomonic Period

From the decline and fall of the Aksumite empire (c.950-970) to the rise of the so-called Solomonic dynasty (1270), a period known as the Zag^{w}e dynasty, there is only marginal evidence

[74] Lady Herbert, *Abyssinia and its Apostle* (London: 1867), 81-82.

[75] Deresse Ayenachew, "Territory Expansion and Administrative Evolution Under the "Solomonic" Dynasty," in *A Companion to Medieval Ethiopia and Eritrea*, edited by Samantha Kelly (Leiden; Boston: Brill, 2020), 63.

[76] Douglas O'Hanlon, *Features of the Abyssinian Church* (London: 1867), pg. 81.

[77] Jean Leclercq, *The Love of Learning and the Desire for God: A Study of Monastic Culture*, trans. Catherine Misrahi (New York: Fordham University Press, 1961), 98-99.

of literary activity taking place. Accordingly, the second period of Gə'əz literature coincides with the establishment of the Solomonic dynasty in Ethiopia (1270) but began to flourish during the reign of *aṣe* Amdä Ṣəyon (1314-1344) and ended five centuries in 1770.[78] The so-called restoration of the Solomonic dynasty coincides with an era of creativity in which the church and state became patrons of the arts. In addition to translated material, original literature was also produced, including the royal chronicles of which the earliest example is that of the above mentioned Amdä Ṣəyon.

Before delving into the second period of Gə'əz literature, it is important to highlight that Solomonic Ethiopia is notably different in several ways from the mighty Aksumite kingdom. The first obvious change that occurred since the decline of Aksum is the movement of central power from the city of Aksum and the coast of modern-day Eritrea to the highlands further southwest in the modern-day Amhara region of Ethiopia. This geographical relocation further to the south did not first take place under the Solomonids, but under the predecessor Zag^{w}e dynasty which shifted the center from Aksum in Tigray to Adäfa in Lasta.[79]

Further, Aksum was a centralized kingdom which had gained international recognitions as a political, religious, and trading power in the Red Sea and broader area of the ancient world.[80] Solomonic Ethiopia in contrast did not attain anywhere near the international recognition as a

[78] See Alessandro Bausi. "Heritage and Originality in the Ethiopic Sinodos," *Journal of Ethiopian Studies*, Vol. 25 (1992): 15-33.

[79] Adäfa is just outside the city of Roha which is also known as Wärwär but primarily known as Lalibela, the city famous for its rock-hewn Churches and named after the thirteenth century King Lalibela, who is credited with commissioning the monumental structures. Marie-Laure Derat, "Before the Solomonids: Crisis, Renaissance and the Emergence of the Zagwe Dynasty (Seventh-Thirteenth Centuries)," in *A Companion to Medieval Ethiopia and Eritrea,* ed. Samantha Kelly (Leiden, The Netherlands: Brill, 2020), 31-32.

[80] David W. Phillipson, "The Aksumite Roots of Medieval Ethiopia," *Azania: Journal of the British Institute in Eastern Africa* 39, no. 1 (2004): 78.

political or trading power that Aksum had previously achieved. In addition, the rise of Islam in the Horn of Africa, the Red Sea region, and beyond, the Ethiopian empire was essentially surrounded by Muslim states and even incorporated several sultanates into the Empire as tributaries.[81] Nonetheless the Solomonic dynasty was indeed a formidable power in the Horn of Africa that inherited a significant portion of the institutional features of Aksum and was by all accounts more of religious power than the predecessor kingdom. From a literary perspective, most manuscripts that have been preserved were composed during the Solomonic period, the second period of Gə'əz literature.

This second period is often referred to as the 'Arabic period' due to the bulk of the translated works being Copto-Arabic in origin.[82] While this second period saw the adoption and indigenous development of several legal codices, key events and actors of the period facilitated the transplant of the *Fəṭḥa Nägäśt* from Coptic Egypt. Undoubtedly the most important figure in this period, in terms of literary activity in Ethiopia, is *abba* Sälama Mätärgwəm (Sälama 'the Translator').[83] *Abba* Sälama 'the Translator' served as the Metropolitan to the Ethiopian Orthodox Church in the fourteenth century for roughly forty plus years from c.1348- 1390. As his title indicates, his scholarship was centered on translating numerous works from Arabic into Gə'əz. He is credited with translating at least fifteen different works (mostly hagiographies) and

[81] Ethiopian historiography has for the most part attributed the "steady decline" of the Ethiopian empire to the idea of the nation being an Island of Christianity in a sea of Islam.

[82] The 'Arabic period' of Gə'əz literature is a general reference to the translated works from 1270-1770. However, this classification is restrictive as numerous indigenous Gə'əz works as well as non-Christian works were produced over the course of five centuries. Haile, "Gə'əz Literature." Witold Witakowski, "Coptic and Ethiopic Historical Writing" in *The Oxford History of Historical Writing*: 400-1400, Vol. 2, ed. Sarah Foot and Chase F. Robinson, (Oxford: Oxford University Press, 2014).

[83] Also sometimes known as *abba* Bərhanä Azeb which translates literally to 'the Light of the South.' Paolo Marrassini, "Sälama" in *Encyclopedia Aethiopica* ed. Siegbert Uhlig and Alessandro Bausi, Vol. 4 (Wiesbaden: Harrassowitz, 2010), 488-489.

according to some scholars should be credited with more. His most important work by far was the revised translation of the Old Testament in Gə'əz from Arabic. As a result of *abba* Sälama's extensive record of translating Copto-Arabic works, scholars have speculated that he was also responsible for translating the *Fətḥa Nägäśt* into Gə'əz or at the minimum laid the foundation for it to have been translated immediately after him in the late fourteenth early fifteenth century.[84] While it is certainly plausible that the *Fətḥa Nägäśt* was indeed translated by *abba* Sälama, there is no evidence that he did in fact translate this work. Barring the discovery of corroborating evidence, this theory remains speculation and accordingly has fallen out of favor with most scholars.[85]

Before we get into the specifics of the origins and translation of the *Fətḥa Nägäśt*, it is important to examine some of the other canon law texts that were translated into Gə'əz prior to the *Fətḥa Nägäśt*. Specifically, we will be looking at the *Mäṣḥafä Senodos* (*Book of the Council*), the *Didəsqəlya* (*Teachings of the Apostles*), and the *Kidan Zä'əgzi'ənä Iyäsus Krəstos* (*Testament of our Lord Jesus Christ*) which are extremely important legal texts in the organization and regulation of the Ethiopian Church. The *Didəsqəlya* is a pseudo-apostolic text that contains laws of the church allegedly handed down directly from the apostles to St. Clement who was then, according to the text, "sent… into the world, that men may walk according to the commandments of the Church."[86] The *Didəsqəlya* is not a unique text to Ethiopia or Coptic Egypt as versions of it can also be found in Syriac, Latin, Greek and Arabic. However, there is

[84] Habtamu Mengistie Tegegne, "The Edict," 80; *Deacon* Mehari Worku, interview by author, Santa Ynez, California, December 28, 2019.

[85] Tegegne, "The Edict," 80.

[86] John Mason Harden ed. and trans., *The Ethiopic Didascalia* (London: Society for Promoting Christian Knowledge, 1920), 2.

no uniformity in these texts, and none of them contain complete set of the statutes.[87] In the case of the Ethiopian version, Alessandro Bausi asserts that the *Didəsqəlya* must have been translated from an Arabic source no later than the fourteenth century, which means the text likely came into Ethiopia early in the Solomonic period.[88]

The *Mäṣḥafä Senodos* for its part, is considered to be the most important canonical-liturgical text of the Ethiopian Orthodox Church. The *Senodos,* like the *Didəsqəlya*, is a pseudo-apostolic text containing canon law regulating nearly every aspect of the Church including election of the bishop, Ecclesiastical practice, liturgy, Biblical canon, moral teachings, disciplinary rules for those found in violation of canon law and more.[89] The compilation also includes various writings of the Church Fathers as well as canons of ecumenical councils and regional synods dating back to the fourth century. A large portion of the *Senodos* is translated from Arabic relying on predominantly Coptic texts but displaying Melkite and Greek influence as well. Further, recent work by Bausi has revealed that the sections of the *Senodos* which depend on Greek texts are evidence of an archaic canonical collection which was translated into Gə'əz during the Aksumite period.[90]

The *Kidane*, in like manner to the *Didəsqəlya* and the *Senodos,* draws upon pseudo-epigraphical authority- in this case Jesus Christ- in order to establish a proper set of rules and

[87] Wilson B. Bishai, "Sabbath Observance from Coptic Sources," *Andrews University Seminary Studies (AUSS)* 1, no. 1 (1963).

[88] Alessandro Bausi, "Didəsqəlya," in *Encyclopedia Aethiopica*, ed. Siegbert Uhlig and Alessandro Bausi, Vol. 2 (Wiesbaden: Harrassowitz, 2005), 154-155.

[89] Alessandro Bausi, "Heritage and Originality in the Ethiopic Sinodos," *Journal of Ethiopian* Studies, vol. 25 (1992), 16; Alessandro Bausi, "Senodos," in *Encyclopedia Aethiopica* Vol. 4., 623-625.

[90] Bausi, "Senodos," *Encyclopedia*, 623-625.

regulations in the day-to-day organization of the church. The original text was composed in Greek in the late fifth century and philologist have speculated that the Gə'əz version is most likely an independent translation based on the Greek.[91] The *Kidane* primarily deals with similar issues as the *Didəsqəlya* and the *Senodos* which include ordination of the entire Ecclesiastical order and their respective prayers as well as orders of baptism, the Eucharist and more. The text also opens with an apocalyptic section which deals with the appearance of Jesus to several of his followers which is where the *Kidane* likely draws its title from and distinguishes the text from other sources of canon law.[92]

Together, the *Kidane*, *Didəsqəlya* and the *Senodos* make up what has been described by Bausi as the "paradigm of true Christian law.[93] The importance of these three texts is highlighted by the fact that they are frequently referenced in a vast array of literature from the fourteenth and fifteenth century which further indicates they were relied upon heavily as a legal reference for sorting out issues in the Church. The three texts were especially relied upon by those involved in various theological controversies that occurred in the fourteenth and fifteenth centuries, and probably enjoyed their greatest success in the works of *aṣe* Zär'a Ya'əqob who initiated massive church and legal reforms during his fifteenth century reign.

In addition to the above texts, there are several other important Christian legal texts found in Ethiopia worth mentioning. The *Mäṣḥafä Fäws Mänfäsawi* (*Book of Spiritual Medicine*) is a text containing penitential canons which was compiled in Arabic in the thirteenth century by the

[91] Simon Corcoran and Benet Salway, "A newly identified Greek fragment of the Testamentum Domini," *The Journal of Theological Studies* 62, no. 1 (2011): 118-119.

[92] Alessandro Bausi, "Testamentum Domini," *Encyclopedia Aethiopica* Vol. 4, 928-929.

[93] Bausi, "Senodos," *Encyclopedia*, 623-625.

Coptic bishop Michael of Aṯrīb and Malīğ.[94] It is unclear when the *Fäws Mänfäsawi* was translated into Gə'əz and could have occurred anytime between the fourteenth and seventeenth century.[95] Since the text is thirteenth century Coptic-Arabic compilation, around the same time as the *Fəṭḥa Nägäśt*, it draws from many of the same sources of canon law and accordingly may have had minimal importance to the EOTC. It must be mentioned, there is a second legal text which bears the same title and has a similar structure in the introduction but contains a completely different set of canons in the second half and accordingly is treated as a separate text.[96]

In addition to the *Fäws Mänfäsawi*, the *Śər'ata Mängəśt* (*Order of the Kingdom*) is another important legal text which contained "secular codes" and served as a guideline for political life at the royal court.[97] The text is an indigenous legal text and is thought to have emerged in the fourteenth century during the reign of *aṣe* Amdä Ṣəyon I (1314-1344) and elaborated on over time. These legal texts, while all important in various ways to the Christian kingdom, are generally regarded as ranked below the *Fəṭḥa Nägäśt* in importance to the EOTC

[94] The date of bishop Michael's birth and death are unknown and thought to be late twelfth/early thirteenth century and late thirteenth century respectively. Wadi Awad, "Michael, Bishop of Atrīb and Malīj," in *Christian-Muslim Relations: A Biographical History,* eds. David Thomas and Alex Mallett, Vol. 4 (1200-1350) (Leinden: Brill, 2012); Michael Kleiner, "Fäws Mänfäsawi: Mäṣḥafä Fäws Mänfäsawi," in *Encyclopedia Aethiopica* Vol. 2, 509-510; Michael Kleiner, "Maṣḥafa faws manfasāwi. Die Geʿez-Übersetzung des arabischen Kitāb aṭ-ṭibb ar-rūḥānī ("Buch von der geistlichen Medizin") des koptischen Bischofs Michael von Aṯrīb und Malīğ (13. Jh.)" (PhD diss., University of Hamburg, 2000).

[95] Kleiner, "Fäws Mänfäsawi: Mäṣḥafä Fäws Mänfäsawi," *Encyclopedia Aethiopica* Vol. 2, 509-510.

[96] Kleiner, "Fäws Mänfäsawi: Mäṣḥafä Fäws Mänfäsawi," *Encyclopedia Aethiopica* Vol. 2, 509-510.

[97]Bairu Tafla and Heinrich Scholler, "Ser'ata Mangest: An Early Ethiopian Constitution," *Verfassung und Recht in Übersee/Law and Politics in Africa, Asia and Latin America* (1976): 488; *Encyclopedia Arthiopica Vol. 4*, s.v. "Śəra'ata Mängəśt."

and to the kingdom. However, these canonical works are significant texts in setting precedence of Christian legal frameworks in Ethiopia prior to the emergence of the *Fəṭḥa Nägäśt*.

The *Fəṭḥa Nägäśt*, A New Way to Think About Law in Ethiopia

The development of Christianity and the textual traditions in Ethiopia helped lay the foundation for the integration of the *Fəṭḥa Nägäśt* into the legal landscape of Christian Ethiopia. The integration of foreign law into Ethiopia was part of a dynamic process that shaped Law in the Christian kingdom. This dynamic process included an entanglement of local legal concepts, canon law, and laws of the monarchy.[98] This complex entanglement produced legal 'hybridity' in the sense that these three legal orders contested and complimented each other creating a complex legal system of ebbs and flows and was constructed on the scaffolding of Christian authority.

It is argued by some scholars that 'hybridity' of Ethiopian law makes it exceptional to Africa in that it has preserved elements of African law, while also incorporating elements of common law, and civil law.[99] Still other scholars argue that this exceptionalism extends not only to the African continent but is global and accordingly qualifies Ethiopian law as an autonomous family of law.[100] However, these arguments are Euro-Centric in that they are centered on the idea that Law is advanced and pure while 'hybridity' is a corruption. It ignores the reality on the ground that, as previously noted,

> all legal systems are mixed [and] derived from imported structures, concepts and ideas but also emanating from different normative systems which are based on customs,

[98] Aberra Jembere, "Law and Judiciary: A. Legal History," in *Encyclopedia Aethiopica*, eds. Siegbert Uhlig, Vol. 3 (Wiesbaden: Harrassowitz, 2007), 507-509.

[99] Augustyniak, "The Genesis of the Contemporary Ethiopian Legal System," 112; Jembere, *An Introduction to the Legal History*, 1.

[100] Augustyniak, "The Genesis," 112.

> religions, and languages, habitat and natural resources, families, geography and climate, conceptions of morality and other features.[101]

This invariably leaves Ethiopia not the exception that it is claimed to be, and instead labels it as a norm in the global systems of law, including those indigenous to Africa. This is what scholars are increasingly referring to as 'normative hybridity,' or the coexistence of both official and unofficial law which is seen, especially contemporarily, as the norm across human society.[102]

While 'legal hybridity' or 'legal pluralism' is seen as the defining marker of Ethiopian law, Aberra Jembere suspects there existed an indigenous "ideological and institutional framework for the development of law" in the Christian kingdom.[103] Assertions such as these often fail to acknowledge the so-called 'elephant in the room,' which is the role of Christianity in shaping the law. The indigenous Christian legal institutions undoubtedly provided the framework for the historic legal developments in the Christian areas of the kingdom. Every aspect of law in the Christian kingdom involved trained clergy or church officials to some extent. Further, while Ethiopian law is often conceptualized as 'hybrid' or 'plural', this terminology while technically accurate, do not fully encapsulate the Ethiopian view of law and justice. Accordingly, a different approach is required to fill in the gaps that are left in efforts to classify Ethiopian law in relation to Europe or Africa.

This study approaches the examination of the history of the *Fəṭḥa Nägäśt* and law in Christian Ethiopia by conceptualizing law through a lens focused by an Ethiopian Orthodox Christian ideology. This approach rejects a firm distinction between 'sacred law' and 'secular or

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[101] Nora V. Demleitner, "Combating Legal Ethnocentrism: Comparative Law Sets Boundaries," *Arizona State Law Journal* 31 (1999): 748-749.

[102] Seán Patrick Donlan, "Remembering: Legal Hybridity and Legal History," *Comparative Law Review*, vol. 2 (2011): 4.

[103] Jembere, *An Introduction to the Legal History*," 2.

civil law' in favor of a fluid boundary where the two are not compartmentalized but are intertwined in a manner that reflects the historical structure of Ethiopian Christian society. Accordingly, categories such as 'secular', 'civil' and more are not suitable and will be replaced with categories reflective of the society in which the *Fəṭḥa Nägäśt* was applied, Christian Ethiopia. This recognizes the process of separating religious and secular institutions is primarily a Western Christian phenomenon that has no equivalency in Eastern Christianity.[104] This is especially evident in the historical Ethiopian Orthodox Christian ideology where government institutions and religious institutions were viewed as intimately interconnected.[105]

In conceptualizing law in the Ethiopian Orthodox Christian context, language is the preferred foundation with which to construct a sound theory. The concept of 'law' and 'Law' are expressed in Gə'əz and Amharic language in several different ways that convey the intertwined character of society in Christian Ethiopia. There are several terms for 'law' in Gə'əz including **ሕግ** (*ḥəgg*), **ሥርዐት** (*śər'at*), and **ፍትሕ** (*fəṭḥ*).[106] Aberra Jembere draws attention to the differences in these three words as relating "to the order of their application or the context in which they are used than to their actual substance."[107] For example, *fəṭḥ*, which is defined as justice, is naturally attached to matters of judgement while *śər'at* is closely related to procedure.

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[104] Rafael Domingo, *God and the Secular Legal System* (New York: Cambridge University Press, 2016), 2.

[105] In an interview with Deacon Mehari Worku it was expressed that the Ethiopian Orthodox world view sees the world in which they live as one giant church and subject to God and his representatives on earth which includes clergy, church officials, kings, rulers, etc. Mehari Worku, interview by author, December 28, 2019.

[106] The term for law in Amharic is *ḥəgg* and in Təgrəññña it is *ḥəggi*, both which are drawn from Gə'əz. Leslau, *Comparative Dictionary of Ge'ez*, s.v. "ḫgg, ḥaggaga"; Jembere, *An Introduction to the Legal History*, 9.

[107] Jembere, *An Introduction to the Legal History*, 9.

On the other hand, the word *ḥəgg* is defined by Jembere as 'Law' in its broadest sense.[108] Claude Sumner further asserts that in Ethiopian Christian philosophy, *ḥəgg* refers to a 'positive law' which is notably related to the divine and is usually considered to emanate directly from God.[109] The concept of a close association between the divine and law finds further support in linguistics. Among the previously mentioned words in Gə'əz, the word **ኦሪት** (*orit*) frequently appears and, depending on the context, can be defined as "the Law, Ten Commandments, or the Octateuch (first eight books of the bible or the Old Testament)."[110] These definitions indicate the *orit* is conceptualized as the ultimate source of law above all others in EOTC ideology.

In order to frame the Ethiopian Christian legal system, in a manner that best reflects the EOTC concept of law, an examination of language is, once again, key. Since the *Fətḥa Nägäśt* is the main legal text of the Ethiopian Christian legal system for the period we are examining, a framework based on this important code is in order. The *Fətḥa Nägäśt* contains a complex legal code divided into two sections, the first being canon law followed by a section containing secular law. In Amharic language, the opening half of the code containing canon law is referred to as **መንፈሳዊ** (*mänfäsawi*) which Leslau defines as "spiritual" or "of the spirit."[111] The second half of the code which contains secular law is referred to **ሥጋዊ** (*śəgawi*) which is defined as "carnal,

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[108] Jembere, *An Introduction to the Legal History*, 9-10.

[109] Claude Sumner, *Ethiopian Philosophy Volume III: The Treatise of Zär'a Ya'əqob and of Wäldä Ḥəywåt, An Analysis* (Addis Ababa: Commercial Printing Press, 1978), 159.

[110] Kidanä Wäldə Kəfle **ኪዳነ ወልድ ክፍሌ**, *Mäṣḥäfä Säwasəw Wägəs Wämäzgäbä Qalat Ḥadis* **መጽሐፈ:ሰዋስው፡ወግስ፡ወመዝገበ፡ቃላት፡ሐዲስ።** [*A New Grammar and Dictionary*] (Addis Ababa: Artistic Press, 1955), s.v. "**ኦሪት**"; Leslau, *Comparative Dictionary of Ge'ez*, s.v. "orit **ኦሪት**."

[111] *Fətḥa Nägäśt Nəbabəna Tərg*^{w}*amew* **ፍትሐ ነገሥት ንባብና ትርጓሜው** [The Reading and Interpretation of the Law of Kings] (Addis Ababa: Bərhanəna Sälam Publishing, 1958 E.C.), 3; Leslau, *Comparative Dictionary of Ge'ez*, s.v. "nafsa".

fleshy, corporeal, temporal."[112] Accordingly, in the Amharic commentary, 'law' in the *Fəṭḥa Nägäśt* is conceived as being 'law of the spirit' or 'spiritual law' and 'law of the flesh' or 'fleshly law'.[113]

However, the Gə'əz translation of the *Fəṭḥa Nägäśt* is slightly different. The first portion of the code containing canon law is referred to as the "Section on Priests (Clergy) and the laws of the divine service."[114] While slightly different in the way it is phrased, the description aligns with the concept of canon or spiritual law (*mänfäsawi*) as expressed in the Amharic commentary. The second portion of the code which deals with secular law is referred to as **ዓለማውያት** (*'alämawəyat*) which is defined by Leslau as "worldly, of the world, secular."[115] In this case, the Gə'əz and Amharic are aligned in framing the second half of the code as "worldly" and "of the flesh." This also frames the second half of the code as the antithesis of the first half of 'spiritual law.' Despite the seemingly separate nature of the two halves of the text based on how they are referenced, the boundary between the two is more fluid than the titles and references suggest. Biblical passages are routinely quoted in the *'alämawəyat* portion of the code, and the overall spirit of the text reflects the intersectionality of the spiritual and secular in the EOTC.

Falling in line with the Gə'əz and Amharic commentary terminology, I use an abstracted version of the Amharic and Gə'əz, *mänfäsawi wä'alämawəyat* ('law of the spirit and of the

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[112] *Fəṭḥa Nägäśt Nəbabəna Tərgʷamew* **ፍትሐ ነገሥት ንባብና ትርጓሜው** [The Reading and Interpretation of the Law of Kings] (Addis Ababa: Bərhanəna Sälam Publishing, 1958 E.C.), 4; Leslau, *Comparative Dictionary*, s.v. "śəgā".

[113] Both *mänfäsawi* and *śəgawi* are Gə'əz terms which are used in the Amharic commentary on the *Fəṭḥa Nägäśt*.

[114] "**አንቀጽ፡በእንተ፡ካህናት፡ወሕገ፡ቅኒ**" Fetha Negest. [15th Century], British Library, EAP 432/1/132, ff 5rc.

[115] Leslau, *Comparative Dictionary of Ge'ez,* s.v. "ālam."

world or flesh'), to reflect the intertwined character of the Christian legal system and the *Fətḥa Nägäśt*. This reflects the intersectionality of the code, both in theory and in practice, and finds parallels in the EOTC Christological concept of *Täwaḥədo*, the union of spirit and flesh in the form of Christ. In like manner the *Fətḥa Nägäśt*, is regarded as a singular code and regarded by some as the "central pillar of law" in the EOTC, next to the Bible.[116] *Abba* Paulos Tzadua in the introduction to his English translation of the *Fətḥa Nägäśt* affirms the concept of *mänfäsawi wä'alämawəyat* when he states that the "tendency to blend secular with religious matters common to the [*Fətḥa Nägäśt*], has indeed contributed to a conception of law as intrinsically sacred in character."[117] Tzadua further notes that this tendency to conceptualize law as sacred in Ethiopia, primarily stems from deeply rooted Christian principles.[118] Accordingly, the concept of *mänfäsawi wä'alämawəyat* fits squarely into the Ethiopian Christian view of law which makes it an ideal approach to examine the history of law and the *Fətḥa Nägäśt*.

It is further important to note the specific characteristics of the *mänfäsawi wä'alämawəyat* system. In particular, the interaction of textual and oral traditions in the practice of law. Historically court cases were primarily conducted orally and most legal documents that are known deal primarily with land rights. Portuguese chaplain Francisco Álvares, who accompanied a Portuguese mission to Ethiopia in the early sixteenth century, noted that the people were not accustomed to written communication and the justices did not record cases in

[116] *Liqä Liqawənt* Śahlu Alämä, interviewed by author, Addis Ababa, December 19, 2020; *Mämhər* Yared Kəbrät, interviewed by author, Addis Ababa, December 19, 2020.

[117] Tzadua, "Fetha Nagast," in *The Fetha Nagast (The Law of Kings)*, translated by Abba Paulos Tzadua edited by Peter L. Strauss (Durham: Carolina Academic Press, 2009), xxxviii.

[118] Tzadua, "Fetha Nagast," xxxviii.

writing and instead relied upon "speech" for the entire process.[119] Álvares further noted that the only writing he did witness, was the recording of goods delivered to the *nəguś*. This aligns with the historic overview of Ethiopia that it was a society where the literate/scriptural mode of communication was not dominant in their normal everyday affairs. The Christian kingdom is also renowned for its rich literary tradition. Accordingly, as Jon Abbink asserts, these two lines of transmission complement each other and create a suitable communication system that meets both the needs of the literate elite and the largely illiterate lower class.[120]

The dual system of orality and literacy applied to multiple areas in Ethiopian Christian society. The field of law is no different in this context in that, true to Álvares' word, orality was dominant, but literacy was also important. Consider the method of the promulgation of law by the *nəguś.* The *nəguś* represents the highest form of law in the Christian kingdom. It is not clear if or what the process was of promulgating a legal statute or an edict. What can be established is that an edict or legal act had to emanate from a source of authority. In the Ethiopian Christian context this meant that the law had to first come from God. This can be defined as either directly drawn or based in part on Biblical laws or church canon laws. Below God in this hierarchal structure is the *nəguś*, followed by the *abun*. Theoretically, the *abun* is considered above the *nəguś*, however the *nəguś* possessed the ultimate power and was the *de facto* leader of the Church.

Using this structure as a template a legal act or edict would have to be constructed with either the Bible or canon laws as precedence. Next it would have to be at the *nəguś*' discretion in

[119] Álvarez, *Narrative of the Portuguese*, 408.

[120] Jon Abbink, "Traditional Ethiopian Legal Culture: Amharic Proverbs and Maxims on Law and Justice," in *Studies in Ethiopian Languages, Literature and History: Festschrift for Getatchew Haile*, ed. Adam Carter McCollum (Weisbaden: Harrassowitz, 2017), 3.

collaboration with either the *abun* or some other religious authority and other administrative officials or judges as well as the various legal scholars who had been trained in the *liqawənt* school. The edict would then be drafted by a scribe and witnessed by dignitaries in the process of ratification and promulgation of the law.[121] Witnesses were an important aspect of legal procedure and in the drafting of legal documents. Witnesses had to be of good standing in the community and be of "high status and faith," a subject I return to in chapter five.[122]

Equally, important to the passing of a legal statute or edict is the transmission of the law from the authority to the people. Since much of the population was illiterate, the primary method of transmission was oral. This was accomplished through a system known in Amharic as **ዓዋጅ፡ ነገር** (*'awağ nägär*) (proclamation or an edict) by a herald referred to as the **ዓዋጅ፡ ነገሩ** *'awağ nägäri*.[123] The *'awağ nägäri* would travel through villages and known gathering spots and make primarily important legal proclamations from high places, accompanied by various musical instruments in order to draw attention of the local people in the region.[124] The '*awağ nägär*

[121] Tegegne, "The Edict of King Gälawdéwos Against the Illegal Slave Trade in Christians: Ethiopia, 1548," 90-91.

[122] Tzadua, *Fetha Nagast*, 264-265.

[123] Anaïs Wion, "Promulgation and Registration of Ethiopian Royal Acts in Behalf of Political and Religious Institutions (Northern Ethiopia, Sixteenth Century)," *North East African Studies* vol. 11, no. 2 (2011): 63-64.

[124] Across many cultures in Ethiopia, mountains or high places are often associated with legal authority or serve as gathering places for community legal procedures. For example, among the Ǝndägañ Gurage group of Southern Ethiopia, the term '*adbar* refers to a gathering of elders to discuss legal matters. '*Adbar* is likely drawn directly from Gə'əz where it serves as the plural form of *däbr* (mountain). In Ǝndägañ, an '*adbar* takes place on top of a high hill of the former market *šhorko*. Ehete Anito Latlo, interview by author, October 3, 2020, Ǝndägañ (Sebat Bet Gurage); Kebede WoldeYohannis Lagebo, interviewed by author, October 4, 2020, Ǝndägañ (Sebat Bet Gurage).

served as an important method of communication between the *nəguś* and his subjects and, accordingly, an important institution in the legal and political systems of the kingdom.[125]

Conclusion

The Christianization of Aksum in the fourth century laid the foundation in multiple ways for legal development in Ethiopia for the following millennium plus. First, the establishment of Christianity as the religion of the kingdom facilitated relations with broader Christendom and especially with Egypt. The connections with the broader Christian world in turn facilitated intellectual exchange and established literary traditions in Ethiopia. Coptic-Egypt developed into a primary source for a variety of Christian literature flowing into Ethiopia, including legal texts, especially from the thirteenth century on. These legal texts primarily contained Ecclesiastical law apart from the *Fətḥa Nägäśt* which also contains 'secular' law codes.

As Christianity became entrenched into the fabric of Ethiopian society over time, concepts of law shifted to reflect the growing influence of the religion. Law in general became viewed as sacred and emanating from God and accordingly ecclesiastical and 'secular' law were intertwined in theory and in practice in a way that reflected the shift. This concept of 'law of the spirit and of the world' is best expressed in a combination of the Gə'əz terms which appear in the *Fətḥa Nägäśt*, *mänfäsawi wä'alämawəyat.* The mänfäsawi *wä'alämawəyat* system relies on a combination of both literary/scriptural and oral channels of transmission that met the needs of both the literate and majority illiterate of the Christian kingdom. Conceptualizing law in a way that aligns with the Ethiopian Christian view and the *Fətḥa Nägäśt* centers Ethiopia in this study

[125] Joanna Martel-Niećko, "'Awağ," in *Encyclopedia Aethiopica*, ed. Siegbert Uhlig, Vol. 1 (Wiesbaden: Harrassowitz, 2003), 400.

and discards frameworks that are problematic and do not align with Ethiopian Christian concepts of law. The remainder of this dissertation will examine the history of the *Fəṭḥa Nägäśt*, from its translation and reception in Ethiopia, to the legal institutions which utilized the code, and to its practical application in Christian Ethiopia from the sixteenth to the twentieth centuries.

Chapter 3: Origins of the *Fətḥa Nägäśt* in and out of Ethiopia

There remains a great deal of speculation and confusion regarding the exact time period the *Fətḥa Nägäśt* was introduced into Ethiopia. Scholars have offered up a wide range of dates and time periods for its introduction, ranging from the fifteenth century to the late seventeenth century.[126] Still others have claimed that perhaps the *Fətḥa Nägäśt* was introduced into Ethiopia in the fifteenth century but was suppressed until the late seventeenth century.[127] The Ethiopian Orthodox Täwaḥədo Church for its part, maintains its own tradition that the code was brought to Ethiopia in the fifteenth century at the request of the *neguś*, *aṣe* Zär'a Yaʿəqob (1434-1468). Though many of these claims have fallen out of favour, there is yet to be a scholarly consensus on the matter.

This chapter explores the origins and reception of the *Fətḥa Nägäśt* with the main objective of shedding light on the circumstances and actors that influenced the text's compilation

[126] A significant number of scholars argue that the *Fetha Nägäśt* was brought to Ethiopia and translated either in the mid to late 16th century or the late 17th century. The list of scholars who subscribe to this theory include Abba Paulos Tzadua, Harry Middleton Hyatt, Lincoln de Castro, D'Emilia Antonio, Ignazio Guidi, Peter H. Sand and Cerulli Enrico. These Negussie Andre Domnic, *The Fetha Nagast and Its Ecclesiology: Implications in Ethiopian Catholic Church Today*, European University Studies. Series 23, Theology, Bd. 910 (Bern: Peter Lang, 2010), 15-16; Peter H. Sand, "Roman law in Ethiopia: Traces of a Seventeenth Century Transplant," *Comparative Legal History* 8, no. 2 (2020): 116-143.

[127] Getatchew Haile argued that the *Fətḥa Nägäśt* arrived in Ethiopia during the reign of *aṣe* Zär'a Yaʿəqob (1434-1468) but was supressed by subsequent rulers until the 17th century. His basis for argument is found in the introduction to the Gə'əz version of the *Canons of the Councils* which is found in some texts of the *Senodos*. The introduction speaks of a "secret book" known as the *Fətḥa Nägäśt* that had been declared improper for the laity to read or know about. However, Paolos Tzadua has since pointed out that the reference in the Gə'əz *Senodos* to a *Fətḥa Nägäśt* also appears in the Arabic *Sinūdūs* which was circulating in the early thirteenth century prior to the composition of the *Fətḥa Nägäśt.* Accordingly, the reference in the texts is certainly about a different book; Getatchew Haile, "A Study of the Issues Raised in Two Homilies of Emperor Zär'a Ya'əqob of Ethiopia," *Zeitschrift der deutschen morgenländischen Gesellschaft* 131, no. 1 (1981), 93-97; Paulos Tzadua, "Fətha Nägäśt," in *Encyclopedia Aethiopica* Vol. 2, 534-535.

in Egypt, and the coming of the code to Ethiopia. Considering Coptic suzerainty over the Ethiopian Orthodox Church, I will demonstrate that the *Fətḥa Nägäśt* was compiled as a legal reference for use in both Egypt and Ethiopia. Evidence of this can be found in mid-thirteenth century Coptic-Syriac rivalries over control of the Ethiopian Church. Within the text itself are canons later inserted by the Copts to cement their position over the Ethiopians. Accordingly, this chapter provides concrete evidence that the Copts were encouraged in part, to compile the code by their regional rivalries with the Syriac Orthodox Church and their own local ambitions.

This chapter will also demonstrate that elements of the code were likely in Ethiopia, and in use long before conventional estimations. The *Fətḥa Nägäśt* and other canonical literature are central to several theological controversies that emerged towards the start of the Solomonic period and raged during the fourteenth and fifteenth centuries. Theses controversies are documented in a variety of Church texts including homilies and hagiographies. The historical accounts of these controversies contain vital information that suggest an alternative time and reasons behind the code coming into Ethiopia. These controversies, along with evidence of the *Fətḥa Nägäśt* in practical application, will serve as a backdrop to our discussion which supports an alternative time frame and places the *Fətḥa Nägäśt* in Ethiopia between the early fourteenth and early fifteenth centuries.

Motives and Reasons Behind the Compilation of the *Mağmū al-qawānīn*

For legal scholars of the so-called Oriental Churches, the twelfth through the fourteenth centuries were marked by important legal developments, including the composition or compilation of several new law codes. The Armenian, Syrian, and Coptic Churches all produced brand new *nomocanons* in this time period, including notable examples from Abdīšō bar Brīkā,

Bar Hebraeus and al- Ṣafī Abū al-Faḍā'il Majid Ibn al'Assāl.[128] The Egyptian Coptic jurist al-Ṣafī Abū al-Faḍā'il Majid Ibn al'Assāl (or Ibn al'Assāl as he is commonly known), composed likely the most famous of these three *nomocanons* in the thirteenth century. Aside from his considerable body of Copto-Arabic work, little is known about the personal life of the famed author of the *Mağmū al-qawānīn*. He was born in Cairo around 1205 into the great Awlād al-'Assāl family and passed away around the year 1265.[129] What is known about the Coptic jurist is the tremendous impact he and his family had on Coptic intellectual development in the thirteenth century. The Awlad al-Assāl family are considered by many to be among the most learned Copts of the medieval era. Ibn al-Assāl is individually responsible for the composition and translation of a considerable body of Copto-Arabic literary works which generally fall into two categories; nonapologetic and apologetic.[130] However, Ibn al-Assāl's work as a canonist surpasses that of his other literary achievements.

Penned in 1238, the *Mağmū al-qawānīn* is one of several canonical works by Ibn al-Assāl between 1238 and 1241. It is generally assumed that Ibn al-Assāl composed and compiled the work on the orders of the Coptic Patriarch Cyril III ibn Laqlaq (1235-1243), whom he worked for as a secretary and juridical counselor. The code was completed and enacted by Cyril III in the

[128] Johannes Pahlitzsch, "The Melkites and their Law: Between Autonomy and Assimilation," in *Law and Religious Minorities in Medieval Societies: Between Theory and Praxis- Religion and Law in Medieval Christian and Muslim Societies,* ed. John Tolan (Turnhout, Belgium: Brepols Publishers, 2016), 37.

[129] Ibn al- Assāl's family originally came from the village of Sadamant in the middle Egypt province of Bani Suef. They moved to Cairo at an unknown date where they settled permanently. S.J. Khalil Samir, "Ṣafī Ibn al'Assāl, al," in *The Coptic Encyclopedia*, ed. Aziz S. Atiya, Vol. 7 (New York: Macmillan, 1991), 2075-2079.

[130] Samir, "Ṣafī Ibn al'Assāl, al," 2075-2079. This entry in *The Coptic Encyclopedia* includes a comprehensive bibliography of Ibn al'Assāl's entire body of work. Included with his notable contributions on Canon law are several replies to refutations of Christianity by notable Muslim scholars including the famous *Refutation of the Christians*, which was composed by 'Al ibn Rabban al-Ṯabari, a Nestorian Christian who had converted to Islam after he was more than seventy years of age.

month of September 1238, at the Synod of Ḥārat Zuwayla in Cairo, for which Ibn al-Assāl served as secretary.[131] It is argued by some that the *Mağmū al-qawānīn* was in fact commissioned by the bishops gathered at the Synod of Ḥārat Zuwayla. However, this is highly unlikely as there is evidence that Ibn al-Assāl completed the compilation around the same time as the Synod was held.[132] The motivations for the composition of the code are unclear, however as with several of the other Oriental Churches, the Copts were under Muslim rule and accordingly retained special legal status as *ahl al-Kitāb* (people of the book) and *ahl al-dhimma* (*dhīmmi*), designations of a protected people under Islamic law.[133] There is evidence that several of the law codes composed by the Oriental churches during this time period were in fact requested by Muslim rulers as it appears they believed the *dhimmi* could have a level of legal autonomy in the Muslim dominant societies.[134] An example is found in eleventh century Egypt, when the Coptic Patriarch Cyril II (1078-1092) was commissioned by the Fatimid vizier, Amir

[131] Gawdat Gabra, *The A to Z of the Coptic Church* (Lanham: The Scarecrow Press Inc., 2009), 25; Georg Graf, "Die koptische Gelehrtenfamilie der Aulād al-'Assāl und ihr Schrifttum," *Orientalia* 1 (1932): 37; Peter H. Sand, "Roman Law in Ethiopia: Traces of a Seventeenth Century Tranplant, 15 (n 81); Adel Sidarus, "Families of Coptic Dignitaries (buyūtāt) under the Ayyūbids and the Golden Age of Coptic Arabic Literature (13th cent.)." *Journal of Coptic Studies* 15 (2013): 197.

[132] Aziz S. Atiya, "Awlād Al-'Assāl," in *The Coptic Encyclopedia*, ed. Aziz S. Atiya, Vol. 1 (New York: Macmillan, 1991), 311; Georg Graf, *Geschichte der christlichen arabischen Literatur*, *vol. 2* (Rome: Biblioteca Apostolica Vaticana 1947), 362.

[133] The Qu'rānic term ahl al-kitāb is defined as "possessors of the scripture" or "people of the Book" and initially referenced Jews and Christians as repositories of earlier revealed books, the Torah, Psalms and Gospels respectively. However, the term was later extended to other groups as Islam spread into Asia. Gordon D. Newby, "ahl al-kitâb," in *A Concise Encyclopedia of Islam* (Oxforord: One World Publications, 2002), 21; The term ahl al-dhimma in Arabic refers to "people benefitting from protection" or "protected people." The term historically is used in reference to ahl al-kitāb who are living under Islamic law and enjoy legal status and freedom to practice their religion provided they pay a special tax (jizya), respect the laws pertaining to them as a group and recognize the "exaltedness of Islam." Yohanan Friedmann, "Dhimma", in *Encyclopedia of Islam, Three*, ed. Kate Fleet (Leiden: Brill, 2012); Newby, "dhimmi", in *A Concise Encyclopedia of Islam*, 52.

[134] Pahlitzsch, "The Melkites and their Law," 37-39.

al-Juyūsh (1073-1094), to produce canons to govern over Christians.[135] According to the *History of the Patriarchs*, Amīr al-Juyūsh assembled the bishops and the Patriarch to address them and stated, "be all of you one law", and "these Canons which ye have compiled, I have no need of them, but I demand them of you in order that the observance of them may be renewed among you."[136]

Christian officials also desired their own civil code as the *dhimmi* had to turn to Muslim courts in civil matters. There was also a general feeling among Church leaders that without a written civil code for Christians, they would lose followers to other faiths.[137] This is confirmed in the late-twelfth century *Armenian Law Code* composed by Armenian intellectual-scholar and priest, Mḫitar Goš. In Chapter 2 of the *Law Code* under the title "Concerning why we wished to compose [this book] now, and at whose instigation we reached this intention," Goš states,

> Although it was said above that it was not necessary for a code to be handed down to us in writing by the Lord, yet now we wished [to do so], because we have heard blame not only from foreigners but also from Christians that there is no code in the Gospel…lest for the reason that the code does not exist in writing, people have recourse to foreigners, according to the complaint of the prophet: "It is from the non-existence of God in Israel

[135] Amir al-Juyūsh (Commander of the Armies) is the formal title of Badr al-Jamālī. Al-Jamālī was an Armenian slave of the Syrian amir, Jamāl al-Dawlah ibn ʻAmmār and eventually rose to the rank of governor of Damascus. In 1073 al-Jamālī came to Egypt and immediately assumed power within the Fatimid Caliphate by purging his enemies. From this point on he took on the title of Amīr al-Juyūsh which stuck with him for the remainder of his life. In addition to Amīr al-Juyūsh, al-Jamālī was also appointed vizier, qādī al-quḍāh (chief justice) and dāʻi al-duʻah (chief propagandist of the Ismáʻīlī faith). Al-Jamālī's reign was relatively favorable to Christians in Egypt owed in part to the fact that he had Christian parentage. However, he was not as favorable in his relationship with Ethiopia. Al-Jamālī continually interfered with the process of appointing metropolitans and interfered in their administration frequently, at one point cutting off the relations. Subhi Y. Labib, "Badr al-Jamālī," in *The Coptic Encyclopedia*, ed. Aziz S. Atyia, Vol. 2 (New York: Macmillan, 1991), 324-326.

[136] Sāwīrus Ibn al-Muqaffa, *Tārīḫ baṭārikat al-kanīsa al-miṣrīya*, II, 3: *Christodoulos-Michael (AD 1046-1102*, ed. and trans. by A.S. Atiya, Y. ʻAbd Al-Masīḥ, and O.H.E. Burmester as *History of the Patriarchs of the Egyptian Church, Known as the History of the Holy Church* (Cairo: 1959), 339.

[137] Pahlitzsch, "The Melkites and their Law," 39.

> that they go to question Beelzebub." This the Apostle clearly reproves, saying: "But brother litigates against brother, and that among unbelievers."[138]

There are three major points that can be gleaned from this passage. First, Church officials did not seem to believe it initially necessary for a written civil code but were feeling pressure from both Christians and non-Christians (Muslims) to compose one. Second, Church officials felt that without a written code, Christians would turn to other religions. The third point is that the Church believed that Christian litigation should occur between Christians even when living "among unbelievers."[139] Some scholars are of the opinion that the *Maǧmū al-qawānīn* of Ibn al-Assal was in fact prepared for special use in *audientia episcopalis*, the courts in Egypt where the adjudication of civil disputes between Christians by a bishop took place.[140] In his *Encylopedia Aethiopica* entry under the title "Fətḥa Nägäśt," Abba Paulos Tzadua argues as such citing Ibn al-Assāl's introduction to his *Maǧmū al-qawānīn*, where he indicates that the work is for use as a guide for lay judges in carrying out their duties.[141] While we cannot be certain that the motivations for the composition of *Maǧmū al-qawānīn* of Ibn al-Assāl were indeed the same, we

[138] Mḫitar Goš, *The Law Code [Datastanagirk'] of Mxit'ar Gōs*, trans. Robert W. Thompson (Amsterdam & Atlanta: Rodopi, 2000), pg 71-72.

[139] Goš, *The Law Code*, 71.

[140] Paulos Tzadua, "Fətha Nägäśt," in *Encyclopedia Aethiopica* Vol. 2, ed. Siegbert Uhlig and Alessandro Bausi (Wiesbaden: Harrassowitz, 2005), 534-535. This essay was also inserted as a forward to the second printing of his English translation of the *Fətha Nägäśt* which was published posthumously in 2009. Paulos Tzadua trans., *The Fetha Nagast: The Law of Kings*, xxxvii-xxxviii; For more on *audientia episcopalis* see Martin Krause, "Audientia Episcopalis," in *The Coptic Encyclopedia Vol.* 1, ed. Aziz S. Atiya (New York: Macmillan, 1991), 534.

[141] Tzadua, "Fətha Nägäśt," 534; The *Episcopalis audientia* courts were not confined to Coptic Egypt and could be found throughout the Middle East. Accordingly, several other *Nomocanons* were produced for use in them, including the previously mentioned Syrian *Nomocanon* of Bar Hebraeus. See Paulos Tzadua "Foreword," to *The Fetha Nagast: The Law of Kings*, trans. Abba Paulos Tzadua, ed. Peter L. Strauss (Addis Ababa: Faculty of Law: Haile Sellassie University, 1968), pg. xvi.

can assert so with a level of confidence as it is reasonable to assume the Coptic Church desired more legal autonomy as a *dhīmmi* community in the Ayyubid Caliphate.

In examining Ibn al-Assāl's motivations for compiling the *Mağmū al-qawānīn* we cannot ignore the fact that some canons in the code directly and indirectly reference the Ethiopian Church. The most notable canon is a direct reference to the Ethiopian Church and is found under the section "Concerning Patriarchs" where it states

> The Holy Council in Nicea (Nicea 37) ordained that the patriarchs in the whole world are four and no more…The Ethiopians are not to have a patriarch from their scientists or by their own choice alone because their patriarch should be under the hand (authority) of the one on the chair of Alexandria. He is the one to appoint for them a Catholicos which is a rank below that of a patriarch…the catholicos is not permitted to ordain metropolitans, because the catholicos is honored in the name of the patriarch without having the authority of a patriarch.[142]

This passage has been identified as a pseudo-canon on the grounds that it historically could not have been enacted at Nicaea. The Council of Nicaea took place in 325 and Frumentius had not been consecrated as *Ṗapṗas* over Aksum at this time. We know this for sure because Athanasius I (328-373), who consecrated Frumentius, was not elected to the See of St. Mark until three years after the Council of Nicaea, in 328.[143] Accordingly, the Ethiopian Church did not have a bishop at this juncture, let alone a representative bishop in attendance at Nicaea. In addition, the source of the pseudo-canon is likely the so called *Eighty Disciplinary Canons of Nicaea* which have

[142] Hanna, trans., *Magmou Al-Safawy Ibn Al-Assal*, chap. 4, 5-6; The *Fəṭḥa Nägäśt* states more or less the same thing regarding the appointment of a metropolitan of the Ethiopian Church; "As for the Ethiopians, a patriarch shall not be appointed from among their learned men, nor can they appoint one by their own will. Their metropolitan is subject to the holder of the see of Alexandria, who is entitled to appoint over them a chief who hails from his region and is under his jurisdiction. And when the said metropolitan is appointed, with the title given to the chief, he is not permitted to consecrate other metropolitans as the other patriarchs do. He shall only be honored with the name of patriarch, without enjoying the power of a patriarch." Tzadua, trans., *The Fetha Nagast*, chp. 4, 18.

[143] See chapter 2; *Magmou Al-Safawy Ibn Al-Assal*, chap. 4, 5, 6; Gianfranco Fiaccadori, "Sälama (Kaśate Bərhan)," in *Encyclopedia Aethiopica,* Siegbert Uhlig, Vol. 4 (Wiesbaden: Harrassowitz, 2010), 484-488.

been identified as entirely apocryphal and likely created approximately three centuries after Nicaea, in the seventh century.[144]

Accordingly, Ibn al-Assāl likely compiled the *Mağmū al-qawānīn* as a legal reference for use in Ethiopia and in Egypt. Further evidence of this can be found in important events of the thirteenth century. This century proved to be a tumultuous time for Ethiopia and Egypt, both politically and for their respective churches. For Egypt, the mid-thirteenth century saw the failed invasion of King Louis IX (1226-1270) in the Seventh crusade (1249-1250) which indirectly precipitated the fall of the Ayyubid dynasty.[145] The murder of the last Ayyubid ruler, al-Malik al-Muazzam Tûrunshah (1249-1250) in 1250 in a Mamlûk coup d'état ended the dynasty that Saladin had established seventy-nine years earlier and was the starting point of the Baḥriyya Mamlûk caliphate (1250-1382).[146] Ethiopia also experienced regime change in the latter half of the thirteenth century when *aṣe* Yəkunno Amlak (1270-1285), under somewhat obscure

[144] Otto Meinardus, "A brief History of the Abunate of Ethiopia," *Weiner Zeitschrift für die Kunde des Morgenlandes, Vol.* 58 (1962), 41,42.

[145] See Peter Jackson, trans. ed., *The Seventh Crusade, 1244-1254: Sources and Documents* (Aldershot: Ashgate Publishing Limited, 2007).

[146] For a detailed account of the Mamlûk coup d'état see Muḥammad ibn abd al-Raḥîm ibn al-Furât, *Ayyubids, Mamluks, and Crusaders: Selections from the Tārīkh al-Duwal wa'l Mulūk of Ibn al-Furāt, Volume 2: The Translation*, trans. and ed. Malcolm Cameron Lyons, Ursula Lyons, Jonathan Riley-Smith (Cambridge: W. Heffer and Sons LTD, 1971), P 32-34; The term "mamlûk" in reference to the sultanate (1250-1517) which ruled over Egypt, the Levant and Hejaz, is a modern scholarly term which references the reigns of the dawlat al-atrāk ("state of the Turks") (1250-1382) and the dawlat al-jarakīsah ("state of the Circassians") (1380-1517). See Koby Yosef, "The Term Mamluk and Slave Status During the Mamluk Sultanate," *Al-Qantara* 19, no. 1 (2013); Newby, "Mamlûk, or mamlûk," in *A Concise Encyclopedia of Islam*, 139-140.

circumstances, seized power by overthrowing and killing the last Zagʷe king, *aṣe* Yətbaräk.[147] *Aṣe* Yəkunno Amlak, a young prince, claimed lineage from Dəlna'od, the last Solomonic king of Aksum and accordingly established what is commonly noted in historiography as the Solomonic Dynasty.

Both the Coptic and Ethiopian Churches also had their fair share of controversy during the thirteenth century, part of which was intertwined with the politics of the region. However, the primary controversies affecting both churches, surrounded the practice of the Coptic Church appointing a bishop for Ethiopia. The practice of the Coptic Patriarch consecrating a Coptic monk as Ṗaṗpas of Aksum (Ethiopia) had allegedly been in place since at least the time of *abuna* Minas (4th-6th century), the second to be appointed to the position after Frumentius.[148] However, the idea that this in fact was a normalized and stable practice and the Coptic Church controlled the Ethiopian Church is contested on several levels. First, the tradition was unstable as a result of politics on the ground in both Egypt and Ethiopia. The Coptic status as a religious minority in Muslim controlled Egypt, meant by default the administration of the Sultanate was party to their

[147] No date is given for the reign of Yətbaräk as the entire Zagʷe dynasty is shrouded in mystery and dates vary. It is not completely clear that Yətbaräk was indeed the last king as there are several versions of the Zagʷe kings list which vary in length of time the dynasty lasted, and the number of kings in the dynasty, as well as the order they ruled. See Marie-Laure Derat, "Before the Solomonids: Crisis, Renaissance and the Emergence of the Zagʷe Dynasty," in *A Companion to Medieval Ethiopia and Eritrea,* ed. Samantha Kelly (Leiden; Boston: Brill, 2020), p. 31-57; Gianfranco Fiaccadori, "Zagʷe," in *Encylopedia Aethiopica, Supplementa, Addenda et Corrigenda, Maps, Index*, ed. Siegbert Uhlig, Vol. 5(Weisbaden: Harrassowitz, 2014), 107-114.

[148] According to Ethiopian tradition, Minas, also known as Sälama II, succeeded Frumentius as Ṗaṗpas of Aksum. While many sources confirm Minas as second Ṗaṗpas of Aksum, many of them do not agree on time period and accordingly require a cautionary approach. There is no evidence stating Minas' origin, but it is generally assumed that Minas was an Egyptian and according to sources served as Ṗaṗpas sometime between the fourth and sixth centuries. Steven Kaplan, "Minas" in *Encyclopedia Aethiopica,* Siegbert Uhlig, Vol. 3 (Wiesbaden: Harrassowitz, 2005), 971-972.

relationship with the Ethiopian Church.[149] What was normalized in the three-party relationship, was the requirement that the Ethiopian *nəguś* dispatch embassies to Cairo on a regular basis in order to request the sultan allow a bishop to be appointed. To the complete disdain of the Ethiopian *nəguś,* the process required substantial amounts of gold and other gifts be sent to both the Patriarch of the Coptic Church and the sultan in order to secure a bishop.[150] The entire process was somewhat offensive to the powerful Christian kings but they none the less went through with the process according to the tradition.[151]

Further, the relationship between the appointed Coptic bishop, the Ethiopian Church and the *nəguś* was occasionally far from amicable and the Coptic bishop was accordingly regarded with suspicion. This was due, in part, to the relationship with the Muslim government of Egypt and their control over the process of appointing a bishop in Ethiopia. Sultans of Egypt,

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[149] The relationship between the two powers and their respective religious institutions is historically complex. Muslim rule in Egypt had been established since the seventh century and accordingly the Christian populations became a religious minority. The inverse is true of Ethiopia with Aksum/Ethiopia being ruled by Christians since the fourth century and incorporating several medieval Muslim Sultanates into their sphere of control as tributary states during the first several centuries of the Solomonic dynasty. See Amélie Chekroun and Bertrand Hirsch, "The Sultanates of Medieval Ethiopia," in *A Companion to Medieval Ethiopia and Eritrea,* ed. Samantha Kelly (Leiden: Brill, 2020), 86-112. Tamrat, "Chapter IV: Territorial Expansion" in *Church and State in Ethiopia 1270-1527*, 119-155.

[150] In 1210, *aṣe* Lalibäla (regnal name Gäbrä Mäsqäl) of the Zagʷe dynasty sent an embassy to Sultan Al-Malīk al-Adil I (1200-1218) in order to secure a bishop. Lavish gifts were sent to al-Adil including an elephant, giraffe, lion and what is described as an onager (likely an African wild ass as they closely resemble an onager). In addition, *aṣe* Lalibäla sent a crown of gold to the patriarch of the Coptic Church, John VI (1189-1216). Sāwīrus ibn al-Muqaffa, *History of the Patriarchs of the Egyptian Church: Known As the History of the Holy Church*. Vol.3 Pt. 2 *Mark III - John VI* (a.d. 1167-1216), trans. and ed. Antoine Khater and O.H.E. Khs-Burmester (Cairo: Societe d'archeologie copte, 1970), 188-189.

[151] Fourteenth century Mamlūk administrator, Shihāb al-Dīn Abu 'l-ʿAbbās Aḥmad b. Yaḥyā Ibn Faḍl Allāh al-Ḳurashī al-ʿAdawī al-ʿUmarī (Ibn Faḍl Allāh al-ʿUmarī) (1301-1349) noted in his *al-Taʿrīf bi 'l-muṣṭalaḥ al-sharīf* (a manual of administration) that the process of securing a bishop was offensive to the Ethiopian kings but they were "compelled" to make the request. See Julien Loiseau, "The Ḥaṭī and the Sultan: Letters and Embassies from Abyssinia to the Mamluk Court" in *Mamluk Cairo, a Crossroads for Embassies*, ed. Frédéric Bauden and Malika Dekkiche (Leiden: Brill, 2019), 638–657.

suspicious and wary of Ethiopia themselves, exploited the situation to the best of their abilities.[152] In addition to the mandatory gifts, they also often required the Egyptian bishops to work to build mosques in Ethiopia in exchange for the appointment.[153] This placed the Egyptian bishops in an extremely awkward position in fulfilling their religious duties in Ethiopia. If they failed to fulfill the wishes of the sultanate, they could be subject to punishment by imprisonment and or death. However, if they did indeed participate in building mosques in Ethiopia, they could also be subject to punishment by imprisonment and or death at the hands of the Ethiopian monarchs.[154]

Despite the instable nature of the relationship between the two Churches, the tradition carried on throughout the thirteenth century with four bishops occupying the seat over the time period.[155] However, with the controversial appointment of Cyril III ibn Laqlaq in 1235 as the Patriarch of the Coptic Church, a serious dispute surrounding the right to appoint a bishop in Ethiopia arose between the Coptic and Syriac Churches. The issue between the two churches arose in 1237 when the Coptic Patriarch Cyril III, encroached upon the territory of the Syriac

[152] The Nile River has its source in the highlands of Ethiopia from which the majority of the water flows and thus has been in the past and remains central in the political relationship between the two regions. Accordingly, one of the biggest fears of the Sultans of Egypt was that Ethiopia would somehow block the flow of the Nile, and several Ethiopian kings exploited this fear by threatening to do so. Between the twelfth and fifteenth centuries, multiple Ethiopian Kings from both the Zag^{w}e and Solomonid dynasties threatened Egypt with blocking the Nile River over various dispute, mostly centered on religion. See Elisabeth-Dorothea Hecht, "Ethiopia Threatens to Block the Nile," *AZANIA: Journal of the British Insitute in Eastern Africa* 23, no. 1 (1988); Meinardus, "A brief History of the Abunate of Ethiopia," 47, 52.

[153] Sāwīrus Ibn al-Muqaffa, *History of the Patriarchs of the Egyptian Church* Vol. 2, Part 3, 350.

[154] al-Muqaffa, *History of the Patriarchs*, 350.

[155] Salvatore Tedeschi, "Ethiopian Prelates: Mikā'ēl II (early thirteenth century)- Qērelos I (end thirteenth century)," in *The Coptic Encyclopedia*, ed. Aziz S. Atiya, Vol. 4 (New York: Macmillan, 1991), 1007-1010.

Orthodox Church by appointing a Coptic bishop for Jerusalem, which also included jurisdiction over Syria and Palestine up to the Euphrates River.[156] In like manner to the Coptic Patriarch having the Nubian and Ethiopian churches under his suzerainty, it had been tradition that the Patriarch of Antioch appointed the bishop of Jerusalem since the fifth century. Cyril III seems to have been emboldened to make such a controversial move by the growing political and military power of Egypt.[157] Cyril III had deep ties with the Egyptian state and had used his connections to circumvent the traditional processes of the Coptic Church in his own rise to the position of patriarch. He was directly appointed to the position by the Sultanate and essentially bribed his way to power when the Coptic Church objected to his appointment.[158]

In response to Cyril III's flagrant disregard for the Syriac tradition, Syriac Patriarch Ignatius III David (1222-1252) retaliated by appointing Tomas, an Ethiopian monk, as bishop of Ethiopia.[159] In what can hardly be a coincidence, Ignatius III had been approached by a party of the Ethiopian Church who were seeking to free themselves of the Copts, immediately after Cyril III's appointment of the bishop of Jerusalem. Accordingly, Ignatius III David obliged the

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[156] Dorothea Weltecke, "Contacts Between the Syriac Orthodox and Latin Military Orders," in *East and West in the Crusader States: Context, Contacts, Confrontations III: Acta of the Congress Held at Hernen Castle in September 2000*, ed. Krijnie Ciggaar, Herman Teule (Leuven: Peeters, 2003), 67.

[157] Tamrat, *Church and State*, 70.

[158] Sāwīrus Ibn al-Muqaffa, *History of the Patriarchs of the Egyptian Church Vol. 3, Part 3: Cyril II - Cyril V (A.D. 1235-1894)*, trans. Antoine Khater, O.H.E. Khs- Burmester (Cairo: Inst. Français d'Archéologie Orientale, 1970), 227; Nineteen years prior to his controversial appointment as patriarch, Cyril III offered a bribe to be appointed as the bishop of Ethiopia. Known then by his birth name Dāwūd ibn Laqlaq, Cyril III was serving as a priest and payed a bribe of 200 dinars to the Ayyubid sultan al-Malik al-Kāmil (1200-1218), to secure his appointment to the position. However, al-Malik al-Kāmil consulted with the patriarch John VI (1189-1216) who recommended Cyrill III be denied the position on the grounds that he was "not fit because his belief in God is corrupt." Salvatore Tedeschi, "Ethiopian Prelates: Giyorgis II (early thirteenth century)," in *The Coptic EncyclopediaVol. 4*, ed. Aziz S. Atiya (New York: Macmillan, 1991), 1009.

[159] Tamrat, *Church and State*, 70; Weltecke, "Contacts Between the Syriac Orthodox", 67.

Ethiopian party by appointing Tomas and further exasperating the conflict. There is no evidence that Tomas ever took up his controversial position, and the situation was resolved with the *modus operandi* allegedly returning to normal. However, there is evidence that a Syriac-Coptic rivalry for control over the Ethiopian Church continued into the late thirteenth century. In a letter to the Coptic Patriarch John VII (1262-1268), *aṣe* Yagba Ṣeyon (regnal name Solomon) (1285-1294) requested a bishop be sent by the Copts and complained about Syrian bishops who were living in Ethiopia whom the people could not tolerate.[160] Further, there are speculations that there may have been a Syriac bishop accepted by *aṣe* Yagba Ṣeyon's father, *aṣe* Yəkunno Amlak, out of necessity when he failed to secure a bishop from Egypt.[161]

Considering this controversy, it is hardly a coincidence that the following year, in 1238, the Coptic Church enacted the *Mağmū al-qawānīn* which includes the pseudo-canon granting the Copts exclusive rights in appointing the Ethiopian bishop. There is no other explanation for inserting the pseudo-canon but to formalize the already existing but shaky tradition and strengthen the Coptic Church's position in relation to the Syriac and Ethiopian Churches.

Accordingly, it is likely that Ibn al-Assal was pressured or ordered to include the pseudo-canon by either the Coptic Patriarch, Cyril III, Sulṭān al-Malik Muḥammad al-Kamīl, or both. The Coptic Church often worked together with the sultanate to retain the Ethiopian Church under

[160] Tamrat, *Church and State,* 69.

[161] Tamrat, *Church and State*, 71.

their control.[162] Both parties viewed the arrangement as beneficial to their respective political and religious ambitions and despite disputes arising in their relationship, relied on each other to preserve the Coptic-Ethiopian relationship. Given the evidence, we can assert firmly that Ibn al-Assāl compiled the *Mağmū al-qawānīn* with three main goals: 1. To establish a civil law for Christians in Egypt and cease their dependence on Muslim courts for civil matters; 2. To issue general reforms in the Coptic church given the tumultuous and controversial period they were going through; 3. To cement the Coptic position over the Ethiopian Church in the wake of the Syriac-Coptic dispute over the appointing bishops. With a more direct understanding of Ibn al-Assāl's motivations in compiling the code in hand, we will now analyze the origins of the text itself.

Origins of the *Mağmū al-qawānīn* of Ibn al-Assāl

Ibn al-Assāl divided his work into two portions which includes twenty-two chapters dealing with religious or church matters, and twenty-nine chapters dealing with civil matters. In composing the first half of the *Mağmū al-qawānīn* dealing with religious matters, Ibn al-Assāl drew from several sources including both the Old and New Testaments in the Bible, Canons of the early Councils, and Apostolic writings among others. The second half of the *Mağmū al-qawānīn* was drawn mainly from a four book collection known as the *Canons of Kings*, which consisted of Roman-Byzantine legal handbooks and Old Testament influence coming from a

[162] In the twelfth century, The Ethiopian *neguś* requested the Caliph the appointment of additional bishops. The Caliph apparently agreed at which point the Coptic Patriarch Gäbriél (1131-1145) implored him to not allow it. Gäbriél argued that if the Ethiopians had more than seven bishops, they would eventually gain the ability to appoint their own Patriarch and would no longer be dependent on the Coptic church. Accordingly, the Ethiopians would be independent of all Egyptian influence. Upon hearing Gäbriél's argument the Caliph immediately reversed his position and blocked the appointment of additional bishops. Tamrat, *Church and State*, 56.

compilation known as *The Precepts of The Old Testament*.[163] In addition to the Roman-Byzantine influences, the section in the *Fətha Nägäśt* under the title "Chapter on Successions, on which the Honorable Abba Querillos, Patriarch of Alexandria, Agreed with His Bishops, Priests and Magistrates," has been identified as a Gə'əz translation of a portions of the *Canons of Cyril III ibn Laqlaq*. The *Canons of Cyril III ibn Laqlaq* were enacted in 1241 and were not inserted into the original Arabic *Mağmū al-qawānīn* of Ibn al-Assāl but was likely drafted by him as well.[164] Finally, it has been noted that Ibn al-Assāl's *Mağmū al-qawānīn* is influenced by the Maliki branch of Islamic law in civil matters. Sales, procedure, divorce, penal provisions and more have been shown to be drawn directly from Islamic law.[165] In addition to the borrowings in civil areas, the style of the *Fəṭḥa Nägäśt* echoes Muslim legal scholarship in that contributions to the code were arrived at through reasoning and analogy and were deemed legitimate through consensus agreement. The formula of reasoning and analogy is comparable to the *qiyās* of

[163] The other three books in the *Canon of Kings* are the *Procheiros nomos*, *Syro-Roman Book of Law* and the *Ecloga*. Scholars have speculated that the *Fətha Nägäśt* (*Law of Kings*) may have drawn its title from the *Canon of Kings*. Peter H. Sand, "Roman Origins of the Ethiopian "Law of Kings" (Fetha Nagast)" in the "Preface" to *The Fetha Nagast*: *The Law of Kings*, trans. Abba Paulos Tzadua ed. Peter L. Strauss (Durham: Carolina Academic Press, 2009), xxxix-l.

[164] This portion of the code, according to an introductory note and an Amharic gloss to the appendix of the *Fətha Nägäśt*, is based upon the writings of an Abba Cosmas and Abba Gabriel who Peter Sand has identified to likely be patriarch Quzman III and patriarch Gabriel II ibn Tarīq (1131-1145). See Peter H. Sand, "Roman Origins of the Ethiopian "Law of Kings" (Fetha Nagast)" in the "Preface" to *The Fetha Nagast*: *The Law of Kings*, trans. Abba Paulos Tzadua ed. Peter L. Strauss (Durham: Carolina Academic Press, 2009), xxxix-l.

[165] Sand, "Roman Origins," x1vii.

Islamic jurists and legitimizing statutes through consensus with the *ijmā* of Islamic jurisprudence. [166]

The *Mağmū al-qawānīn* is by far the most important work of Ibn al-Assal as it served as the official legal manual of the Coptic Church and has functioned as the official book of both civil and Ecclesiastical law in Ethiopia (*Fətḥa Nägäśt)*. In addition, the *Mağmū al-qawānīn* served as the foundation for Maronite Ecclesiastical law, reformed by ‘Abdallah Qara ‘Ali during the 18th century. [167] The precise time period Ibn al-Assal’s *Mağmū al-qawānīn* was brought to Ethiopia and translated into Gə’əz is unclear and has the been the subject of much debate with claims that the translation and promulgation took place anywhere between the fourteenth and seventeenth centuries.[168] Despite the debate, the legal text retains its prestige in both Egypt and Ethiopia as it remains the basis of Ecclesiastical law for the Coptic church and even more so for the EOTC, which continues to train legal scholars to interpret and apply the code in Ecclesiastical matters.[169] Aside from the scholarly consensus on the origins and source of

[166] Ibid, xlviii. *Qiyās* is described as a systematic form of reasoning in Islamic law, employed when there are no clear directives to be found in the Qur’ān or the Hadith. Although it existed informally (*ra’y*) it was formally incorporated into the Madhhab al-Shāfi’ī, one of the four Sunni schools of religious law which derives its theory and name from famed Sunni Imam, Abū ‘Abdillāh Muhammad ibn Idrīs al-Shāfi’ī (767-820). See Ahmad Hasan, “The Principle of Qiyās in Islamic Law-An Historical Perspective, *Islamic Studies* 15, no. 3 (1976), 201-203; While the loose definition of *ijmā* is ‘consensus’, the literal definition of the word is ‘to resolve firmly to do something’. The most accepted legal definition in Islamic law is the one provided by a jurist in the Shāfi’ī school, *Imam* Sayf al-Din al-Amidi (1156-1233): “[*ijmā*] is an expression of the agreement of the generality of those qualified to loosen and bind from the community of Muhammad in a particular age upon the ruling of a particular occurrence.” Abdullah bin Hamid Ali, “Scholarly Consensus: Ijma: Between Use and Misuse,” *Journal of Islamic Law and Culture* 12, no. 2 (2010), 95.

[167] René-Georges Coquin, “Canon Law,” in *The Coptic Encyclopedia vol. 2,* ed. Aziz S. Atiya (New York: Macmillan, 1991), 449-451.

[168] See Note 125

[169] Conquin, “Canon Law,” 1991; See also Aberra Jembere, *An Introduction to the Legal History of Ethiopia, 1434-1974*, (Munster: LIT Verlag, 2000)

the code, the EOTC retains its own tradition, as to the origins and source of the code and the time it arrived in Ethiopia.

Origins of the *Fətha Nägäst* According to Ethiopian Tradition

The Ethiopian tradition which details the origins of the text and the circumstances surrounding it being brought to Ethiopia are quite different from the scholarly assertions. As previously noted, Ibn al-Assāl's *Mağmū al-qawānīn* draws from several sources of law including Roman Byzantine, Judaic, and Islamic to name a few. Part of the information we have is based on Ibn al-Assāl's own citations and references which he included throughout the entire text and made their way into the Gə'əz translation as well as he outright states his sources in the introduction to the text. However, according to Ethiopian tradition the code is thought to have much more prestigious "purely" Christian origins. In fact, the Ethiopian Church tradition's official line is that the *Fətḥa Nägäśt* was not the work of Ibn al- Assāl but instead was crafted by the 318 Fathers of the Council of Nicaea. Attaching the prestigious origins to the law code enhanced the already reverential view the Ethiopian Church holds for it. In like manner to the *Kidane*, *Senodos* and *Didəsqəlya*, attributing the text to the 318 Fathers established a pseudo-epigraphical authority by which the law could be readily accepted by both the church and state authorities. In addition to the origins of the composition of the code, the Ethiopian Church has a story which details when and by whom the *Fətḥa Nägäśt* was brought to Ethiopia and translated into Gə'əz.

Ethiopian tradition which is drawn, in part, from translations of the text itself, claim the book was brought into Ethiopia during the fifteenth century reign of *aṣe* Zär'a Yaʿəqob (1434-

68).[170] The portion that stems from the Gə'əz translation details specifically that the text was brought to Ethiopia at the request of *aṣe* Zär'a Yaʿəqob and was translated by an Egyptian deacon named Petros Abdä Säyd.[171] *Aṣe* Zär'a Yaʿəqob was dissatisfied with the existing sources of law and the lack of a unifying civil or secular code to govern his kingdom, which he publicly lamented to his royal court. At this point, Petros Abdä Säyd, who was present in his royal court, informed him of a prestigious law code in Alexandria which had been composed by the 318 Orthodox Fathers of the Council of Nicaea. *Aṣe* Zär'a Yaʿəqob immediately provided funding in the amount of 30 ounces of gold for the procurement of a copy of the text and ordered Abdä Säyd to travel to Egypt and do so as well as to take on the task of translating it from Arabic into Gə'əz.[172]

This information certainly fits with what we know of *aṣe* Zär'a Yaʿəqob and his reign. The historical record of the reign of *aṣe* Zär'a Yaʿəqob paints the picture of a religious zealot who implemented vast religious and legal reforms in his kingdom as well as put forth an unmatched effort to firmly unite both church and state under his authority.[173] In addition to vast legal and religious reforms, *aṣe* Zär'a Yaʿəqob introduced various religious holidays, mandated the veneration of the cross and icons of the Virgin Mary which greatly influenced art, and

[170] *Fetha Negest.* [15th Century], British Library, EAP 432/1/132,

[171] Tzadua trans., *Fetha Nägäśt*, 319.

[172] Tzadua trans., *Fetha Nägäśt*, 319.

[173] Tamrat, *Church and State* 231, 302.

contributed enormously to the development of literature.[174] Perhaps the most important detail of *aṣe* Zär'a Yaʿəqob in relation to the Ethiopian tradition on the *Fətha Nägäśt* is his concern with law and the 'lawlessness' and lack of Christian unity that existed within his kingdom. Tadesse Tamrat points to the lack of influence the Church and state had on the extensive non-Christian provinces that had been incorporated into the kingdom prior to the reign of *aṣe* Zär'a Yaʿəqob. Indeed, the *nəguś* did attribute the 'lawlessness' to non-Christian influences in his kingdom.[175]

However, another source, a homily attributed to *aṣe* Zär'a Yaʿəqob entitled the *Homily in Honour of Saturday* suggests that perhaps the *Fətha Nägäśt* may have been translated prior to or during *aṣe* Zär'a Yaʿəqob's reign. Despite its title, the homily does not devote much of the text to the Sabbath but focuses instead on the subject of the Trinity of God and the biblical canon. One of the controversies that took place during *aṣe* Zär'a Yaʿəqob's rein (1434-1468) was several prominent intellectuals openly challenged *aṣe* Zär'a Yaʿəqob on several aspects of his theological teaching. These scholars all came from the region of Tägulät and were known by the names of Zämika'el, Gämalyal, Giyorgis, ʿAṣqa and Fəre Maḫbär.[176] These scholars confronted *aṣe* Zär'a Yaʿəqob on several issues including the image of God, the canonical scriptures, the

[174] *Aṣe* Zär'a Yaʿəqob influenced and supported literary development as an author and co-author of numerous works as well as commissioned a plethora of literary works. The majority of the works he authored or co-authored are extremely polemical works composed to refute his various opponents. Nearly all of his works deal with the major controversies of his time including the veneration of the cross and Virgin Mary icons, as well as Sabbath observation and the biblical canon to name a few. Steven Kaplan and Marie-Laure Derat, "Zär'a Yaʿəqob" in *Encyclopedia Aethiopica*: *Supplementa, Addenda et Corrigenda, Maps, Index*, ed. Siegbert Uhlig, Vol. 5 (Wiesbaden: Harrassowitz, 2014), 146-150.

[175]Tamrat, *Church and* State, 302. The southward expansion of the kingdom primarily took place under the direction of *aṣe* Amdä-Ṣəyon (r.1314-1344) who conquered numerous regions including the Kingdom of Gojjam and numerous regions surrounding Shäwa. Ibid, 119-155.

[176] There is no evidence that these scholars acted in unison or belonged to a group. However, Western scholars have primarily grouped them together under the moniker, 'Zämika'elites.' This is due to Zämika'el being the main scholar referenced by *aṣe* Zär'a Yaʿəqob when refuting these scholars. See Getatchew Haile, "Zämika'elites," in *Encyclopedia Aethiopica vol. 5*, 131-133.

concept of the trinity of God, and the place of Mary in Christian worship.[177] The *Homily* focuses on one of these disputes between *aṣe* Zär'a Yaʿəqob and the scholar Gämalyal. The dispute was centered on the canonical status of the *Book of Jubilees* which *aṣe* Zär'a Yaʿəqob based his theology of the Trinity on. Gämalyal, in his efforts to refute the *nəguś*, allegedly rejected the *Book of Jubilees* as well as the *Book of Maccabees* and included the *Book of Joseph bin Gorion* as part of the *Book of Maccabees.*[178]

Gämalyal, in rejecting the *Book of Jubilees* and equating the *Book of Joseph bin Gorion* with the *Book of Maccabees* provided a key piece of evidence regarding the *Fəṭḥa Nägäśt.* Getatchew Haile draws attention to the significance when he honed in on the fact that the *Fəṭḥa Nägäśt* is the only book of canon law in Ethiopia that excludes the *Book of* Jubilees from the enumerated 81 books of the bible and equates the *Book of Joseph bin Gorion* with the *Book of Maccabees*.[179] This is an indication that perhaps Gämalyal had access to a Gə'əz translation of the code and was well acquainted with the text, since he was after all evoking it in a refutation of the emperor.[180] However, this also casts a shadow of doubt over the authenticity of the claim that

[177] Getatchew Haile, "A Study of the Issues Raised in Two Homilies of Emperor Zärʾa Yaʿəqob of Ethiopia," *Zeitschrift der deutschen morgenländischen Gesellschaft* 131, no. 1 (1981): 90-91.

[178] Haile, "A Study of the Issues," 93.

[179] Getatchew Haile also notes that the *Senodos* does not equate the *Book of Joseph bin Gorion* with the *Book of Maccabees.* Ibid.; Getatchew Haile, "Religious Controversies and the Growth of Ethiopic Literature in the Fourteenth and Fifteenth Centuries," Oriens Christinus Weisbaden 65 (1981): 136. The *Fətha Nägäśt* in chapter 2 provides a list of the canonical books of the bible which at the end of the Old Testament list states "**ወካዕበ፡ መጽሐፈ፡ ዮሲፍ፡ ወልደ፡ ከርዮን፡ ወውእቱ፡ መጽሐፈ፡ መቃብያን፡**(and also the *Book of Yosäf Wäldä Käryon* [*Book of Joseph bin Gorion*] which is the same as the *Book of Mäqābiyān* [*Book of Maccabees*]." *Fetha Negest.* [15th Century], British Library, EAP 432/1/132, f 6rc.

[180] According to *Gädlä Elyas Gädamawi,* Gämalyal was blind. However, having this disability would not prevent Gämalyal from knowing the contents of the *Fəṭḥa Nägäśt*. Orality and the ability to memorize and recite complete texts are key features of EOTC traditional school training and is a requirement for each scholar who goes through these programs. Haile, "Zämika'elites," in *Encyclopedia,* 132; *Mämhər* Betseha Alemu, interviewed by author, Gondär, Ethiopia, August 31, 2017; *Liq Liqawənt* Śahəlu Adämä, interviewed by author, Addis Ababa, Ethiopia, December 19, 2020.

the code was introduced during the reign of *aṣe* Zär'a Ya'əqob. It is highly unlikely that the *Fətḥa Nägäśt* was brought from Egypt, translated into Gə'əz and dispersed widely enough to be at the center of a major theological debate during his reign. As it stands, the story of Gämalyal points towards perhaps an earlier reception of the code. As we shall see next, there is indeed more evidence supporting a pre- *aṣe* Zär'a Ya'əqob reception of the *Fətḥa Nägäśt*.

The *Fətḥa Nägäśt* in Practical Application in the Early 16th Century

Further evidence that the *Fətḥa Nägäśt* had indeed made its way into Ethiopia by the fifteenth century can be found in the travel narrative of Francisco Álvares. In the early sixteenth century, Portugal sent an embassy to Ethiopia with the hopes of establishing an official diplomatic relationship with the Christian kingdom. Many in Portugal were convinced that Ethiopia was the land of Prester John, a mythical utopian king who was conceived in the imagination of medieval Europe. According to the myth, Prester John was a priest king over a distant Christian land that was prophesized to form an alliance with European Christendom and help deliver Jerusalem back into the hands of Christendom from Muslim control.[181] Father Francisco Álvares, who was serving as chaplain to the Portuguese embassy, provided one of the first detailed European descriptions of Ethiopia in his sixteenth century travel narrative based on the six years he spent in the nation from 1520 to 1526.[182] Álvares, along with the embassy entered from Məṣəwwa and traveled south, stopping at various locations along the way. Early on in his travels, Álvares described his year-and-a-half stay in the town of Dəbarwa, a market town

[181] Manuel João Ramos, "The Myth of Prester John and Iberian Visions of Ethiopia," In *International Seminar on Pedro Páez in 17th Century Ethiopia*. 2012.

[182] Charles Beckingham, "European Sources for Ethiopian History before 1634," *Paideuma* 33 (1987): 170.

located in modern day Eritrea which served as the capital city of the governor (*baḥər nägaš*) of the Red Sea provinces.[183] Geographically, Dəbarwa was an important political and commercial center as it lies roughly 150 kilometers southwest of the Red Sea port Məṣəwwa, and a little over one thousand kilometers from Shewa, where the *neguś*, *aṣe* Ləbnä Dəngəl frequently established his royal camp.

While in Dəbarwa, Álvares and his nephew lodged in the house of a local man named Ababitay for approximately one and a half years. Álvares observed many local customs and events and used his narrative to document his observations. Among others, Álvares criticized local marriage customs and the punishment of offenders.

> The men who have plenty of food to eat keep two or three wives; and it is not forbidden to them…, only by the church. Every man who has more than one wife does not enter the church, nor does he receive any sacrament: and they hold him to be excommunicated…For a year and a half a nephew of mine and I lodged in the house of a man named Ababitay, and he had three wives…Nobody forbade them, except the Church, as has been said, which did not give him the benefit of the sacraments.[184]

Álvares' main issues are that the local men were quite frequently engaging in polygyny, and the punishment they receive is enforced exclusively by the church.

Regarding polygyny, the *Fətḥa Nägäśt* clearly asserts that the practice is reprehensible for a Christian. Under the section entitled "Advice and Precepts for the Laymen and for the Community of the Faithful," it asserts that a Christian man must not be a lover of women and

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[183] The office of the *baḥər nägaš* ('ruler or king of the sea') was instituted by *aṣe* Bä'ədä Maryam (1468-1478) during his reign and included the Northern provinces of Təgray, Angot and Qeda. However, the institution existed under a different tile for approximately three centuries prior to the reign of *aṣe* Bä'ədä Maryam. From the twelfth through the fifteenth centuries the office and region were known as *Ma'əkälä baḥər* ('middle of the coast'). The capital city Dəbarwa was an important political and commercial center as it lies roughly 150 kilometers southwest of the Red Sea port Məṣəwwa. Dəbarwa

[184] Francisco Álvarez, *Narrative of the Portuguese Embassy to Abyssinia, During the Years 1520-1527,* trans. Henry Edward John Stanley (London: Hakluyt Society, 1881), 44-45.

will take only one wife.[185] Interestingly, this strict tenet is found in the half of the code that deals with Ecclesiastical law. In sharp contrast the civil portion of the code contains an entire section dedicated to tenets on marriage. Under the section entitled "Betrothal, Dowry, Marriage and What Follows Them," the following is laid out regarding polygyny.

> So far as we have dealt with marriage concluded with the first woman: marriage to a second woman is different. It is inferior to the first. With respect to this second wife…she shall not have the nuptial blessing, but upon her the penitential prayer shall be said…a second marriage is not commendable.[186]

This tenet takes a less strict stance than the previous assertion, opting to only label polygyny as an unrespectable practice. However, under the sub-section entitled "Definition of Marriage and Matters Concerning it," a much firmer stance is taken and punishment for engaging in polygyny is laid out.

> A man shall not have two wives…if one does this, he shall be prevented from receiving the Eucharist and from entering the Church. He shall not enter the community of the faithful until he parts from the second [woman]…Whether he takes two wives [together] or he takes them separately, each one in her own house… if he is a layman he shall be barred from associating with the people.[187]

What clearly stands out is the assertion that indeed a man should not be engaging in polygyny, but also the prescribed punishment for men who violate the tenet. In a striking parallel with Álvares' experience in Dəbarwa, the Church is tasked with punishing violators of the tenets on polygyny, and the punishment includes a ban from entering a church, partaking of the Eucharist, or associating with the faithful. However, the *Fəṭḥa Nägäśt* also makes provisions for offenders to restore his status in the Church. Under the subheading "Definitions of Marriage and Matters

[185] Tzadua, *The Fetha Nagast*, 76-79.

[186] Tzadua, *The Fetha Nagast*, 132-133.

[187] Tzadua, *The Fetha Nagast*, 144.

Concerning it," it states, "He shall not enter the community of the faithful until he parts from the second [woman] and lives with the first only."[188] In yet another striking parallel, Álvares tells of how Ababitay is able to regain his status in the Church.

> …before our departure, he put away from him, and from intercourse with him, two wives and remained with one, that is to say the one he had last, who was the youngest, and already they gave him the sacraments, and he entered the church like anybody else, and as though he had not had more than one wife.[189]

In this case what stands in contrast to the *Fətḥa Nägäśt* is the fact that Ababitay is able to regain his status in the Church by staying with one wife, but his last one as opposed to the first which is prescribed in the code. The divergence could possibly be due to methods of interpretation of the precepts which are not always required to be literal.[190] In this case perhaps it was judged that Abibitay was fulfilling the spirit of the law which is to ultimately practice monogamy. What can be drawn from this account is the parallels that exist between Álvares' account and the precepts contained in the *Fətḥa Nägäśt* are strong evidence that the code held a measure of social influence by the early sixteenth century. The *Fətḥa Nägäśt* in practical application so far from the *neguś* is an indication that the code had been in Ethiopia for a considerable amount of time. This evidence, along with the evidence drawn from the story of the debates between Gämalyal and *aṣe* Zär'a Ya'əqob support a late fourteenth-early fifteenth century reception of the *Fətḥa Nägäśt.* This gives approximately a century for the code to be translated and spread through the

[188] Tzadua, *The Fetha Nagast*, 144.

[189] Álvarez, *The Portuguese Embassy to Abyssinia,* 45.

[190] Church scholars of the *Fətḥa Nägäśt* known as *Liq* or *Liqawənt* have three methods of interpreting the code: By the alternative, the literal, and by idiomatic interpretation. See Jembere, *An Introduction to the Legal History of Ethiopia*, 37-38; *Liqä Śaltanat* Habtä Maryam Wärqnäh, *T'int'awi Ye Itiop'ia Timhirt [The Study of Ancient Ethiopia],* (Addis Ababa: Berhanena Selam Printing Press, 1963 Ethiopian Calendar).

various Church educational institutions, where it could appear at the center of theological debates in the fifteenth century and be seen in practical application in the early sixteenth century. However, as we shall see next, there is evidence that supports perhaps even an earlier transplant of the code than the fifteenth century.

Ewosṭatewos, the Sabbath and the *Fətḥa Nägäśt*: An Earlier Reception?

In the first several centuries of the Solomonic dynasty, the EOTC and the kingdom experienced several religious controversies, some of which nearly permanently fragmented both institutions. One of these notable controversies was centered on the subject of the Saturday Sabbath which emerged from the teachings of *abba* Ewosṭatewos (*c*. 1273-1352), a monk from Gär'alta, in the modern day Tigray region of Ethiopia.[191] Within the ecclesiastical tradition of Ewosṭatewos life and teachings , there is evidence of a possible earlier arrival of the *Fətḥa Nägäśt.* In particular, the persecution that he experienced as a result of his pro-Sabbath stance contains valuable insight into the sources of canon law that he used to defend his position and in turn the sources that were possibly used against him.

Ewosṭatewos was born Ma'əqabä Ǝgzi (trust of the Lord) on *Hamle* 21 (July 15) 1273 in the Ṣəra district in eastern Təgray. Around the age of seven he was sent to be trained by his uncle Dan'el who was the abbot of Däbrä Maryam monastery in Gär'alta, Təgray. Under the supervision of his uncle, Ewosṭatewos was trained for around eight years and initiated into monastic life which he professed at the age of fifteen. At the peak of his monastic career

[191] There is evidence that the Sabbath was controversial in Ethiopia long before Ewosṭatewos. However, it is primarily Ewosṭatewos and his followers who pioneered a pro-Sabbath movement in the 14th and 15th centuries. Ekaterina V. Gusarova, "Little Known Aspects of Veneration of the Old Testament Sabbath in Medieval Ethiopia," *Scrinium* 13, no. 1 (2017): 154-158; Getatchew Haile, "The forty-nine hour Sabbath of the Ethiopian church," *Journal of Semitic Studies* 33, no. 2 (1988): 233-254.

Ewosṭatewos was exiled from Ethiopia due apparently to religious persecution of believers in keeping the 'Sabbath of the Jews' of which he was one of the main promulgators.[192] Ewosṭatewos and his followers' stance on the Sabbath they claimed was legally supported in the literature of the Church. This is confirmed in an account recorded in his *Gadl* (hagiography) which details charges that were brought against Ewosṭatewos at the court of the Patriarch in Cairo, Egypt. His accusers were fellow Ethiopian pilgrims who claimed Ewosṭatewos refused to communicate with them and was observing the Sabbath in addition to the Sunday services.[193] While it is not mentioned which law code was evoked to support the charges against Ewosṭatewos, it is probable that the *Fəṭḥa Nägäśt* provided the legal grounds to indict him. Support for this theoretical assumption can be found in both Coptic and Ethiopian sources of canon law that were in use for prior to Ibn al'Assāl and his composition of the *Mağmū al-qawānīn* in 1238 as well as the stance of both Churches on the issue of the Sabbath.

The Statutes of the Apostles, one of the pseudo-Apostolic texts found in the *Senodos,* is thought to have been composed around the end of the fourth century. This legal text provides several examples of legal guidelines which seemingly support Sabbath observance, specifically

[192] Ewosṭatewos was definitively the main advocate of observance of the double sabbath and is credited with initiating a pro-Sabbath monastic movement known as **ደቂቀ ኤዎስጣቴዎስ** (däqiqä Ewosṭatewos) or Ewosṭateans. However, it is noted that his maternal uncle Dan'el, who was his monastic father, was himself trained in the monastic traditions by a monk named Ebnä Sänbät which literally translates to 'Cornerstone of the Sabbath' and is perhaps an indication that Ewosṭatewos inherited his views on the Sabbath from his uncle who in turn had inherited it from his teacher. While there is not enough evidence to be sure, there is evidence observance of the Sabbath, especially the double sabbath, being championed by the Ethiopian Church since at least eleventh century and possibly earlier. Gianfranco Ficcadori, "Ewosṭatewos," in *Encyclopedia Aethiopica*, ed. Siegbert Uhlig, Vol. 2 (Wiesbaden: Harrassowitz, 2005) 469-472.

[193] **የሙክዬ ጮባ ጋልይ የአቡነ ኤዎስጣቴዎስ ገዳም** (Yämukye Čoba Galəy YäAbunä Ewosṭatewos Gädam) **ገድለ ቅዱስ ኤዎስጣቴዎስ ግእዝ እና አማርኛ** (Gädlä Qədus Ewosṭatewos: Gə'əz əna Amarəña) (Addis Ababa: Ethiopian Orthodox Tewahedo Church, 2006 Ethiopian Calendar), 43.

in the Coptic, Gə'əz, and Arabic versions.[194] One of the key statutes regarding the Sabbath observance states the following translated from the Sahidic (Coptic) text:

> Let the slaves spend five days doing work but on the Sabbath (Sabbaton) and the Lord's day (kyriakē) let them devote themselves to the church that they may be instructed in Piety (eusebēs) of godliness. The sabbath indeed because the Lord rested on it from finishing all the creation, And the Lord's day because it is the day of the resurrection of the Lord.[195]

The Coptic Church accepted Sunday as the Christian day of worship or the Christian Sabbath around the mid fourth century. However, as evident from the late fourth century text, the Copts had not rejected traditional Sabbath observance in accepting Sunday, or at the minimum continued to offer a level of reverence for the Sabbath in their literature. The Ethiopian Gə'əz version goes even further than the Coptic in providing a justification for a double Sabbath, under "Statute 66" it states,

> Concerning the resting on both the sabbaths. Every believing man and woman shall rest on the sabbath and the First day…And we also commanded thus in our Epistle. [You] and your slaves and your servants, do your work five days. And on the sabbath and the first day [you] shall not do any work in them…And therefore he said in the (book of the) Law which (is about) the creation. And God blessed the seventh day which is the sabbath…Then the First day is the day of the Resurrection of our Lord Jesus Christ. And the (First) day was named sabbath, and both were named sabbaths.[196]

While both the Coptic and Ethiopian text generally agree on idea of a double Sabbath, the Ethiopian text goes to greater lengths than the Coptic to justify Sabbath observance in addition to the first day or Sunday. These notable points of divergence in the canons reveal not only a divide

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[194] Wilson B. Bishai, "Sabbath Observance from Coptic Sources," *Andrews University Seminar Studies (AUSS)* 1, no. 1.

[195] George William Horner trans. & ed., *The Statutes of the Apostles or Canones Ecclesiastici* (London: Williams & Norgate), 1

[196] Horner, *The Statutes*, 210-212

between the two churches on the point of the Sabbath, but also agency on the part of the Ethiopian church as the text is reflecting the local Christian beliefs and practices.

In the case of the Coptic Church there is a certain amount of honor given to the Sabbath in Coptic and Copto-Arabic literature as evident from the *Statutes of the Apostles*. However, textual references from the fourth century reveal efforts of the Copts to distance themselves from the 'Sabbath of the Jews.' For example, the *Homily on the Seed*, a fourth century pseudo-Athanasian (St. Athanasius Patriarch of Alexandria, 328-373) text, it claims that the Copts gathered on the Sabbath "not being infected with Judaism," rather they would gather only to honor and worship Jesus because he is the "Lord of the Sabbath."[197] The Council of Laodicea (343-381) indicates that Sabbath observance was widespread among early Christians in the world. This is particularly evident in "Canon 29" which specifically states that "Christians must not Judaize by resting on the Sabbath, but must work on that day, rather honoring the Lord's day, and if they can, resting then as Christians. But if any shall be found to be Judaizers, let them be anathema from Christ." Further, Canons 37-39 reveal an overall concern with Christians celebrating Jewish holidays and associating with Jews in general. Thus, it can be asserted that removing Judaic elements from Christian practice as well as separating Christians from Jews was a major concern of the Council.[198] By the sixth century, Sabbath observance seems to have been wiped out of the Coptic Church as they shared the position of greater Christian world in rejecting

[197] Werner K. Vyhmeister, "The Sabbath in Egypt and Ethiopia," in *The Sabbath in Scripture and History*, ed. Kenneth A. Strand (Washington D.C.: Review and Herald Publishing Association, 1982), 169-70

[198] Emile Maher Ishaq, "Saturday" in *The Coptic Encyclopedia,* ed. Aziz S. Atiya, Vol. 7 (New York: Macmillan, 1991), 2098-3000. The timing of the Council of Laodicea is of particular interest when taking into consideration the composition of the *Apostolic Canons* is also dated around the same period.

Sabbath observation as a Judaic practice.[199] In stark contrast to the Coptic Church there is ample evidence that Ethiopian Church had an extended history of Sabbath observance.[200] The *Senodos*, *Didəsqəlya, Kidane* all go to considerable lengths to justify Sabbath observance, certainly greater than their Oriental Orthodox counterparts do in their versions of these canonical works. Further, Sabbath observance seems to have been a point of contention between the Ethiopian Christians and the Coptic Church for at least three centuries prior to Ewosṭatewos. Evidence of this divide is found in the eleventh century when Bishop Sāwīrus , in a report on the Ethiopian Church, requested Patriarch Cyril II (1077-92) to formally request that the Ethiopians cease observing customs drawn from the Old Testament.[201] While Bishop Sāwīrus does not specify the Old Testament customs the Ethiopian Church was practicing, based on historical evidence it is safe to assume that the customs Sāwīrus is referencing includes observation of the *Sänbätä Ayhud* or the Sabbath of the Jews.[202]

Two centuries later, the Copts codified their stance on the Sabbath in Ibn al'Assāl's *Maǧmū al-qawānīn* (1238). Under the chapter 19 title "On Sundays, Saturdays, Lord's Feasts, and Pilgrimage" it states,

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[199] Ishaq, "Saturday" in *The Coptic,* 2098-3000.

[200] A number of scholars including famed semitologist Edward Ullendorff (1920-2011) have written extensively on the so-called Hebraic-Jewish influence on the customs and practices of the Ethiopian Orthodox Church as well as Ethiopian culture in general. Some of these customs include Old Testament dietary restrictions, male circumcision on the eighth day after birth, and Sabbath observance. See Edward Ullendorff, "Hebraic-Jewish Elements in Abyssinian (Monophysite) Christianity," *Journal of Semitic Studies* (1956): 216-56; E. Ullendorf, *Ethiopia and the Bible*: *Schweich Lectures of the British Academy,* 1967 (London: Oxford University Press, 1968); Ernst Hammerschmidt, "Jewish Elements in the Cult of the Ethiopian Church," *Journal of Ethiopian Studies* 3, no. 2 (1965): 1-12; Getatchew Haile, "The Forty-Nine Hour Sabbath of the Ethiopian Church," *Journal of Semitic Studies* 33, no. 2 (1988).

[201] Sāwīrus Ibn al-Muqaffa, *History of the Patriarchs of the Egyptian Church* Vol. 2, Part 3, trans. Yassa 'Abd al-Masih, Aziz Suryal Atiyah, and O.H.E. Burmester (Cairo: 1949), pg 330

[202] Haile, "The Forty-Nine Hour Sabbath," 233-244.

1. It is not proper for Christians to take Saturday as their Holiday as the Jews do. They Should work Saturday…
2. Do not keep Saturday as the Jews do.
3. Do not prostrate yourself on Sundays and the Lord's feasts because it is days of joy. Although it should not be done, no one should fear Church punishment if they do. [203]

The Gə'əz translation of the *Mağmū al-qawānīn* (*Fətḥa Nägäśt*) more or less states the exact same thing, however with a few notable differences. Under the heading "አንቀጽ፡፲ ወ ፱ በእንተ፡ዕለተ፡እሁድ፡ወዕለተ፡ሰንበት፡ወበዓላተ፡እግዚእ፡ወምክንያተ፡አብዕሎቶሙ፡ደቅ፡ፀ ወ ፱" Chapter 19: Concerning Sunday and Saturday and the Feast Days of the Lord and the Reason You Celebrate Them" it states:

> **ኢይደልዎሙ፡ለክርስቲያን፡ከመ፡ጽርዑ፡ተገብሮ፡በዕለተ፡ሰንበት፡ከመ፡አይሁድ፡አላ፡ይትገብበውእቱ፡ዕለት፡ከመ፡ክርስቲያን፡ወለእመ፡ተረክቡ፡እምሕዝብ፡እንዘ፡ይገብሩ፡ግብረ፡እሁድ፡ወእቶሙ፡ይከውኑ፡ስዱዳነ፡እምቅድመ፡ገጹ፡ለክርስቶስ፡ዘኒቅያ፡ፀ፡**[204]**ወኢትትዓቀቡ፡ሰንበተ፡ከመ፡አይሁድ፡መከ**[205]**፡ወኢይኩን፡በዕለቱ፡እሁድ፡ወበዓላተ፡ክቡራን፡ሰገድ፡እሰመ፡እሱ፡መዋዕለ፡ፍሥሐ፡ውእቶሙ፡ወበእንተዝ፡ይደሉ፡ከመ፡ናጽርዕ፡ገቢረ፡በዕለተ፡እሁድ፡ወበዓላት፡ወዝንቱ፡አንቀጽ፡ዘእንበለ፡ግዘት**[206]

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[203] William A. Hanna trans., *Magmou Al-Safawy Ibn Al-Assal* (St. Louis: 1996), 78.

[204] **ዘኒቅያ፡ፀ** (zäniqəya) is a reference to the source from which the sentence or passage is drawn, which in this case is the Melchite version of the second book of the canons of the fifth council, held in Nicaea in 325. See Paulos Tzadua, "Preface," to *The Fetha Nagast: The Law of Kings,* trans. Paulos Tzadua ed. Peter L. Strauss (Addis Ababa: Faculty of Law: Haile Sellassie University, 1968), "XI", pg. 7.

[205] The word **መከ** (mäkä) is a reference to the source from which the sentence or passage was drawn, in this case the *Syro-Romana* law book, which is one of the four law books included in the *Canon of Kings*. The *Syro-Romana* is a Greek compilation which dates back to the 5th century and is cited a total of 89 times in the *Fətha Nägäśt*, in both the Ecclesiastical and Secular portions of the code. It is also entitled, *Legislation of the Kings Constantine, Theodosius and Leo*. See Peter H. Sand, "Roman Origins of the Ethiopian "Law of Kings" (Fetha Nagast)" in *The Fetha Nagast*: *The Law of Kings*, translated by Abba Paulos Tzadua ed. Peter L. Strauss (Durham: Carolina Academic Press, 2009.

[206] Fetha Negest. [15th Century], British Library, EAP 432/1/132, ff: 60rc- 60va. This particular manuscript was selected since it dates back to the 15th century which corresponds to the time period the *Fətha Nägäśt* was allegedly brought to Ethiopia and translated into Gə'əz at the request of *aṣe* Zär'a Ya'əqob. The manuscript is stored at the most ancient and accordingly one of the most prestigious monasteries in Gojjam, Däbrä Koreb Wä Qäraneyo Mädhanealäm. The monastery dates back to the Aksumite period and was established in the 4th century by the sibling joint rulers of Aksum, Abrəha and Aṣbəha who established Christianity as the official religion of the kingdom c. 340. The manuscript was digitized by the University of Hamburg and is part of the "Endangered Archives" collection at the British Library.

> ’iyədäläwommu läKrəstiyan kämä ṣər‘u tägäbəro bä‘ələtä sänbät kämä ’Ayhud ’alla yətəgäbbäwə’ətu ‘ələt kämä Krəstiyan wälä’əmma täräkbu ’əmmḥəzb ’ənzä yəgäbru gəbrä ’əhud wä’ətommu yəkäwənnu sədudanä ’əmmqədmä gäṣu läKrəstos zäniqəya 20 wä’itət‘aqäbu sänbätä kämä ’Ayhud mäkä wä’iyəkun bä‘ələtu’əhud wäbä‘alatä kəburan sägäd ’əsma ’əssu mäwa‘əllä fəśəḥa wə’ətommu wäbä’əntäz yədällu kämä naṣər‘ə gäbirä bä‘ələtä ’əhud wäbä‘alat wäzəntu ’anqäṣ zä’ənbälä gəzät.
>
> It is not proper for Christians to cease work on Saturday like the Jews, but you should work on this day as Christians. And if from among the [Christian][207] people there are those who observe as the Jews do, they will be driven forth from before the face of Christ. You must not observe the celebration of the Sabbath as the Jews do. There must be no prostration in worship on Sundays and on the honored feast days. You must not work on Sundays and on feast days since these are times of rejoicing. This chapter does not carry the penalty of excommunication.[208]

In like manner to the Arabic version, the statute clearly forbids the observance of the Sabbath for Christians and instead instructs them to distinguish themselves from Jews by refraining from work and prostration in observation of Sunday and other Christian holidays. There are, however, notable differences between both codes. The *Fətḥa Nägäśt* includes a punishment for violating the statute and, additionally, it deviates from the *Mağmū al-qawānīn* by including the exemption from punishment (excommunication) in the entire passage on the Sabbath. In contrast, the *Mağmū al-qawānīn* specifies that the exemption from excommunication applies to the statute forbidding prostration on Sundays and holidays. The passage also echoes the 29th Canon of the Council of Laodicea which differs from the *Mağmū al-qawānīn* and the *Fətḥa Nägäśt* only in

[207] The word Christian does not appear in the original Gə’əz text but is added in my translation for clarity. The Gə’əz term used in original is **ሕዝብ**/*ḥəzb* which in singular form is defined as nation, people, tribe, sect, multitude, crowd and in its plural form **አሕዛብ**/*aḥzāb* gentiles, pagans, and heathens. In Gə’əz Christian literature the singular ሕዝብ/ḥəzb is used to indicate Christian people as opposed to the plural **አሕዛብ**/*aḥzāb* gentiles, pagans, and heathens. Leslau, *Comparative Dictionary of Ge’ez*, s.v. “ḥəzb”. Habtamu Mengistie Tegegne, “The Edict of Gälawdéwos against the Illegal Slave Trade in Christians: Ethiopia, 1548,” *The Medieval Globe,* 22.

[208] My translation follows Abba Paulos Tzadua’s with the exception of a few select words. See Tzadua, *The Fetha Nagast: The Law of Kings,* pg. 114.

that it calls for excommunication for those found guilty of observing the Sabbath of the Jews.[209] In addition, the text reflects the overall anti-Judaic stance of the Council of Laodicea as well as the *Homily on the Seed's* efforts to distance Christian customs from Judaic practice. The statute additionally deviates dramatically from the Gə'əz *Senodos*, *Didəsqəlya,* and *Kidane* which repeatedly glorify both the Sabbath and Sunday and calls for there to be a cessation of all work on both days in observation of the double Sabbath.

By the time Ewosṭatewos' trial in Alexandria occurred (c. 1338-39) the *Mağmū al-qawānīn* had been in use in Egypt for about a century.[210] It may also have been well known in Ethiopia, if we base this assumption on the Ethiopian pilgrims being the source of complaints against Ewosṭatewos. The *Senodos*, and other Ethiopian canonical works, could not have been the legal basis for Ethiopian pilgrims to issue accusations against him. Indeed, as we have seen, these texts go to great lengths to glorify the Sabbath and command Christians to observe it along with Sunday. There are only two viable explanations that fit with this scenario. The Ethiopian pilgrims could have been prompted by their Coptic Egyptian hosts, who indeed had been putting forth efforts to eradicate Old Testament customs from the Ethiopian church for centuries at this point.[211] The second option is that Ibn al'Assāl's *Mağmū al-qawānīn* had in fact made its way to Ethiopia, was translated, and had been known among Christian scholars and Church officials by

[209] See page 76.

[210] Ewosṭatewos allegedly left Ethiopia in 1338 meaning his trial would have to be between 1338-1339. The Coptic Patriarch Benjamin II (1327-1339), who presided over his trial, died in early January of 1339. Accordingly, the trial must have been between the time Ewosṭatewos left Ethiopia and the death of Benjamin II. Sāwīrus, "Benjamin (Banyâmîn) the Patriarch, and He is the Eighty-Second of (Their) Number," in *History of the Patriarchs Vol. 3 Pt. 3*, 232-233; Subhi Y. Labib, "Benjamin II," in *The Coptic Encyclopedia vol. 2*, 377-378.

[211] Sāwīrus, *History of the Patriarchs*, p. 330.

the mid fourteenth century and provided the legal grounds for the charges brought against Ewosṭatewos by his compatriots. There is no clear evidence that supports the latter of the two scenarios and not much for the foremost either. What is evident is that the Coptic Church had a clear anti-Sabbath, anti-Judaic stance, which they were actively trying to impose on the Ethiopian church since at least the eleventh century. This is especially convincing when considering the Sabbath in Sāwīrus' complaints against the 'Old Testament' practices of the Ethiopian Church.

At his trial (c.1338-1339), Ewosṭatewos readily admitted to observing the double Sabbath. He claimed he was completely justified in doing so and quoted passages from the *Bible* and the *Senodos* to support his argument.[212] Ewosṭatewos' biblical argument was centered on the Ten Commandments that call for the strict Sabbath observance with the punishment of death for failing to do so.[213] The *Senodos*, in like manner to the *Bible*, establishes historical and legal precedents for Sabbath observance, the Bible for *Sänbätä Ayhud* and the *Senodos* for the double Sabbath. The *Gadl* does not detail whether there was a verdict in the case, only that Ewosṭatewos and his followers continued to Jerusalem enduring some persecution along the way, including an incident where Ewosṭatewos was placed in fetters at a monastery of Scetis which he had stopped at on their journey.[214]

Several Coptic canonical works that predate the *Fəṭḥa Nägäśt* call for excommunication of individuals found to be observing the Sabbath of the Jews. Had Ewosṭatewos been convicted in Alexandria this indeed may have been his fate if these were the codes the Copts were relying

[212] Yämukye Čoba, Gädlä Qədus Ewosṭatewos, 88.

[213] Exod. 20:8-11, 31:13-15; Num. 15:32-36 KJV.

[214] Yämukye Čoba, Gädlä Qədus Ewosṭatewos, 89.

on at the time. In contrast the *Fətḥa Nägäśt* follows up its statute against Sabbath observation by eliminating excommunication as a punishment for violating the law, while the *Mağmū al-qawānīn* does not include this interpolation or any other punishment. Instead, the law calls for a slightly different punishment when it states, "And if from among the [Christian] people there are those who observe as the Jews do, they will be driven forth from before the face of Christ."[215] The Gə'əz word used in the *Fətḥa Nägäśt* for "driven forth" is "ስዱዳነ" (*sədudāna*), which is synonymous with the word "exile."[216] While it is not explicitly stated that Ewosṭatewos was exiled from Ethiopia, all sources do indicate that he was forced to leave the country based on religious controversies of his time.[217] Furthermore, the *Fətḥa Nägäśt* more-or-less discourages bishops from using excommunication as a penalty by ironically, punishing him with excommunication.[218] While there is no concrete evidence to support the theory, both his exile from Ethiopia, as well as the persecution he received in Egypt point towards the *Fətḥa Nägäśt* as the source of law for both the charges and the penalties levied against Ewosṭatewos. Taking all of this into account and bearing in mind the evidence from the fifteenth and sixteenth centuries, elements of the *Fətḥa Nägäśt* were likely known in Ethiopia by the early fourteenth century.

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[215] Fetha Negest. [15th Century], British Library, EAP 432/1/132, f. 63.

[216] The word "ስዱዳነ" (*sədudāna*) can also be used for excommunication. However, the fact that the *Fetha Nägäst* explicitly rules out the penalty of excommunication for observing *Sänbätä Ayhud* in the same passage that sədudāna is used enforces the choice of 'driven forth', 'banish' or 'exile' as a more suitable translation. Leslau, *Comparative Dictionary of Ge'ez,* s.v. "sadada."

[217] Gianfanco Ficcadori, "Ewosṭatewos," in *Encyclopedia Aethiopica* Vol. 2, ed. Siegbert Uhlig and Alessandro Bausi (Wiesbaden: Harrassowitz, 2005), 469-472; Tadesse Tamrat, *Church and State*, 207.

[218] Excommunication is a common punishment for various violations found throughout the first half of the *Fetha Nägäst* (concerning the spiritual/church matters). However, in cases when the law does call for excommunication as a punishment, there are provisions that encourage the church to work to reinstate separated members back into the fold. See al- Ṣafī Abū al-Faḍā'il Majid Ibn al'Assāl, *The Fetha Nagast: The Law of Kings,* trans. Abba Paulos Tzadua ed. Peter L. Strauss (Addis Ababa: Faculty of Law Haile Sellassie I University, 1968), 39.

Conclusion

Several observations emerge from this chapter on the origins and reception of the *Fəṭḥa Nägäśt*. First, it is indisputable that the code was initially compiled for use in Ethiopia and was part of Coptic efforts to further impose their authority and norms on Ethiopia. The Copts intentions are made clear by the insertion of the pseudo-canon ascribed to the Council of Nicaea into both versions of the code. The pseudo-canon which gave exclusive rights in both the appointment and occupation of the position of metropolitan of the Ethiopian Church to the see of Alexandria was enacted in the year 1238. In what can hardly be a coincidence, this formally took place at the Synod of Ḥārat Zuwayla in the year following the major Syriac-Coptic dispute over the right to appoint the Ethiopian bishop, in 1237. With their centuries long tradition on shaky ground, it is no doubt the Copts inserted this canon along with others aimed at cementing their position over the Ethiopians and imposing their theological views on them as well.

Second, while there are numerous notable scholars who have asserted that the *Fəṭḥa Nägäśt* is a creation of the sixteenth or seventeenth centuries, it is likely that it was created much earlier, sometime between the early fourteenth and early fifteenth centuries. These claims are historically detectable in the literature documenting the major Church controversies in this time period, especially in the historical disputes on the Sabbath. In addition, the evidence of the code in practical application in the early sixteenth century further support these findings. Furthermore, the mere existence of the fifteenth century copy of the *Fəṭḥa Nägäśt* utilized in this chapter makes it clear that the code was translated and in Ethiopia prior to conventional estimations. Finally, the assertion that the *Fəṭḥa Nägäśt* was adopted mainly for the 'secular' ('*alämawəyat*) portion of the code indeed has merit as there are several glaring contradictions between the *Fəṭḥa*

Nägäśt (mainly in the Ecclesiastical laws) and other Ethiopian codes on key aspects of the Ethiopian faith, namely the Sabbath, biblical canon and more. Despite the continued efforts by the Copts to exercise dominion over the EOTC, the Ethiopian Church was contesting that authority and incorporating their own norms into the texts that they were receiving for the most part from Egypt. As we shall see in the upcoming chapters, despite the glaring contradictions, the *Fəṭḥa Nägäśt* developed into an important source of law in regulating Ethiopian Christian society.

Chapter 4- Scholars in the House of Books: Knowledge Production and Modes of Transmission

Religious institutions have played an important role in the organization of societies around the world throughout history. Ghislaine Lydon observes that religious institutions contain an "inherent legal nature" that structure the norms, rules and beliefs of a society.[219] Lydon further notes that specifically, the 'Abrahamic' faiths are embedded with legal frameworks which provide public institutions with motivations to comply with behavioral norms in society.[220] A key aspect in establishing norms and regulating behaviors in society is the production of legal knowledge and the modes of transmitting that knowledge. In all societies, this is where formal and informal education fit in.

In general, it is difficult to pinpoint when indigenous formal education begins in Africa. However, in the case of Ethiopia, with the adoption of Christianity as a state religion in the fourth century, the Church developed over time into an indigenous formal institution of education.[221] Christianity, with its 'inherent legal nature' provided the legal framework in regulating numerous aspects of the lives of Ethiopian Christians and non-Christians alike. This chapter will analyze the institutional history of the EOTC and its traditional school system and

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[219] Ghislaine Lydon, *On Trans-Saharan Trails: Islamic Law, Trade Networks, and Cross-Cultural Exchange in Nineteenth-Century Western Africa* (New York: Cambridge University Press, 2009), 350.

[220] Lydon, *On Trans-Saharan Trails,* 3. Lydon specifically references Judaism and Islam in relation to early modern trade in Western Africa. However, here I include Christianity under the umbrella of 'Abrahamic' faiths, along with Judaism and Islam. In the case of Ethiopian Christianity, the inherent legal traditions of the EOTC are in many cases obviously drawn from the Old Testament and accordingly similar to Judaic traditions. For more on Judaic traditions in the EOTC see

[221] Woube Kassaye, "Education of the Ethiopian Orthodox Church: Personal Reflection on Nibab Bet and Zema Bet," *Journal of Ethiopian Church Studies*, no. 6 (2018), 116,117.

its role in appropriating, creating and transmitting legal knowledge. Special attention will be given to the *Mäṣḥaf Bet* (House of Books) which represents the highest level of education a scholar can achieve in the EOTC school system.

The *Mäṣḥaf Bet* has four main branches or fields of study under its umbrella which includes the *liqawənt* school. The *liqawənt* school's curriculum is composed of the study of the writings of Church fathers, the computation of time and the calendar (*Bahire Hasab*), and the study of Ecclesiastical and Civil law.[222] The *liqawənt* branch is of particular importance to this study as the *Fətḥa Nägäśt* serves as the main source of legal instruction in the *Mäṣḥaf Bet*. Accordingly, the *liqawənt* branch historically served as a knowledge center that functioned in three distinct ways in relation to the law. First, bearing in mind that several the texts in the Ethiopian Christian corpus had origins outside of Ethiopia, the school system served as a 'site of integration,' or in other words integrating new knowledge into the intellectual tradition via foreign sources. Second, the *liqawənt* school served as a 'site of knowledge production' through a novel indigenous method of interpretation known as *andəmta*. Finally, the school system, and more specifically the *liqawənt* school, served as a center for the transmission of legal knowledge through the intense training of legal professionals who would then assist in the legal affairs of the Christian kingdom.

Evidence from the sixteenth to the nineteenth centuries show that the legal professionals who had gone through training in the *liqawənt* school would go on to occupy various leadership positions within the Church and would play key roles in the local, regional, and kingdom wide legal affairs. A close examination of the EOTC school system, its graduates, and the positions

[222] Yirga Gelaw Woldeyes, *Native Colonialism: Education and the Economy of Violence Against Tradition in Ethiopia* (Trenton: Red Sea Press, 2017), 77-78.

they would go on to occupy reveal the Church as the key institution and the main mechanism by which the integration of the *Fəṭḥa Nägäśt* into the legal corpus and tradition of Christian Ethiopia took place. This chapter will examine the EOTC school system, methods of legal interpretation, legal scholars and their roles in the Church and kingdom, and the local tradition of building churches to establish the widespread use of the *Fəṭḥa Nägäśt* and the complex legal system for which it served as the foundation.

The Traditional Ethiopian Orthodox School System

According to local traditions, the EOTC school system has functioned with some level of continuity for the last sixteen centuries, with additional claims by some writers that it was a pre-Christian institution.[223] However, over this time period, the school system has gone through multiple historical reformations and has evolved and adapted to local realities. Historically, the EOTC has functioned as an agent in the preservation and transmission of cultural heritage in the Christian empire of Ethiopia.[224] The traditional school system of the EOTC has for centuries

[223] Local members of the EOTC clergy have often expressed that the school system was in fact a pre-Christian Ethiopian Jewish institution. Their assertions are primarily grounded in the Solomon-Sheba narrative found in the *Kəbrä Nägäśt*. According to the *Kəbrä Nägäśt*, King Solomon of Israel had a son with the Queen Makeda of Sheba (Saba or Ethiopia). The son David was crowned by Solomon as King of Ethiopia and sent with him the sons of his top advisors, military officials, priests, and other administrators in the kingdom to accompany his son and help him rule in Ethiopia in like manner to his father. The *Kəbrä Nägäśt* provides a list of the names and positions that accompanied David, but according to local oral traditions, King David's entourage included *Liqawənt* who accompanied David to Ethiopia and established the Jewish ancestor to the Church traditional schools. Informant interview, interview by author, Daga Ǝsṭifanos Monastery, Lake Tana, Ethiopia, August 25, 2017.

[224] Girma Amare asserts that the church in Ethiopia functioned as an agent in preserving and transmitting cultural heritage in like manner to the mosque in Muslim societies and the synagogue in Jewish societies. Roger W. Cowley additionally states that the EOTC school system has a commonality with Jewish and Islamic education, especially in ways it places emphasis in orality and memorization in instruction and has an aim of gaining an overall grasp of a defined corpus of learning. Girma Amare, "Aims and Purposes of Church Education in Ethiopia," *The Ethiopian Journal of Education, no. 1* (1967): 1-2; Roger W. Cowley, *Ethiopian Biblical Interpretation: A Study in Exegetical Tradition and Hermeneutics* (New York: Cambridge University Press, 1988), 1-2.

offered a curriculum centered on Christian literature with the main goal of preparing an exceptional class of clerics to run the everyday affairs of the Church.[225] In addition to training clerics, the church schools served as a training ground for individuals who would go on to occupy various civil positions in the Ethiopian empire.[226] Accordingly, the school system while primarily functioning as an ecclesiastical institution, was additionally a crucial institution to the civil affairs of the Christian kingdom.

Table 1: Fields of study time to completion. (adapted from Woldeyes, 2017, pp 58-59.)

Fields of Study	**Time to Completion**
ንባብ፡ቤት (*Nəbab Bet*)	2 Years
ቅዳሴ፡ቤት (*Qəddase Bet*)	6 Months
ዜማ፡ቤት (*Zema Bet*)	8 Years
ቅኔ፡ቤት (*Qəne Bet*)	5 Years
መጽሐፍ፡ቤት (*Mäṣḥaf Bet*), History, Calligraphy, Book Binding, etc.	14 Years 6 Months
Total Time to Completion	Approx. 30 Years

[225] David G. Scanlon & L. Gray Cowan, "Preface", to Alaka Imbakom Kalewold, *Traditional Church Education in Ethiopia,* trans. Menghestu Lemma (New York: Teachers College Press, 1970), v; Ephraim Isaac, *The Ethiopian Orthodox Täwahïdo Church* (Trenton: Red Sea Press, 2013), 92.

[226] Church and state in Ethiopia form, as Isaac phrases it, "an inseparable entity." Members of the clergy as well as educated laymen who passed through the various levels of the school system were able to use their various positions in the Church to wield tremendous power and influence in the political sphere. In addition, the school curriculum is centered around developing both religious and secular skills and knowledge. Isaac, *The Ethiopian*, 109, 133-142; Mehari Worku Zemelek, interview by author, Santa Ynez, California, December 28, 2019; Woldeyes, *Native Colonialism*, 62.

The EOTC school system, which is still existence today, has five levels of study which starts with what can best be described as a primary education and depending on how far the student decides to continue, includes secondary and what many deem the equivalent of postgraduate studies.[227] While time to completion largely depends on the student, it is estimated that all levels of the school system can be completed anywhere between twenty-eight and thirty years. The school system historically was an exclusive institution in that it was strictly for males. Boys between the age of 5 and 7 would start out with the equivalent of a primary education in the school known as the **ንባብ፡ቤት** (*Nəbab Bet*-House of Reading).[228] The *nəbab bet* has as its primary student learning outcome, basic literacy and the ability to grasp social and religious concepts.[229] In order to graduate from the *nəbab bet* students have to complete various stages within the program which include: 1) learning the *fidäl* syllabary is known as **ቍጥር፡ትምህርት** (*qʷəṭər təmhərt*, lit. 'learning of numbers') which consist of counting the letters of the syllabary; 2) **ፊደለ ሐዋርያ** (*fidälä ḥawarya*, lit. 'Alphabet of the Apostles') where students would practice various forms of reading, primarily from the first Epistle of St. John[230]; 3) **ገበታ፡ሐዋርያ** (*Gäbäta ḥawarya*) which involves advanced reading of various apostolic and hagiographic works; 4) in

[227] Mehari Worku Zemelek, interview by author, Addis Ababa, January 29, 2015.

[228] While historically access to learning in the *nəbab bet* was restricted to boys, a similar form of education was offered separately to girls starting from the age of 12. This education for girls was offered exclusively at nunneries. See Habtemichael Kidane, "Nəbab bet," in *Encyclopedia Aethiopica*, vol. 3, 1159-1161.

[229] Woldeyes, *Native Colonialism*,

[230] There are four styles to reading the *Fidälä Ḥawarya*: 1) **ቍጥር** (*Qʷəṭər*, 'numbers') which involves reading letter by letter; 2) **ግዕዝ** (*gə'əz*) which involves connecting letters into words and phrases; 3) **ውርድ፡ንባብ** (*Wərd Nəbab,* lit. 'descending reading) this involves reading with slow rhythmic chanting; 4) **ቍም፡ንባብ** (*Qʷəm Nəbab*, 'reciting reading'). For a complete description see Kidane, "Nəbab bet," 1160; Woldeyes, *Native*, 64.

the final stage, students are required to memorize the entire **መዝሙረ፡ዳዊት** (*Mäzmurä Dawit*, Psalms of David) at which point they will have completed the schooling in the *Nəbab bet*.[231] Time to completion is estimated at roughly two years for the average student.[232]

After literacy has been gained through the *Nəbab bet*, the scholar has the choice to move on to the higher levels in the school system or to go into service for their local church. The level that follows the *Nəbab bet* is known as the **ቅዳሴ፡ቤት** (*Qəddase bet*, lit. 'House of the liturgy') which as its name indicates is reserved for studying the Ethiopian Orthodox liturgical texts. After a student completes the both the *Nəbab bet* and the *Qəddase bet*, only then can he gain access to the higher schools. The next level available for study is known as the **ዜማ፡ቤት** (*Zema bet*, lit. house of chant) where students are trained to become cantors in the EOTC.[233] After students pass through these three preceding levels, only then can they take up education in the **ቅኔ፡ቤት** (*Qəne Bet*, 'House of *Qəne*). A basic description of the *Qəne Bet* curriculum is the study of the theory and practice of EOTC poetry (*Qəne*) alongside the study of Gə'əz language. An intimate

[231] Woldeyes divides the *nəbab bet* into 6 stages. The above description is based upon Kidane's entry in the *Encyclopedia Aethiopica*. See Woldeyes, *Native*, 64; Kidane, "Nəbab bet" 1159-1161.

[232] Kalewold, *Traditional Ethiopian*, 1.

[233] The sub-specialties or areas of study within the *Zema bet* include: 1) the **ድጓ** (*Dəggʷa*) and the **ጾመ፡ድጓ** (*Ṣomä Dəggʷa*) which is the study of antiphonal hymns used for the entire year and lent respectively; 2) the **ዝማሬ** (*Zəmare*) and **መዋሥእት** (*Mäwaśə'ət*) which is the study of hymns dedicated to the Holy Eucharist and another antiphonary; (3 the **መዝገበ፡ቅዳሴ** (*Mäzgäbä Qəddase*) and the **ሰዓታት** (*Sä'atat*) which is the study of the Holy Mass and Horologium and are not required if the student wishes to be ordained a priest or deacon; 4) the **አቋቋም** (*Aqʷaqʷam*) which is the study of the EOTC liturgical dance and instrumental accompaniment. Habtemichael Kidane, "Zema bet," in *Encyclopedia Aethiopica,* Vol. *5*, 175; Woldeyes, *Native*, 70-71.

knowledge of Gə'əz is required for students in the *Qəne Bet* in order to possess the ability to express complex concepts in poetry and song form.[234]

The last and highest level of education in the EOTC traditional system is known as the **መጽሐፍ፡ቤት** (*Mäṣḥaf Bet*, lit. 'House of the Book').[235] The various levels of study in the *Mäṣḥaf Bet* are primarily focused on theology and **አንድምታ** (*Andəmta*), which is traditional EOTC exegesis.[236] The curriculum of the *Mäṣḥaf Bet* is known as **አራቱ፡ጉባኤያት** (*Aratu Guba'eyat*, lit. 'four collections'), since it is divided into four areas of study or collections. The four areas of study are: 1) the **ብሉይ፡ኪዳን** (*Bəluy Kidan*) which is the interpretation of the Old Testament; 2) the **ሐዲስ፡ኪዳን** (*Ḥaddis Kidan*) which is the interpretation of the New Testament; 3) the **ሊቃውንት** (*Liqawənt*), deals with patristics and includes the study of law and legal texts (the *Fətha Nägäśt* is the main source for the study of law)[237]; and the **መጻሕፍተ፡መነኮሳት** (*Mäṣaḥəftä Mänäkosat*, lit. the 'Books of Monks') is the final area of study and has a curriculum based on

[234] Woldeyes, *Native*, 74; The *Qəne Bet* is one of the longer and more difficult levels of the EOTC traditional school system. The curriculum is notoriously difficult to master and in addition, students often suffer through economic hardships associated with this area of study. In addition, while the main purpose of the *Qəne Bet* is to study the traditional poetry, scholars in this school read nearly all EOTC material available to them. This is cited as one of the reasons the Amharic exegesis tradition known as *andəmta* is viewed as an offshoot of the *Qəne Bet.*

[235] A student is required to complete study in the *Qəne Bet* prior to entering study in the *Mäṣḥaf Bet*. Issac classifies the *Mäṣḥaf Bet* as a school of "literature and history." Isaac, The Ethiopian Orthodox, 96.

[236] Modern *Andəmta* can be traced back to the Gondärine era (1632-1769) when it went through a reformation initiated by a blind church scholar known as 'Ǝzra. 'Ǝzra's reformations included introducing new methods of interpretation which were considerably shorter than previous methods. The shorter method is known as **ታች፡ቤት** (*Tačč Bet*, lower house) and is the most common method in modern times. *Encyclopedia Aethiopica* vol. 1, s.v. "Andəmta"; *Encyclopedia Aethiopica* vol. 3, s.v. "Mäṣḥaf Bet."

[237] Other legal texts studied in the *Liqawənt* include the *Senodos*, the *Fäws Mänfäsawi* and the *Didəsqəlya*. However, it must be noted that these texts are primarily Ecclesiastical laws and the *Fətḥa Nägäśt* is the only legal text containing both Ecclesiastical and civil or secular laws.

monastic literature and law. In addition to these main four fields there is also the study of calendric calculations, history, calligraphy, manuscript binding and illuminating taught under the umbrella of the *Mäṣḥaf Bet*. For the rare student who can complete all areas of study, they are awarded the honorific appellation of **አራት ዐይና** (*Arat ʻAyna*, lit. 'four-eyed').[238]

Liqä Liqawənt: Legal Scholars, Translation and Interpretation of Law

This study is primarily concerned with the *liqawənt* area of schooling as this is the school where the *Fəṭḥa Nägäśt* makes up the core of the curriculum. Graduates from the *liqawənt* are highly regarded and in the past possessed the ability to work in both the service of the Church and/or government where they would often have prominent roles as advisors and officials.[239] The high esteem these scholars are held in is evident in their honorific titles, which include *liq* ('exalted elder') or *liqä liqawənt* ('Most learned' or 'head' of the scholars). Informants consistently have equated the honorific *liqä liqawənt* with a PhD in modern Western institutions. It should also be noted that the appellation *liqä*, appears in multiple titles and ranks (e.g., *liqä kahənat*, 'arch priest') within the EOTC hierarchy and denotes elderliness, knowledgeability, greatness and authority. However, it is usually reserved for specialist in patrology, history and

[238] Woldeyes indicates that the term *Arat Ayna* aligns with the four main areas of study in the *Mäṣḥaf Bet*, but additionally attributes the name to the belief that the bearer of the honorific title possesses the ability to see what took place in the past and foresee events in the future. *Däbtära* who are also highly educated clerics, or as described by Steven Kaplan as, 'lay ecclesiastics', are according to local traditions feared for their magical powers they possess. In other words, as an informant described, "they are feared for their knowledge of good and evil" which includes the ability to see the past and future.

[239] *Liqä Liqawənt* are contemporarily regarded with high esteem in the EOTC and are routinely called upon to interpret and settle matters in the Church where the *Fəṭḥa Nägäśt* is still regarded as the main source of canon law.

law.[240] The *liqä liqawənt* are celebrated to the extent that the names of the most famed legal scholars of the *Fətha Nägäśt* are remembered in scholar genealogies which are preserved in both oral and written traditions.[241]

In relation to the law and knowledge production in general, the *liqawənt* school functions in three distinct ways. The first area of function can be described as a 'site of integration' of knowledge. The higher schools, and the *liqawənt,* employ distinct methods of textual interpretation that is a step in appropriating foreign source material and integrating it into Ethiopian doctrine.[242] However, the process of integrating foreign sources into Ethiopian doctrine is initiated when the material is first translated into local language, in this case from Arabic into Gə'əz and Gə'əz into Amharic. The EOTC has long been acknowledged for its rich scribal traditions, which apart from producing indigenous works, also has translated and edited a significant corpus of texts derived from Greek, Syriac, Coptic and Arabic sources, primarily through Arabic intermediaries.[243] While a significant portion of the EOTC's literature indeed can be classified as having a foreign origin, this is in no way indicative of any Ethiopian cultural subordination. To the contrary, the process of translating and interpreting foreign texts was quite

[240] See Bairu Tafla, "Titles, Ranks and Offices of the Ethiopian Orthodox Tawāḥedo Church: A Preliminary Survey," *Internationale Kirchliche Zeitschrift* 76, no. 4 (1986): 300-304.

[241] *Liqä Śaltanat* Habtä Maryam Wärqnäh, *Ṭəntawi YäItyoṗiya Śər'atä Təməhrt* **ጥንታዊ የኢትዮጲያ ሥርዓተ ትምህርት** [*The Traditional School Curriculum of Ethiopia*] (Addis Ababa, 1971).

[242] Roger Cowley, *Ethiopian Biblical Interpretation: A Study in Exegetical Tradition and Hermeneutics* (New York: Cambridge University Press, 1988), 1-2.

[243] Christian manuscripts have for the most part been translated into Gə'əz and Amharic. Beta Israel (Ethiopian Jews) and Muslims also possessed scribal traditions which translated and produced works in Gə'əz (Beta Israel) and Arabic and Harari among Muslims of the region. See Bausi, "Chapter Writing, Copying, Translating: Ethiopia as a Manuscript Culture," in *Manuscript Cultures: Mapping the Field*, ed. Jan-Ulrich Sobisch, Jörg Quenzer and Dmitry Bondarev (Berlin/Boston: De Gruyter, 2014), 37-77.

complex and essentially altered the texts to conform to Ethiopian culture.[244] Translation is not unique to any culture and should not be reduced to an expression of cultural dependence. Rather it should be noted that in the process of translation, the original meaning is altered and adjusts to fit local cultural world views.[245] As Geertz has noted "societies…contain their own interpretations."[246] Accordingly, approaching the study of the integration of the *Fəṭḥa Nägäśt* into EOTC doctrine requires honing-in on the specific cultural innovations rather than highlighting the foreign influences.

In terms of law, concepts of 'legal transplant' and 'reception' assert that the transfer of law from one society to another is a relatively straight forward process and has multiple benefits for the receiving society including "saving the awful labor of thought."[247] Aside from the implications of stating that law can be accepted "without thought," this concept is flawed as it reduces change in law to the displacement of rules across boundaries and fails to account for the changes that occur in the process of translation.[248] Cultural constructions of reality and rules vary from society to society and are unique to each individual language. Therefore, translation is not a bridge by which cultural exchange takes place but is a form of interpretation and is

[244] Alessandro Bausi, "Ethiopia and the Christian Ecumene: Cultural Transmission, Translation, and Reception," in *A Companion to Medieval Ethiopia and Eritrea*, ed. Samantha Kelly (Brill, 2020), 217-251

[245] Ngũgĩ wa Thiong'o, The Politics of Translation: Towards an African Language Policy," *Journal of African Cultural Studies* 30, no. 2 (2018): 128-129.

[246] Clifford Geertz, *The Interpretation of Cultures: Selected Essays by Clifford Geertz* (New York: Basic Books Inc., 1973), 453.

[247] Watson, "Aspects of Reception of Law," 335.

[248] Pierre Legrand, "The impossibility of 'legal transplants'," *Maastricht journal of European and comparative law* 4, no. 2 (1997): 118-119.

increasingly viewed as an act of cultural creativity.[249] Following this logic, the very act of translating the *Fəṭḥa Nägäśt* from Arabic into Gə'əz was the initial process of appropriating and integrating the law into the Ethiopian cultural construction of reality. The novel indigenous methods of interpretation, learned and sharpened in the *Mäṣḥaf Bet, liqawənt* school, is a further step in the process of appropriating law in this case the *Fəṭḥa Nägäśt*.

The process of translating the *Fəṭḥa Nägäśt* from Arabic into Gə'əz admittedly had its own hurdles to clear. Some of the legal terminology deployed in the '*alämawəyat* portion of the text did not translate into Gə'əz and Amharic easily. Accordingly, the process of interpreting the legal provisions in the text was an important next step in the process of appropriation and indigenization. *Liqä liqawənt* who studied law and especially the *Fəṭḥa Nägäśt* from at the latest the fifteenth century, main role was to serve as advisors to government officials and especially judges and lawyers, positions that were usually occupied by highly trained 'lay ecclesiastics' known as *däbtära*.[250] In their role as legal advisors, *liqä liqawənt* employed the traditional Ethiopian methods of textual interpretation which they mastered in the *Mäṣḥaf Bet* higher school of traditional education

[249] Fenna Van Nes, Tineke Abma, Hans Jonsson, and Dorly Deeg, "Language differences in qualitative research: is meaning lost in translation?," *European journal of ageing* 7, no. 4 (2010): 314; Oana-Helena And one, "Gender issues in translation," *Perspectives: studies in translatology* 10, no. 2 (2002): 135-136.

[250] Jembere, *An Introduction to the Legal History of Ethiopia*, 37; The term *däbtära* is derived from the Greek *diphtera* which means 'skin, leather or parchment'. In Gə'əz the literal meaning of *däbtära* is royal tent or pavilion, tent, tabernacle, sanctuary, and is commonly used to refer to the 'lay ecclesiastics' referenced above. Once *däbtära* completed their training in the traditional schools they according to sources had their choice of becoming a theologian, lawyer, or a judge. Charlemagne Théophile Lefebve, *Voyage en Abyssinie: Exécuté Pendant les Années 1839, 1840, 1841, 1842, 1843* (Paris: Libraire de la Société de Géographie, rue Hautefeuille, 1854), 178; Kidanä Wäld Kəfle **ኪዳነ ወልድ ክፍሌ**, *Mäṣḥäfä Säwasəw Wägəs Wämäzgäbä Qalat Ḥadis* **መጽሐፈ:ሰዋስው፡ወግስ፡ወመዝገበ፡ቃላት፡ሐዲስ።** [*A New Grammar and Dictionary*] (Addis Ababa: Artistic Press, 1955), s.v. "däbtära" "**ደብተራ**"; Leslau, *Comparative Dictionary of Ge'ez*, s.v. "dabtarā."

There are three main methods of interpretation that are applied by the *liqä liqawənt* functioning in their roles as legal advisors. The first method that is utilized by scholars in interpreting texts is known as **የአንድም፡ ትርጓሜ** (*Yä'andəm tərgʷame*). According to *liqä liqawənt* Śahlu Alämä, *yä'andəm tərgʷame* method developed during the reign of *aṣe* Zär'a Yaʿəqob, which indicates perhaps that according to EOTC tradition, the method of interpretation was developed specifically for interpreting the laws in the *Fətḥa Nägäśt*.[251] The *yä'andəm tərgʷame* method of interpretation is interpretation by the alternative or has also been described as interpretation by enumeration.[252] This method involves the scholar offering approximately ten to fifteen alternative interpretations to the initial. The interpretations are not numerically listed but are offered in succession with each interpretation proceeded by the introductory Amharic clause *andəm* ('and one') from which the interpretive method draws its appellation.[253] *yä'andəm tərgʷame* is also described as a deep interpretation that involves reading, in the case of the *Fətḥa Nägäśt*, what the law states on an issue as well as providing context and stating precedence for punishments applied for violating the law. Moreover, this involves drawing from other legal texts or cases in support in the process of formulating the various legal interpretations.

The next method of interpretation is less complex than *yä'andəm tərgʷame* and is known as **ነጠላ፡ ትርጓሜ** (*Näṭäla tərgʷame*). The *näṭäla tərgʷame* method of interpretation can best be described as a literal interpretation.[254] This method does not involve the context, precedence, or

[251] *Liqä Liqawənt* Śahlu Alämä, interviewed by author, Addis Ababa, December 19, 2020; *Mämhər* Yared Kəbrät, interviewed by author, Addis Ababa, December 19, 2020. The

[252] Jembere, *An Introduction to the Legal History of Ethiopia*, 52.

[253] In addition to *andəm*, the scholar interpreting using the *Yä'andəm tərgʷame* method may use the Gə'əz words '*aw* (or) and *bo* (there is) as substitutes. Roger Cowley, "Old Testament Introduction in the Andemta Commentary Tradition," *Journal of Ethiopian Studies* Vol. 12, no. 1 (1974): 169-170.

[254] Jembere, *An Introduction*, 52.

explanation characteristic of *yä'andəm tərgʷame*. It is simply a direct translation of a passage or provision word for word from the text. The *liqä liqawənt,* in using in this method would simply translate the passage from one language to the next and deliver the literal translation directly from the text.

The third and final method of traditional interpretation is known as **የምሥጢር፡ ትርጓሜ** (*yämaśṭir tərgʷame*). The *yämaśṭir tərgʷame* method of interpretation is best described as idiomatic interpretation. In this method the scholar will ignore the structure of the sentence or passage and will instead direct all their attention to the meaning conveyed by the passage. In this case no attention is given to the text or the grammatical forms. Further, in this method the direct definition of each word in a passage is not taken at face value, but rather the contextual meaning of the entire passage or sentence.[255]

Together, these three methods of interpretation are part of what is known as the *andəmta* commentary tradition. The *andəmta* commentary tradition represents a corpus of Amharic commentaries which grew out of an earlier Gə'əz commentary tradition known as *tərgʷame*.[256] According to EOTC scholar traditions the *andəmta* tradition likely first developed in the fifteenth century by the eleventh *abbot* of the renowned Däbrä Libanos monastery *əčč̣äge* ʻƎnbaqom (b.

[255] Jembere, *An Introduction,* 53; *Liqä Liqawənt* Śahlu Alämä, interviewed by author, Addis Ababa, December 19, 2020; The Amharic version of the *Fəṭḥa Nägäśt* was translated from Gə'əz using two of the three interpretive methods, namely *Yä'andəm* and *Näṭäla tərgʷame*.

[256] The *tərgʷame* tradition developed between the thirteenth and sixteenth centuries primarily in monasteries in Gondär, Goğğam and Wollo. The *tərgʷame*, like the *andəmta* tradition is designed to make the material suitable for local audience.

ca. 1470, d. ca. 1560).[257] *ʿƎčč̣äge* ʿƎnbaqom's contributions to translation and interpretation laid the foundation for *andəmta*, but it is generally recognized that methods of translation and interpretation of texts was revolutionized and standardized during the Gondärine period. [258]

The Amharic *andəmta* tradition developed out of the need to make the corpus of knowledge more suitable for local consumption in the wake of the destruction and large-scale conversion which occurred in the previous century during the jihad of Ahmed Grañ. The *tərgʷame* tradition had initiated this process by blending local scholarship and thought with early patristic writings, but in comparison to the *andəmta* did not have the structure and unified form that *andəmta* possesses. Additionally, the *andəmta* tradition, aside from the structure it brought to interpretation, also had the advantage of being written in a contemporary language that was more accessible to a larger group of Christians, both ecclesiastics and laity alike.[259] The *andəmta* tradition, also paved the way for a standardized method of interpreting the laws in the *Fətḥa Nägäśt* as well as making the law more accessible to the laity. It is through these methods of interpretation that the *Fətḥa Nägäśt* was integrated into the intellectual traditions of Ethiopian Christianity.

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[257] According to his hagiography, *ʿƎčč̣äge* ʿƎnbaqom was born Abū l-Fath in Yemen to a Jewish mother and belonged to a royal Muslim family. He left Yemen around 1489 and went to Ethiopia where he stayed in the courts of various Ethiopian Christian nobles. He converted to Christianity, was baptized and given the name ʿƎnbaqom and entered into monasticism around 1500. He is the only non-Ethiopian to ever occupy the position of *ʿƎčč̣äge* or *abbot* of Däbrä Libanos. He is primarily remembered for the many works he translated and authored and for his role in developing the translation and interpretation traditions of the EOTC. *Encyclopedia Aethiopica* vol. 2, s.v. "Ǝnbaqom."

[258] *Deacon* Alem Sahle, interviewed by author, Los Angeles, April 2021; Wärqnäh, *Ṭəntawi YäItyoṗiya*, 212-222.

[259] Literacy was not common among the laity and access to the material came via ecclesiastics and the lay church officials who were literate. The key mode of transmission from those who were literate and those who were illiterate was through traditions of oral recitation of texts and laws. The ability to recite in a contemporary language versus Gəʾəz which the laity was easily able to understand in most cases made the material accessible to more.

The very basic examples of the integration of the *Fətḥa Nägäśt* are first found in the translation process followed by the *andəmta* method of interpretation. The third function of the *liqawənt* school in relation to law and more specifically the *Fətḥa Nägäśt*, is knowledge transmission. The *liqawənt* school served as a site of knowledge transmission through the intensive training of legal scholars who are experts in interpretation of the *Fətḥa Nägäśt* who would move on to serve as legal advisors. Orality and memory play important roles in this process. For each *liq liqawənt* to graduate the *liqawənt* school they must first memorize and recite the entire *Fətḥa Nägäśt*. In addition, each *liq* must be able to, from memory apply the three methods of interpretation to the legal code. The purpose of this methodology is practical for multiple reasons. First, literacy was not widespread and all texts including legal texts, were for the most part in the exclusive possession of the various church and monastery libraries with additional text to be found in the libraries of the kings, regional rulers and other nobility. Memorization of the text was also important in the event of the loss or destruction of the physical manuscripts.[260] This was of particular importance in the reconstitution of the Christian kingdom in Gondär in the wake of the *jihad* of Ahmed Grañ, which was responsible for the destruction of a great deal of Christian material culture, including manuscripts.[261]

Memorization was also a key function of the *liqawent's* main role as legal advisors and in the dissemination of legal knowledge. Since copies of the *Fətḥa Nägäśt* primarily remained in the possession of the various institutional and private libraries, *liqawənt* relied on memory when

[260] *Liqä Liqawənt* Śahlu Alämä, interviewed by author, Addis Ababa, December 19, 2020; *Mämhər* Yared Kəbrät, interviewed by author, Addis Ababa, December 19, 2020.

[261] Šihāb ad-Din Ahmad bin 'Abd al-Qāder bin Sālem bin 'Utmān, *Futūh Al-Habaša (The Conquest of Abyssinia)*, trans. Paul Lester Stenhouse (Hollywood: Tsehai Publishers & Distributers, 2003); Asa j. Davis, "The Sixteenth Century Jihād in Ethiopia and the Impact on its Culture (Part One)," *Journal of the Historical Society of Nigeria,* vol. 2, no. 4 (1963).

providing legal advice, especially in the rural areas of the kingdom where often other legal systems were also in practice.[262] *Liq liqawənt* who would serve in the rural areas of the kingdom journeyed to remote areas and serve local Christian governors who were often installed in power by the *nəguś*. According to the *Fətḥa Nägäśt* on court procedure, every case must have persons "experienced" in the law present to assist the judge in difficult cases and provide legal opinions.[263] Confirmations of this legal procedure in practice, at least in the courts of the *nəguś*, is found in the early sixteenth century travel narrative of Spanish priest Francisco Álvarez. Under a sub-heading entitled "Of the tent of justice and method of it, and how they hear the parties," Álvarez indicates that court procedure included multiple advisors offering legal opinions on a case after hearing statements from both the accuser and the accused.[264] Of the procedure Álvarez states

> The Hearing is conducted in this manner. The plaintiff brings his action and says as much as he pleases without anyone speaking, and the accused answers and says as much as he pleases, without anyone hindering him…. When they have finished their arguments… t there is there a man standing… and he repeats all that these parties have said, and having finished relating it all, he then says which of the parties spoke best in his opinion, and which of them has justice on his side. Then one of those who are sitting like Commissioners…relates all that the parties had said, and then says what he thinks is justice. And in this manner follow all those who are sitting….and then it comes to the turn of the Chief Justice, who has been attentive to what has been said by the others, and to their opinions; and so he gives his sentence…[265]

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[262] European missionaries in the seventeenth century reported that other legal systems and forms of governance were in place in various provinces of the kingdom occupied by Jews, Muslims and indigenous religions. Jeróme Lobo, *A Voyage to Abyssinia*, trans. *Liqä Liqawənt* Śahlu Alämä, interviewed by author, Addis Ababa, December 19, 2020.

[263] By all accounts this is similar to the function of a *mufti* offering a *fatwa* or a non-binding legal opinion on matters in Islamic jurisprudence. See Brinkley Messick, "The Mufti, the Text and the World: Legal Interpretation in Yemen, *MAN* Vol. 21, No. 1 (1986).

[264] The *Fətḥa Nägäśt* also indicates that in court procedure both the parties in a case should have a chance to plead their case without interruption from any party. Tzadua, *Fetha Nagast*, 258; Álvarez, *Narrative of the Portuguese Embassy*, 333-334.

[265] Álvarez, *Narrative of the Portuguese Embassy*, 334.

Neither the *Fəṭḥa Nägäśt* nor Álvarez specifically refer to the legal advisors or experienced men as *liqawənt*. However, it is safe to assume that these were indeed *liqawənt* or at the very least *däbtära* who were the only scholars from the traditional schools with the knowledge and authority to offer legal opinions. The judges in this account are likely *azzaž* (lit. 'commander') a title in the fifteenth and sixteenth century referred to the four judges who served as the highest jurist versed in the *Fəṭḥa Nägäśt*, and served on the supreme court of the kingdom.[266] Álvarez further notes that the entire court proceedings are conducted orally without the use of a scribe or anyone else to make written record of the case.[267] Accordingly, memory serves as a "mental artifact or tool of thought" in systemizing the legal knowledge drawn primarily from the *Fəṭḥa Nägäśt* and blended with local legal thought.[268] This is not to approach memory as an inflexible archive from which *liqawənt* could simply retrieve memories from. Rather, this acknowledges that memory is a dynamic social process which is used to recuperate, reconfigure and sometimes invent.[269]

The role of orality is equally important in the transmission of legal knowledge in the Ethiopian Christian context. As noted in chapter 2, Ethiopia, while primarily known for its rich written heritage on law and other subjects, should also be acknowledged for its rich orature, and

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[266] *Azzaž*, or commander, is a generic term that has been used to describe a variety of civil servants over time. Its original use is found primarily in the fifteenth and sixteenth centuries and was used to describe the four highest jurist, who were experts in the interpretation of the statutes contained in the *Fəṭḥa Nägäśt. Encyclopedia Aethiopica Vol. 1*, s.v. "Azzaž."

[267] Álvarez, *Narrative of the Portuguese Embassy*, 334

[268] Carlo Severi, "The Arts of Memory: Comparative Perspectives on a Mental Artifact," *HAU: Journal of Ethnographic Theory*, vol. 2, no. 2 (2012), 452.

[269] Mary Nooter Roberts and Allen F. Roberts, "Memory, Luba Art, and the Making of History," African Arts 29, no. 1 (1996): 23-73.

in fact both complement each other in the transmission of cultural knowledge.[270] This is particularly evident in the legal training that *liqawənt* and other scholars received as well as in legal procedure that was for the most part exclusively conducted orally. Memory and orality complimented each other in the absence of the written text and served to bridge the gap between the literate elite, who were in the numerical minority, and the majority illiterate laity. It also served as method of claiming authority in the realm of legal procedure and justice. This is important as the *Fətḥa Nägäśt* while theoretically the law of the Christian kingdom, was applied alongside and sometimes in unison with other legal systems, especially in the peripheral regions.[271]

Mämhəran (Scholar Lists) 15th-19th Century

I have in the previous chapter established that the *Fətḥa Nägäśt* was fully translated and had begun the process of being integrated into Ethiopia by the late fifteenth early sixteenth centuries. This assertion is based on a wide array of evidence from various sources that give us biographical data of the individuals studying the *Fətḥa Nägäśt*, provide snap shots of the *Fətḥa Nägäśt* in practical application, and EOTC literature directly influenced by the *Fətḥa Nägäśt*. The scholarly genealogies, known as *mämhəran* (lit. 'teachers') are of importance as they reveal the Gondärine era as a point of acceleration in the overall education and production of knowledge which includes legal knowledge drawn directly from the *Fətḥa Nägäśt*.

[270] Jon Abbink, "Traditional Ethiopian Legal Culture: Amharic Proverbs and Maxims on Law and Justice," in *Studies in Ethiopian Languages, Literature and History: Festschrift for Getatchew Haile*, ed. Adam Carter McCollum (Weisbaden: Harrassowitz, 2017), 3.

[271] Jembere, *Legal History,* 2.

The initial scholars who are listed from the fifteenth century on are clearly preeminent scholars in the traditional Church school system and occupy various roles in the church hierarchy. The *mämhəran* of some of these scholars is found in the Amharic interpretation or commentary on the *Fətḥa Nägäśt*. The *mämhəran* for the *Fətḥa Nägäśt* is as follows,

> Ṗeṭros Wälda Abdä Säyd translated it [*Fətḥa Nägäśt*] from Arabic to Gə'əz and taught it to Ḥäwaryanä Krəstos; Ḥäwaryanä Krəstos taught it to *Liqä Kahənat* [High Priest] Wäldä Yona; *Liqä Kahənat* Wäldä Yona passed it down to *'Ǝčč̣äge* Bäträ Giyorgis; from *'Ǝčč̣äge* Bäträ Giyorgis to *'Aqqabe Sä'at*[272] Käbte; from *'Aqqabe Sä'at* Käbte to *Aläqa* Wäldä Ab; from *Aläqa* Wäldä Ab to *Azzaž* Lämih; from *Azzaž* Lämih to Mulugeta Kidanä Maryam; from Mulugeta Kidanä Maryam to Bäzzabəh; from Bäzzabəh to 'Ǝrq Yəhun; from 'Ǝrq Yəhun to *Aläqa* Yoḥannəs; through another lineage it was passed from *'Ǝčč̣äge* Bäträ Giyorgis to Gʷäšu Habtu; from Gʷäšu Habtu to *Aläqa* Wəhib; from *Aläqa* Wəhib to *Aläqa* Yätämäñu; from *Aläqa* Yätämäñu to Mulugeta Kidanä Maryam…[273]

These teachers of the *Fətḥa Nägäśt* come from a variety of ecclesiastical backgrounds and expertise within the Church system as indicated by their varying titles. Apart from *azzaž* Lämih, who based on his title was likely a high-ranking judge, there is no indication that these teachers were involved in the legal process outside of studying the code. Those with the title *aläqa,* which usually indicated the title holder served as a leader of a church or monastery, would likely also have been involved on some level in the legal affairs of the kingdom, at least on a local level, in their respective parish. However, we can assume that many of them would be involved in the legal matters of the kingdom given the high positions within the administration some of these teachers occupied.

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[272] The *'Aqqabe Sä'at* (lit. 'keeper of the hours') was the most important ecclesiastical official at the royal court of the *nəguś*. He was traditionally responsible for the schedule of the *nəguś* along with the hours of prayer. Steven Kaplan, "'Aqqabe Sä'at," in *Encyclopedia Aethiopica Vol. 1*, 292b-293a.

[273] *Fətḥa Nägäśt Nəbabəna Tərgʷamew* **ፍትሐ ነገሥት ንባብና ትርጓሜው** [The Reading and Interpretation of the Law of Kings] (Addis Ababa: Bərhanəna Sälam Publishing, 1958 E.C.), 11.

Legal Officials

The *Fəṭḥa Nägäśt mämhəran* stands out because of the varying titles and positions of the teachers, but also there are some teachers listed without an administrative title. This is an indication that there were no restrictions on who had access to studying and interpreting the law at the highest educational level. However, the most frequent administrative title found on this *mämhəran* is *aläqa* which appears four times out of the 14 names listed. The prevalence of the title *aläqa* on this list is significant on several points. The title *aläqa* often belonged to leaders of large, prestigious churches known as *däbr* (pl. *adbarat*).[274] As prestigious churches, the *däbr* were well endowed with extensive land possessions in addition to numerous liturgical books, vestments, and utensils for the everyday operations of the church. The *aläqa*, in their main duties, oversaw the material needs and administration of the *däbr* and were extremely closely associated with the church congregation. As a result of his close association with the church and the community, the position carried a high level of prestige, both within and outside of the *aläqa's* parish. The authority of the *aläqa* was not limited to the clergy and the administrative affairs of the church. As a result of the prestige and close relationship to the congregation enjoyed by the *aläqa*, their authority extended to civil judicial matters of the congregation.[275]

Manuscript evidence of both the authority of the *aläqa* extending to the judicial matters of the congregation and their reliance on the *Fəṭḥa Nägäśt* as their main legal reference can be

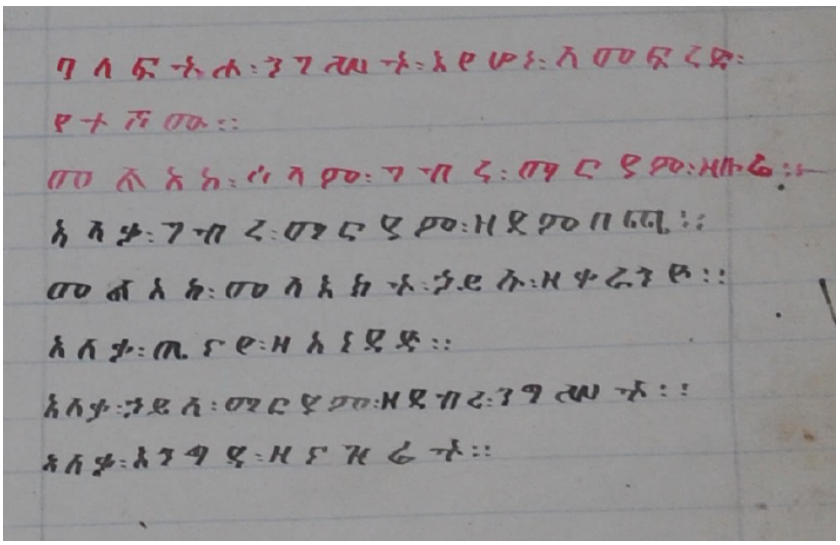
[274] The term *aläqa* or commander is also found in combination with other words to describe various titles especially in the military. Habtemichael Kidane "Alaqa," in *Encyclopedia Aethiopica Vol. 1*, 191-192; The ecclesiastical term *dabr* (lit. 'mount' or 'mountain'), while directly related to the frequent location of monastic communities and churches in mountainous regions in Ethiopia. However, it is also noted that sacred spaces are often depicted as mountains regardless of where they are geographically located. See Steven Kaplan, "Dabr," in *Encyclopedia Aethiopica Vol. 2*, 6a-7a.

[275] Bairu Tafla, "Titles, Ranks and Offices of the Ethiopian Orthodox Tawāḥdo Church. A Preliminary Survey," *Internationale Kirchliche Zeitschrift* 76, no. 4 (1986), 304.

found in a nineteenth century historical text entitled *Tarikä Nägäśt* (*The History of Kings*). The text is written in the Amharic language and the main subject matter of the manuscript is the regional history of Goğğam. In a section describing the administration of the regional governor of Goğğam, *nəguś* Täklä Haymanot[276] (1850-1901), a list of appointed judges is given. Their titles reveal much about the legal order and sources which were in use in the Christian kingdom. Under the sub-heading "**ባለፍትሐ፡ንገሥት፡እየሆነ፡ለመፍረድ፡የተሾሙ።** (Those Who are Chosen to Judge Using the *Fəṭḥa Nägäśt*)" the following names are listed

> **መልአከ፡ሰላም፡ገብረ፡ማርያም፡ዘቡሬ።አለቃ፡ገብረ፡ማርያም፡ዘደምበጫ።መልአከ፡መለእክት፡ኃይሉ፡ዘቀራንዮ።አለቃ፡ጢናየ፡ዘአነደድ።አለቃ፡ኃይለ፡ማርያም፡ዘደብረ፡ንግሥት።አለቃ፡እንግዳ፡ዘናዝሬት።**[277]
>
> *Mäl'akä sälam* Gäbrä Maryam of Bure; *aläqa* Gäbrä Maryam of Dämbäč̣a; *mäl'akä mäla'əkt* Ḫaylu of Qäranyo; *aläqa* Ṭinayä of Anädäd; *aläqa* Ḫaylä Maryam of Däbrä Nəgəśt; *aläqa* 'Ǝngəda of Nazəret.

Picture #1: *Tarikä Nägäśt* (Private Collection: Habtamu Mengistie Tegegne), 37.



[276] Despite having the title *nəguś* or king, Täklä Haymanot served as a regional governor in his home region of Goğğam and never apparently aspired to the throne of Ethiopia. See Bairu Tafla "Täklä Haymanot," in *Encyclopedia Aethiopica Vol. IV*, 837a-839a.

[277] *Tarikä Nägäśt* (Private Collection: Habtamu Mengistie Tegegne), 37.

Immediately noticeable is the prevalence of the title *aläqa* on this list of individuals appointed to judge using the *Fəṭḥa Nägäśt* as a legal reference. Four of the six names on the list carry the title *aläqa*, and noticeable is the various areas and regions the individuals on the list come from. However, it is quite possible that all the names on the list served as *aläqa*. The *aläqa* of famous and important *däbr* churches historically received honorific titles directly related to the special privileges the *däbr* possessed. For example, the *aläqa* of Däbrä Bərhan Śəllase church in Gondär carries the title *mäl'aka bərhanat* (lit. 'angel of lights') and the *aläqa* of St. Mikael's church in Gondär is known as *mäl'aka gännät* (lit. 'angel of paradise'). [278] Accordingly, it is likely that the two names listed as appointed judges, *mäl'akä sälam* (lit. 'angel of peace') Gäbrä Maryam and *mäl'akä mäla'əkt* (lit. 'angel of angels') Ḫaylu served as *aläqa* over more prestigious churches than their four colleagues that appear on the list.

For these *aläqa* to be appointed as judges relying exclusively on the *Fəṭḥa Nägäśt*, they would have undoubtedly had have to gone through and completed extensive training in the *Liqawənt* branch of the *Mäṣḥaf Bet* school. The *Tarikä Nägäśt* contains further information that both confirms the extensive training of the *aläqa* in the *Mäṣḥaf Bet* and the legal authority many were assigned to judge based on the laws encoded in the *Fəṭḥa Nägäśt*. Under the subheading "**መጽሐፍ አስተማሮች፡** […] **ብሉይና፡ ሐዲስ፡ የሚያስተምሩ።** (Teachers of the Books of the Old and New Testaments)" it gives an extensive list of scholars who are assigned special duties relating to the *Fəṭḥa Nägäśt*.[279]

[278] "Churches and Church Administration," *Encyclopedia Aethiopica Vol. 1*, 740-744.

[279] *Tarikä Nägäśt*, 23c.

[መምሕር፡ፀበሉ][280]፡አለቃ፡ገብረ፡ኤልያስ፡ዘአነደድ።መምሕር፡እንግደ፡ዘድንጅ።መምሕር፡ሸዋገኘ ሁ፡ዘደብ፡ወርቅ።አለቃ፡ወልደ፡ጊዮርጊስ፡ዘማርቆስ፡ወዘሻዋ፡አለቃ፡ተስፋየ፡ዘአገው።ሠረገላ፡ብርሃን ፡ዘማርቆስ፡ወዘትግሬ።መምሕር፡ዘገየ፡ዘደምበጫ።ሊቀ፡ጠበብት፡ወልደ፡ሥላሴ፡ዘደምበጫ።አባ፡ጽጌ ፡ዘደምበጫ።መምሕር፡ደስታ፡ዘዋሸራ።ሊቀ፡ረድኤ፡ዋሴ፡ዘድንግራ።መምህር፡መሸሻ፡ዘሞጣ፡ሊቀ፡ ጠበብት፡ካሰ፡ዘሞጣ።መምህር፡ገብረ፡ሥላሴ፡ዘኢያስ።ሊቀ፡ጠበብት፡አይቸህ፡ዘኤልያስ፡መምህር፡ሰ ው፡አገኘሁ፡ዘየውሽ።አባ፡አካሉ፡ዘብቸና።መሪጀታ፡ካሰ፡ዘመንግሥት።መምህር፡እንግዳ፡እሼት፡ዘዲ ማ።መምህር፡ገብረ፡እግዚአብሔር፡ዘቢቡኝ።አባ፡ወልደ፡ጊዮርጊስ፡ዘዲማ።አባ፡ተድላ፡ዘዲማ።መም ህር፡ወልደ፡ሚካኤል፡ዘዘጌ።መምህር፡ኃይሉ፡ዘድንጅ።መምህር፡ኪዳኔ፡ዘማርቆስ።አለቃ፡ታመነ፡ዘማ ርቆስ።እነዚህ፡ሁሉ፡ከንጉሥ፡ዘንድ፡የጸነነ፡ፍርድ፡ሲገኝ፡ከየሀገራቸዉ፡ተሰብስበው፡ከንጉሥ፡ባለ፡ፍ ትሕ፡ንገሥት፡ጋራ፡ተማክረው፡ፍርድ፡የሚአቀኑ፡ናቸው።[281]

[*Mämhər* Ṣäbälu]; *aläqa* Gäbrä Elyas of ’Anädäd; *mäm*[*h*]*ər*[282] Ǝngəda of Dəngǧ; *mäm*[*h*]*ər* Šäwagäñähu of Däb[rä] Wärq; *aläqa* Wäldä Giyorgis of Marqos and Šawa; *aläqa* Täsfayä of Agäw; *Śärägäla* Bərhan of Marqos and Təgre; *mäm*[*h*]*ər* Zägäyä of Dämbäça; *liqä ṭäbäbət* Wäldä Śəllase of Dämbäça; *abba* Ṣəge of Dämbäça; *mäm*[*h*]*ər* Dästa of Wašära; *liqä rädə*’ Wase of Dəngəra; *mämhər* Mäšäša of Moṭa; *liqä ṭäbäbət* Kassä of Moṭa; *mämhər* Gäbra Śəllase of Iyas; *liqä ṭäbäbət* Ayəčäh of Elyas; *mämhər* Säwə Agäñähu of Yäwəš; *abba* Aḳälu of Bəčäna; *märi*[*ge*]*ta*[283] Kassä of Mängəśto; *mämhər* Ǝngəda Ǝšet of Dima; *mämhər* Gäbrä Ǝgzi’abəḥer of Bibuñ; *abba* Wäldä Giyorgis of Dima; *abba* Tadla of Dima; *mämhər* Wäldä Mika’el of Zäge; *mämhər* Ḫaylu of Dəngǧ; *mämhər* Kidane of Marqos. All of these (scholars), when a controversial sentence is found to have been given, the king will gather them from their regions, and they will pass judgment based on the *Fətḥa Nägäśt*.[284]

As with the previous list, these officials carry a variety of titles and come from a variety of locations, primarily in Goǧǧam, with few exceptions. The sub-heading indicates these men were

[280] The name *mämhər* Ṣäbälu originally appears in the subheading, due to scribal error. I have removed it and inserted it at the top of the list.

[281] *Tarikä Nägäśt*, 23, 24.

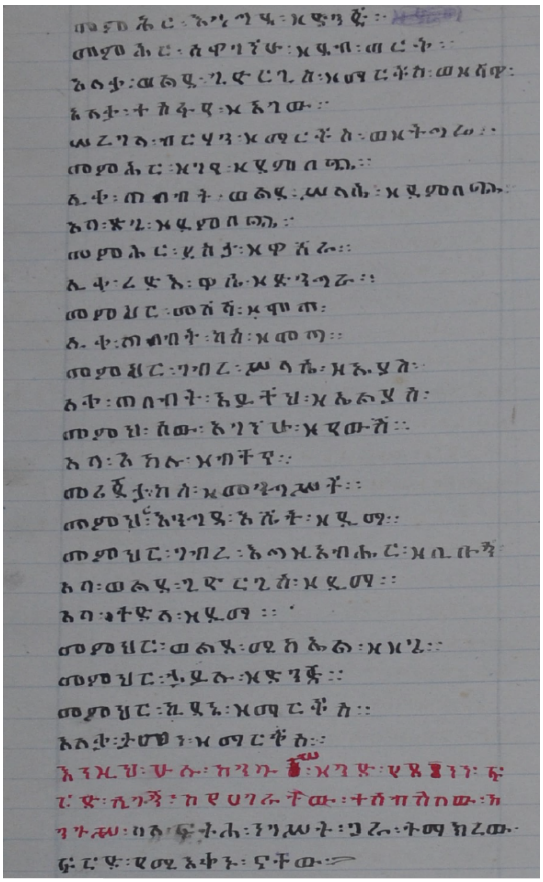
[282] The unknown author or scribe uses **መምሕር** (*mämḥər)* in the text several times. This is an incorrect spelling of the word. The **ሕ** which is transliterated ḥ, should be **ህ** (h) as in **መምህር**. In quoting the text I stay true to the material but correct the mistake in the transliteration and translation. See Leslau, *Comparative Dictionary of Ge’ez*, s.v. “mahara.”

[283] The original text incorrectly uses ‘ጀ’ (ğä) in the administrative title **መሪጌታ** (*märigeta*) (from Amharic *märi* ‘leader’ and *geta* ‘master’). In quoting the text I stay true the original but correct the spelling in the above transliteration and translation. See Leslau, *English-Amharic Context Dictionary*, s.v. “leader”, “master n.”

[284] The translation of the last sentence in this passage was aided by Habtamu Mengistie Tegegne and Mehari Worku.

all educated in the *Mäṣḥaf Bet* as they are listed as "Teachers of the books" and described as teaching specifically the interpretations of the Old and New Testaments; subjects that are only taught in the *Mäṣḥaf Bet*. Further, as indicated earlier in the chapter, an individual could not serve as a judge or legal official unless they had gone through the *liqawənt* school.

Picture #2: *Tarikä Nägäśt* (Private Collection: Habtamu Mengistie Tegegne), 24a (39 pdf).



However, this list of officials and their assignment differs from the previous list of judges. Their education and assignment indicate that this is a legal counsel of sorts, where the highly trained scholars are being called upon from their communities to establish a consensus on an appeal case with *nəguś* Täklä Haymanot, in consultation with a *liqä* who served as the *nəguś'* legal advisor. The mix of both higher and lower ranked titles that are on this list is also notable. Prestigious titles, like the first list of judges, do appear frequently in this list. However, you can

also find titles like *märigeta*, which essentially is a learned *däbtära* who serves in various roles at a *däbr* church assigned to him by the *däbr's aläqa*. If the church is smaller or what is known as a *gätär* church, the *märigeta* is essentially the same role as an *aläqa*.[285] The mix of both prestigious and minor titles on this list of scholars demonstrates the power legal scholars possessed, as the text points out these men were called upon to work on important appeal cases with the *nəguś.*

Oral histories confirm that it was a tradition for rulers to appoint a select few prestigious experts on the *Fətḥa Nägäśt* as judges, in like manner to the first list, and to call scholars and administrators from other parts of the kingdom to establish legal precedence and consensus for dealing with appeal cases and other legal issues in the kingdom, reminiscent of the second list.[286] These scholars would then return to their home region to act as judges and legal advisors and to teach other qualified officials to judge "rightly."[287] This tradition is said to have been in place since at least the Gondärine period and likely much earlier.[288] Legal councils such as this served multiple purposes, including consolidating the power of the *nəguś* over the Church and Christians in remote regions. Additionally, these councils would be beneficial in controlling various religious movements that would occasionally spring up and come into conflict with the

[285] *Encyclopedia Aethiopica Vol.* 1, s.v. "Churches and Church Administration"; Encyclopedia *Aethiopica Vol. 3*, s.v. "Märigeta."

[286] *Liqä Liqawənt* Śahlu Alämä, interviewed by author, Addis Ababa, December 19, 2020; *Mämhər* Yared Kəbrät, interviewed by author, Addis Ababa, December 19, 2020.

[287] *Liqä Liqawənt* Śahlu Alämä, interviewed by author, Addis Ababa, Ethiopia, December 19, 2020; *Mämhər* Yared Kəbrät, interviewed by author, Addis Ababa, Ethiopia, December 19, 2020; *Tarikä Nägäśt*, 24a.

[288] *Mämhər* Betseha, interviewed by author, Gondär, Ethiopia, August 31, 2017.

throne.[289] However, these councils reveal the *mänfäsawi wä'alämawəyat* nature of the legal system, as the text illustrates, these scholars, both prestigious and minor, had the power to correct and overturn legal decisions with *nəguś* or, as in this case, a local regional ruler. It further highlights the central role of the church in the legal affairs of the state and channels and pathways by which the use of the *Fətḥa Nägäśt* spread throughout the kingdom.

Building Traditions and the Spread of the *Fətḥa Nägäśt*

The EOTC and the administration of the kingdom of Ethiopia were historically intertwined to the point that the two, for the most part, can be viewed as inseparable. In many ways the Church and the State mirrored the *Täwaḥədo* Christology of the EOTC, the union of flesh and spirit, or as discussed in chapter two, *mänfäsawi wä'alämawəyat*. Accordingly, the Church played a central role in the legal affairs of the kingdom and contributed greatly to the increased use of the *Fətḥa Nägäśt* as the main legal reference. The Church educational system provided the training of legal scholars who would go on to serve as judges, advisors, and teachers of law. Evidence of this system in practice is found primarily in the documentation of the courts of the *nəguś* and other nobility. However, the Church and the state worked together to spread their influence into the rural areas of the kingdom and tributary states. Extensive networks of churches throughout these remote regions of the kingdom contributed greatly to the spread.[290]

[289] Marie-Laure Derat, "A royal correspondence in the XVth and XVIth centuries: the documents of the Gospel of Däbrä Kärbe (Zana)," *Aethiopica* 9 (2006): 72.

[290] Most of the churches in Ethiopia are *gätär* churches which are small churches in rural areas. While the number of those living in rural areas has been steadily declining, as of 2020, 78% of the population numbering more than 112 million, lived in rural areas of the nation. See "Rural Population (% of Total Population) of Ethiopia," *World Bank*, 2021, https://data.worldbank.org/indicator/SP.RUR.TOTL.ZS?locations=ET

Numerous testimonies attest to the extensive network of churches in the Christian kingdom. European travelers and missionaries in the sixteenth and seventeenth centuries commented that the kingdom was full of churches and monasteries and there were vast numbers of priests, monks, lay clerics and scholars who occupied them.[291] Further, Scottish traveler James Bruce (1730-1794) commented that "there is no country in the world where there are so many churches as in Abyssinia."[292] Bruce goes on to attribute the high number of churches in the country to the *nəguś*' prolific habit of building churches, and to the belief among the people that an individual will have atoned for their sins should they build a church in their lifetime or leave an inheritance fund to build one after their death.[293] Indeed, it was a common tradition amongst the nobility to build many churches, which contributed greatly to the spread of the Christian legal order.

In fact, it was the duty of the *nəguś*, by law, to not only build churches, but also to donate from his personal wealth to all members of the clergy, and to endow churches with lands, books, vestments, religious relics, and more.[294] The larger and prestigious churches were well endowed

[291] Pankhurst, *A Social History of Ethiopia*, 29, 31.

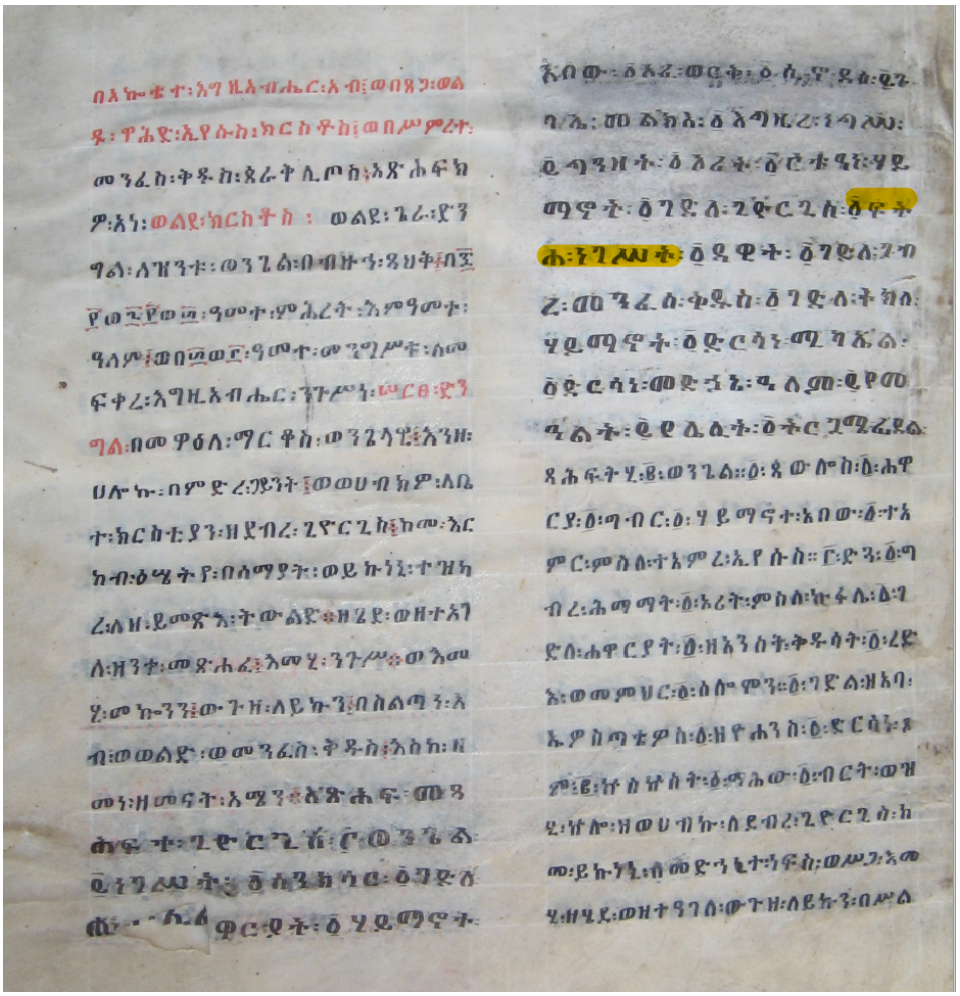
[292] Bruce uses Abyssinia, a synonym for Ethiopia which was widely used in different forms up until the 20th century. *Encyclopedia* Aethiopica *Vol.* 1, s.v. "Abyssinia;" James Bruce, *Travels to Discover the Source of the Nile: In the Years 1768, 1769, 1770, 1771, 1772, and 1773, Volume 3* (Edinburgh: G.G.J. and J. Robinson, 1790), 313.

[293] Bruce, *Travels Volume 3., 313.*

[294] The *Fəṭḥa Nägäśt* dictates that the king should donate to the entire clergy based on rank and exempt them from paying tribute to the king. Further, kings are required to donate money to churches in order to care for the poor and orphans as well as to give of the "first fruits" of the spoils of war to the church. Tzadua trans., *Fetha Nagast*, 272-273; Verena Krebs notes that this tradition of building churches was at the heart of diplomatic missions to Europe by Ethiopians in the fourteenth and fifteenth centuries and is also tied to legitimizing the so called Solomonic lineage of the kings. See Verena Krebs, *Medieval Ethiopian Kingship, Craft, and Diplomacy with Latin Europe* (Cham, Switzerland: Springer Nature, 2021).

with extensive lands, and copies of the most important ecclesiastical texts, including the *Fəṭḥa Nägäśt*. Every church whether prestigious and large or humble and small were said to have a copy of the legal code.[295] This is supported in multiple ways. One is the physical copy of the text where the colophon and other features of the manuscript attests to when, where, and by whom the book was created.

Picture #3: *Wängel ZäWärq Atkäna Giyorgis* (Private Collection: Habtamu Mengistie Tegegne), 26b



[295] *Liqä Liqawənt* Śahlu Alämä, interviewed by author, Addis Ababa, December 19, 2020; *Mämhər* Yared Kəbrät, interviewed by author, Addis Ababa, December 19, 2020; *Mämhər* Betseha, interviewed by author, Gondär, Ethiopia, August 31, 2017.

Another form of evidence that the *Fətḥa Nägäśt* was not restricted to royal and prestigious churches can also be found in inventory lists which appear in various manuscripts including special texts known as *Wängel ZäWärq* (lit. 'The Golden Gospel'). The *Wängel ZäWärq,* as its title indicates, is a text containing the Four Gospels with a gold, silver, or metal embossed cover. However, the *Wängel ZäWärq* also contain historical notes about the church or monastery which they belong, including inventories, land grants and acts, genealogies and other historical records.[296] A specific example can be found in the *Wängel ZäWärq* of Atkäna Giyorgis church, located in the district of Farṭa in Bägemdər province. Atkäna Giyorgis is situated roughly 100km south-east of Gondär and was founded in 1596 by *Ras* Wäldä Krestos, a courtier to *nəguś asé* Śärṣä Dəngəl (1563-1597).[297] The *Wängel ZäWärq* of Atkäna contains land records and other legal documents, but also includes an inventory list of various text donated at the time of the establishment of the church by *Ras* Wäldä Krestos. Included among the various titles donated to Atkäna Giyorgis is a single copy of the *Fətḥa Nägäśt*.[298]

The significance of this gift is that Atkäna Giyorgis is by no means a prominent or royal church. A constant trope in studies of the *Fətḥa Nägäśt* is that, although it has been deemed an important source of law, it was primarily only important in the courts of the *nəguś*. The donations of texts were not empty displays of piety either. These texts, including the *Fətḥa Nägäśt*, were donated with the purpose of using them in the everyday affairs of the church, in this case Atkäna Giyorgis. As previously noted, churches also functioned as centers of learning

[296] *Encyclopedia Aethiopica Vol. 4*, s.v. "Wängelä Wärq."

[297] Habtamu Mengistie Tegegne, "Land tenure and agrarian social structure in Ethiopia, 1636–1900," (Phd diss., University of Illinois at Urbana-Champaign, 2011), 196, 280.

[298] *Wängel ZäWärq Atkäna Giyorgis* (Private Collection, Habtamu Mengistie Tegegne), 26b.

and scholarship in addition to sites of legal procedure and repositories of a wide array of legal documents.[299] Atkäna Giyorgis is a small and unimportant church, in the political affairs of the kingdom. Yet it, along with many other small churches, possessed a copy of the *Fəṭḥa Nägäśt* which it used in both local legal disputes and for the purpose of education. This is an indication of the widespread use of the code and its importance to local church and state officials far removed from the centers of power.

Conclusion

What emerges from the evidence is a complex *mänfäsawi wä'alämawəyat* legal system with the *nəguś* at the top followed by *azzaž* or the supreme court judges who were prestigious scholars and administrators directly appointed by the king. Next were the scholars such as the *liqawənt* who act as legal advisors both in the courts of the *nəguś* and in other regions and vassal states. Following the *liqawənt* are the *aläqa*, the leaders of prestigious churches and church communities, and the *mämhər* who functioned as teachers and legal advisors and often the leaders of monastic communities. Of chief importance to this entire legal order was the Church as a whole and the individual church. These centers of worship were the embodiment of *mänfäsawi wä'alämawəyat* as they additionally functioned as centers of education and scholarly activity, sites of legal procedure, as well as repositories of legal documents. The complex educational system at the heart of it all, served as a site of integration, knowledge production, and transmission through novel methods of translation, interpretation, and the training of legal

[299] Solomon Addis Getahun states that the dual function of the Church as a space of education in addition to being a place of worship is an indication of "the existence of [the church as] a clearly defined urban space by profession. Solomon Addis Getahun, "Urbanization and the Urban Space in Africa: The Case of Gondar, Ethiopia," *Journal of Ethiopian Studies*, Vol. 45 (2012), 121.

scholars. These legal scholars would go on to occupy various administrative positions and to wield tremendous power in the legal sphere of the kingdom.

While the *nəguś* was the representation of the ultimate civil power, the Church had extensive legal powers as illustrated in the *Tarikä Nägäśt*, and even worked on important legal decisions and appeal cases with the *nəguś.* Since the churches in the kingdom had multiple functions related to education and the law, the tradition of building churches in the kingdom ultimately contributed greatly to the expanded use of the *Fətḥa Nägäśt* throughout the remote regions and areas of the kingdom. As we shall see in the next chapter the *Fətḥa Nägäśt* served as an important legal reference in various cases throughout the kingdom.

Chapter 5: The *Fətḥa Nägäśt* in Practical Application

In Ethiopian historiography and EOTC histories, the *Fətḥa Nägäśt* is viewed as a central text in the organization of Ethiopian Christian society. *Liqawənt* and other church scholars regard it as the "central pillar" to the EOTC. Despite the high esteem afforded to the *Fətḥa Nägäśt* by ecclesiastics affiliated with the EOTC, many scholars suggest that the law codes value was only superficial and was never applied beyond the court of the king.[300] This premise is based primarily on the claim that there is insufficient evidence to support the code in practical application outside of a few references which appear in various king's chronicles.[301] A wide array of direct and indirect references to the code in practical application call for a reassessment of these assertions. As previously discussed in Chapter 2, evidence of the practical use of the code can be found in everything from European travel narratives to indigenous legal texts.[302]

This chapter argues that the *Fətḥa Nägäśt* was in fact an important body of law in the administration, organization and social life of Christian society. It will do so by examining evidence of the *Fətḥa Nägäśt* in practical application. Evidence will be drawn from various case studies on slavery, emancipation, land, inheritance, and usury. These case studies come from different time periods and are drawn from a variety of sources including chronicles, legal records, land charters and more. Complex records dealing with slavery, emancipation,

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[300] Peter L. Strauss, "Preface to the Second Printing of the Fetha Nagast," *Journal of Ethiopian Law* 22, no.1 (2008): 155; Stanley Z. Fisher, "Traditional Criminal Procedure in Ethiopia," *The American Journal of Comparative Law* 19, no. 4 (1971): 712.

[301] The earliest direct account of the *Fətḥa Nägäśt* in practical application appears in the chronicle of *ase* Sarsa Dengel (r. 1563-1597). The chronicle notes that when a death penalty delivered in a judgement by the leaders in the kingdom, the *Fətḥa Nägäśt* was referenced as precedence for delivering the judgement. Tzadua, "Foreword," in the *Fetha Nagast*, xx.

[302] See chapter 3.

inheritance and land align with provisions in the *Fətḥa Nägäśt* and disclose the law is embedded with what I call 'mechanisms for mobility.' This is centered on the idea that the law code contained mechanisms that encouraged emancipation, which in turn, allowed upward mobility from a slave class to a free landholder in some cases. The case on usury likewise emphasizes the influence of the *Fətḥa Nägäśt* on every aspect of life in the Christian kingdom, including finances and economic transactions.

These case studies further provide concrete examples of the *mänfäsawi wä'alämawəyat* system. The cases we will examine are all characterized by a common blend of secular and religious matters, as discussed in chapter 2. These cases will be examined and compared alongside the Gə'əz *Fətḥa Nägäśt* in order to highlight gaps and parallels in legal theory and practice. The case studies will shed light into the various ways the law was interpreted and applied across Ethiopian Christian society and the imprint it left on the political, social, economic, and religious life of the kingdom.

Usury

The practice of usury, which can be defined as the charging of interest above the principal or the charging of exorbitant or abusive rates, has been practiced in some form for thousands of years.[303] The practice was widely considered morally reprehensible and legally prohibited among a variety of different cultures and religious institutions. Laws against usury are

[303] Charles R. Geisst asserts that collecting interest or usury, is the world's oldest financial practice and was considered the world's second oldest profession up until the industrial revolution. Charles R. Geisst, *Beggar thy Neighbor: A History of Usury and Debt* (Philadelphia: University of Pennsylvania Press, 2013), 2, 13.

considered some of the oldest and most pervasive forms of economic regulation in existence.[304] Followers of Hinduism, Buddhism, Judaism, Christianity, and Islam all have legal prohibitions against usury and generally viewed it as an "execrable crime" along with murder, prostitution and arson.[305] In modern society, followers of Judaism and even more so Islam are recognized as the foremost religious groups who vehemently oppose usury. While not receiving as much notoriety as its 'Abrahamic' counterparts, Christianity has a protracted history of branding the taking of usury as both sinful and prohibited by law. It is noted that within Christianity there has been debate on and prohibitions against usury from the infancy stages of the religion.[306]

Ethiopia is not an exception in that the *Fətḥa Nägäśt* prohibits usury in both the *mänfäsawi* and '*älämawəyat* portion of the code. In the *mänfäsawi* portion of the *Fətḥa Nägäśt*, in chapter five, which deals with the appointment and deposition of priests, the law declares that a priest who was known to be a usurer should be deposed as punishment.[307] In addition, the *Fətḥa Nägäśt* in the '*älämawəyat* section, deals with usury explicitly. Towards the end of the text, in chapter fifty which deals with drunkenness, usury and miscellaneous sins, the legal stance on the subject is clearly articulated when it prohibits usury for both ecclesiastics and lay persons. Furthermore, it brands it a sin against God to even desire to engage in usury.[308] The

[304] Edward L. Glaeser and José Scheinkman, "Neither a Borrower Nor a Lender Be: An Economic Analysis of Interest Restrictions and Usury Laws," *The Journal of Law and Economics* 41, no. 1 (1998): 1, 2; Geisst, *Beggar thy Neighbor*, 13.

[305] Wayne A.M. Visser and Alastair MacIntosh, "A Short Review of the Historical Critique of Usury," *Accounting*, *Business & Financial History* 8, no. 2 (1998): 176-179.

[306] The Roman Catholic Church prohibited usury in canon law from at least the fourth century. Visser and MacIntosh, "A Short Review," 178.

[307] *Fetha Negest.* [15th Century], British Library, EAP 432/1/132, picture #27, f. 24r, a.

[308] *Fetha Negest.* [15th Century], British Library, EAP 432/1/132, picture #136, f. 133r, b.

passage also states that usury was banned according to **ሕግ፡ ቀዳማዊ** (*ḥəgg qädamawi*) which translates to the first law. This is a direct reference to the *Orit* or the Old Testament Mosaic law. Additionally, the passage also mentions that practicing usury is discouraged in the New Testament and is also banned according to canon law.[309] Citing the Old and New Testaments along with the church canons establishes that usury is universally viewed as reprehensible and accordingly should be condemned.

While the *Fəṭḥa Nägäśt* clearly condemns usury, it is not clear to what extant usury was practiced or condemned among Ethiopian Christians. As discussed in chapter two, the '*awağ nägär* system is important to this case study on usury, as it provides evidence of usury both being practiced and condemned. One example can be found in the chronicle of the Gondärine *nəguś*, *aṣe* Yohannis I (r. 1667-1682). *Aṣe* Yohannis I's reign was marked by religious controversy and civil warfare due in large part to his intolerant policies towards other religions and factions in the Church.[310] During his reign he decreed Catholics as *personae non grata* in the kingdom, segregated living for Muslims and Jews, and prohibited Christians from intermarrying or being employed by Jews or Christians. Despite characterizations of being "weak-willed" and "intolerant" towards religious minorities, *aṣe* Yoḥannəs I is also remembered as "the righteous" for his acts of piety performed as *nəguś*. In particular, he amnestied prisoners, cancelled taxes on cattle and emptied the royal treasury twice during his reign to give alms to the poor.[311] In addition to these acts, *aṣe* Yoḥannəs I also issued a decree against usury. According to his chronicle in 1678 after a council in which many laws and legal issues were discussed, he

[309] *Fetha Negest.* [15th Century], British Library, EAP 432/1/132, picture #136, f. 133r, b.

[310] LaVerle Berry, "Yoḥannəs I," in *Encyclopedia Aethiopica* Vol. 5, 69a-70b.

[311] Berry, "Yoḥannəs I," in *Encyclopedia*, 69a-70b.

"proclaimed by the herald that…whoever lends money or wheat to another must not take interest."[312]

There are several important factors in this legal edict prohibiting usury in Gondärine Ethiopia. First, the chronicle mentions that this proclamation was made side by side with the edict of segregated living areas for Jews, Muslims and Christians.[313] Accordingly, the *'awağ nägäri* would have been delivering this edict to members of all three faiths along with the one prohibiting usury. This indicates that the prohibition against usury may have not been restricted to Christians. Both Muslims and Jews have legal prohibitions of usury, especially among members of their own respective faiths. Accordingly, we can make an informed guess that the blanket prohibition of usury may have been designed to protect Christians when dealing with Muslims and Jews. Muslims controlled the lion's share of the trade in the region, which was nothing new, and Jews primarily served as craftsmen in the area. Additionally, it aligns with *aṣe* Yoḥannəs I's attitude towards economically burdensome policies which he dispensed with during his reign.

While this evidence is somewhat indirect, it is clear evidence of the *Fətḥa Nägäśt* in practical application. Considering the process of promulgating law, the *Fətḥa Nägäśt* was the most important legal reference next to the bible.[314] The *Fətḥa Nägäśt* mirrors both the Old Testament and New Testament stance on usury and aligns conceptually with the blanket

[312] *Annales Iohannis I, 'Iyāsu I Et Bakāffā I*, trans. Ignazio Guidi (Lipsiae: Harrassowitz, 1961), 37; Richard Pankhurst ed., *The Ethiopian Royal Chronicles* (Addis Ababa: Oxford University Press, 1967), 103.

[313] *Annales Iohannis I,* 37.

[314] *Liqä Liqawənt* Śahlu Alämä, interviewed by author, Addis Ababa, December 19, 2020; *Mämhər* Yared Kəbrät, interviewed by author, Addis Ababa, December 19, 2020.

prohibition. While there is certainly a gap between written law and actual behavior, we cannot ignore people's knowledge of law which serves as a far better guide to its social affect.[315] In contemporary Ethiopia and in the past, the practice of usury is generally despised among many ethnic and religious groups.[316] The Amharic term for usurer is **አራጣ፡ አበዳሪ** (*'araṭa 'abädari*) who are viewed as contemptible characters and additionally regarded as "blood suckers" across Ethiopian society.[317] Based on the fragmentary evidence and cultural attitudes towards usury we can assert that both the blanket prohibition against usury and the *Fəṭḥa Nägäśt* were relevant in the seventeenth century. In addition, the process by which the law was composed, promulgated, and based on the statutes in the *Fəṭḥa Nägäśt*, is like the sixteenth century edict against the enslavement of Christians issued by *asé* Gälawdewos (r. 1540-1559) in 1558. The edict reflected the laws in the *Fəṭḥa Nägäśt* and matched the people's knowledge of the law against enslaving Christians during this time period.[318] The *nəguś* was the ultimate authority below God and accordingly his laws would have to have a strong basis in the law of God, which in this case was the *Fəṭḥa Nägäśt*.

Property

The assumption that the *Fəṭḥa Nägäśt* was not an important text in the legal history of Ethiopia is founded primarily on the assertion that there is little recorded evidence of the code in practical application. There is a measure of truth in this claim in that there is not a lot of written

[315] Tegegne, "The Edict of King Gälawdéwos Against the Illegal Slave Trade in Christians: Ethiopia, 1548," 103.

[316] *Deacon* Mehari Worku, interview by author, January 15, 2015, Addis Ababa.

[317] Ibid.; Spielman, "One Law for Us All," 24.

[318] See Tegegne, "The Edict of King Gälawdéwos."

documentation of the code in use. However, when references to the code do appear in the written record, they reveal that the *Fətḥa Nägäśt* was the main legal text of the kingdom and influenced a great deal of legal culture, both in the courts of the kings and beyond. Much of the legal records that do exist deal primarily with property or land in some form.

In this section we will briefly examine evidence of the *Fətḥa Nägäśt* in practical application relating to land. The first reference we will examine is found in a manuscript which belongs to the Däbrä Marqos church, located in the city of Däbrä Marqos, Goğğam. The document is a land register entitled **የደብሩ የክብረ መዝገብ** (*Yädäbru Yäkəbrä Mäzgäb*, *The Parish Records*). The *Yädäbru Yäkəbrä Mäzgäb* contains an interesting note relating to a court case concerning contested property and the *Fətḥa Nägäśt*. It offers a brief summary of the court case involving *nəguś* Täklä Haymanot of Goğğam (r. 1881-1901). The passage states.

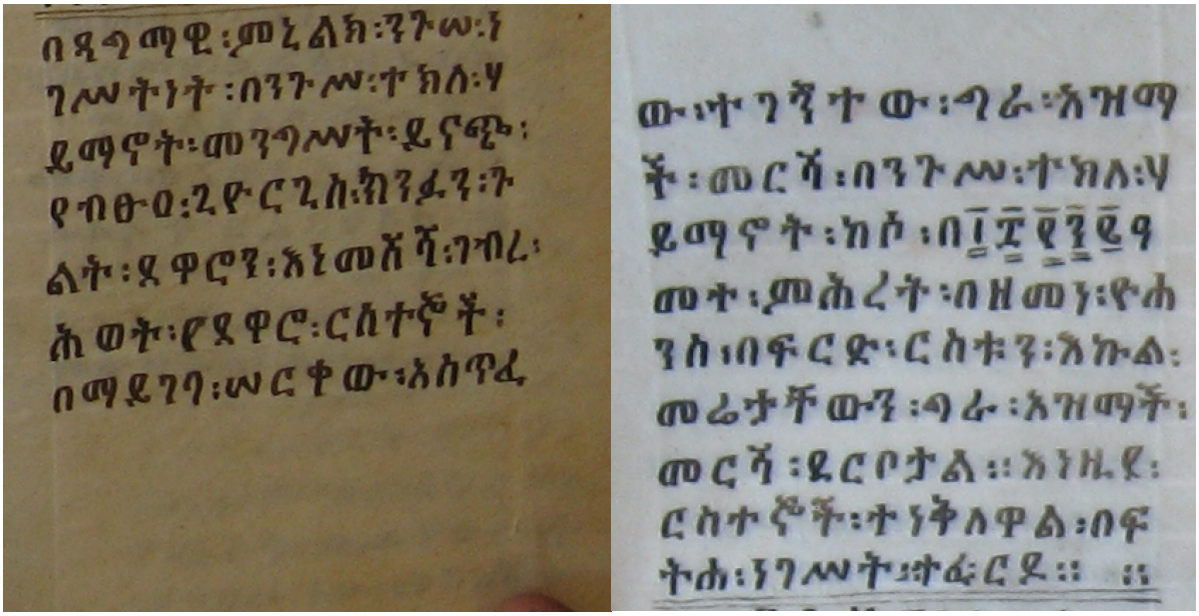
> **በዳግማዊ ፡ ምኒልክ ፡ ንጉሠ ፡ ነገሥትነት ፡ በንጉሥ ፡ ተክለ ፡ ሃይማኖት ፡ መንግሥት ፡ ይናጭ ፡ የብዑዐ ፡ ጊዮር ጊስ ፡ ክንፉን ፡ ጉልት ፡ ደዋሮን ፡ እነመሸሻ ፡ ገብረ ፡ ሕወት ፡ ርስተኞች ፡ በማይገባ ፡ ሠርቀው ፡ አስጥፈው ፡ ተገ ኝተው ፡ ግራ ፡ አዝማች ፡ መርሻ ፡ በንጉሥ ፡ ተክለ ፡ ሃይማኖት ፡ ከሶ ፡ በ፲፰፻፺፮ዓመተ ፡ ምሕረት ፡ በዘመን ፡ ዮ ሐንስ ፡ በፍርድ ፡ ርስቱን ፡ እኩል ፡ መሬታቸውን ፡ ግራ ፡ አዝማች ፡ መርሻ ፡ ደርቦታል ፡ እነዚይ ፡ ርስተኞች ፡ ተነቅለዋል ፡ በፍትሐ ፡ ነገሥት ፡ ተፈ ፡ ርዶ።**[319]
>
> Bädagmawi Mənilək *nəguś nägäśtənät* bä*nəguś* Täklä Haymanot mängəśt yənaç̣ yäBəśu‘a Giyorgis Kənfan gult Däwaron ənä Mäšäša Gäbrä Ḥəwät yädäwaro rəstäñoč bämayəgäba śärqäw asṭəfäw tägäñətäw gəra azmač Märša bä *nəguś* Täklä Haymanot käso bä 1892 ’amätä məḥərät bä zämän Yoḥannəs bä fərd rəstun ’əkul märetačäwən gəra ’azmač Märša därbotal. ‘Ǝnäziyə rəstañoč tänäqəläwal bä Fətḥa Nägäśt täfä rədo.
>
> In the reign of the King of Kings Mənilək II in the government of *nəguś* Täklä Haymanot. Because the restäña Mäšäša Gäbrä Ḥəwät [and his accomplices] stole and illegitimately registered Däwaro in Yenache, the gult land of Bəśu‘a Giyorgis Kenfu, under their names, *gəra ‘azmač* Märša brought a case against them at the court of *nəguś* Täklä Haymanot. In 1892 in the year of John, *gəra ‘azmač* Märša took over half of the defendants lands by court judgment. The defending restäña are displaced from their lands according to the law in the *Fətḥa Nägäśt*.[320]

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[319] *Yädäbru Yäkəbrä Mäzgäb*, Däbrä Marqos, (Private Collection: Habtamu Mengistie Tegegne), picture #237-238, ff. 47r, b-47v, a.

[320] I have translated this passage with help from Habtamu Mengistie Tegegne and Mehari Worku.

Picture #4: *Yädäbru Yäkəbrä Mäzgäb*, Däbrä Marqos, picture #237-238, ff. 47r, b-47v, a. (Private Collection: Habtamu Mengistie Tegegne)



The passage is unclear as to what legal rule in the *Fətḥa Nägäśt* was used to come to this judgement. However, throughout the '*alämawəyat* portion of the code there are several circumstances where a government official might confiscate land or a portion of it might go to the church or government. On matters of succession and land sales the *Fətḥa Nägäśt* dictates that land should be divided in halves and quarters depending on the circumstances. Further what we can draw from this passage is that cases that involved property and land in these circumstances was being judged using the *Fətḥa Nägäśt* as precedence. The next case studies we will examine, dealing with questions of slavery and manumission provide more detailed evidence of the *Fətḥa Nägäśt* in practical application and give us a window into the institutional norms in the late nineteenth-early twentieth century.

Slavery and Manumission

The institution of slavery has a protracted history in Ethiopia and the greater Horn of Africa-Red Sea region. Since late antiquity there are numerous sources which document slave trading at multiple ports up and down the Horn of Africa's Red Sea coastline. Roman scholar Pliny the Elder (24-79CE) noted that the port of Adulis of the Aksumite Empire (modern-day Eritrea) was a commercial port where slaves were traded among other "things."[321] In the late-sixth and early-seventh centuries it is documented that the Arabian Peninsula and contained a high number of enslaved *Habaša* who were enslaved as a consequence of warfare between the Aksumite Kingdom and various polities in the Arabian Peninsula.[322] In addition to warfare, sixth century Egyptian geographer Cosmas Indicopleustes noted that slaves from the HOA were primarily trafficked out of the Gulf of Aden port of Berbera (modern day Somalia).[323] Up to the fourteenth century in Ethiopia, slavery primarily followed this pattern, where captives of warfare were candidates for enslavement.[324]

By the late Middle Ages, the slave trade had become endemic to Ethiopia and the entire HOA. As the institution became more commonplace, the method of enslaving individuals shifted from captives of warfare to slavers conducting routine raids throughout the region. Slave raids in Ethiopia had become so common that the fifteenth-century *sultan* of Adal, Ǧamāladdīn III (d.

[321] Stuart Monro-Hay, "Aksumite Overseas Interest," *Northeast African Studies* Vol. 13, no. 2 (1991): 131.

[322] Hend Gilli-Elewy, "On the Provenance of Slaves in Mecca During the Time of the Prophet Muhammad," *International Journal of Middle East Studies* 49, no. 1 (2017), 165.

[323] Stuart Monro-Hay, "Aksumite Overseas Interest," *Northeast African Studies* Vol. 13, no. 2 (1991): 131.

[324] Habtamu Mengistie Tegegne, "The Edict of King Gälawdéwos Against the Illegal Slave Trade in Christians: Ethiopia, 1548," 83.

1433) openly bragged that he had flooded markets across the Middle East, Mediterranean, and Indian Ocean regions with Abyssinian slaves.[325] As a result of their relationship with local Muslim polities who had affinities for importing "*Habaša* slaves," Muslims in Ethiopia and the greater HOA of region emerged as the primary traffickers of enslaved individuals and accordingly slave raiding and trading became an occupation associated with Muslims in the HOA. However, this does not indicate that Christians in Ethiopia did not engage in the slave trade or enslave people. To the contrary, there is a wide array of documentary evidence of the Christian kingdom enslaving individuals. Moreover, the *Fətḥa Nägäśt* contains an entire section of law regulating the institution.

The Christian legal theory on slavery found in the *Fətḥa Nägäśt* closely resembles the legal theories on slavery found in Islam and Judaism.[326] In the case of the *Fətḥa Nägäśt,* portions of the code are drawn directly from the *Orit* (Old Testament). It lays out in detail who can be enslaved, how they can be enslaved, and justification for such enslavement. Conflict or war is the justification given for the general enslavement of peoples. In the '*älämawəyat* portion of the code in chapter 31 it states:

> **ወዘተርፈሂ፡ እምኔሁ፡ በከመ፡ ፈትሐ፡ አእምሮ፡ ውእቱ፡ እስመ፡ ኩሎሙ፡ ሰብእ፡ ሱቱፋን፡ ውስተ፡ ግዕዘ ን፡ በስርው፡ ፍጥረታዊ፡ ውዳእሙ፡ ፀብእ፡ ወጎይለ፡ ፈረስ፡ ታመጽእ፡ ቦሙ፡ ከመ፡ ይትቀነዩ፡ በበይናቲሆ ሙ፡ እስመ፡ ሕገ፡ ፀብእ፡ ለወመዊዕ፡ ትሬስዮሙ፡ ለምውዓን፡ አግብርተ፡ ለመዋዕያን፡ ወኦሪትኒ፡ ታጢይ ቅ፡ ከመ፡ ይቅንይዎሙ፡ ለውዑዓን፡ እምሃይማኖት፡ ወዘሂ፡ ተወልዱ፡ እምኒሆሙ፡ እስመ፡ ጽሑፍ፡ ውሲቲ ታ፡ ዘይብል፡ ይኩኑ፡ ለክሙ፡ አግብርተ፡ ወአዕማተ፡ እለ፡ ትነሥእዎሙ፡ እምአሕዛብ፡ እለ፡ ይነብሩ፡ በዓ ውድክሙ።ወእምነ፡ ፈላሰያን፡ እለ፡ ይነብሩ፡ ምስሊክሙ፡ ወእምኔሆሙ፡ ተሣየጡ፡ ወእምዘርኦሙ፡ ዘተ ወልደ፡ ውስተ፡ ምድርክሙ፡ ወይኩኑ፡ በክሙ፡ ዘተወርሰዎሙ፡ ወለደቂቅክሙ፡ እምድኅሬክሙ፡** [327]

[325] Tegegne, "The Edict," 83.

[326] See David B. Spielman, "One Law for Us All: A History of Social Cohesion *through Shared Legal Tradition Among the Abrahamic Faiths in Ethiopia*, (Master's Thesis, University of California, Los Angeles, 2015).

[327] *Fetha Negest.* [15th Century], British Library, EAP 432/1/132, picture #87, f. 84r, b-c.

> Wäzätärfähi ’əmmnehu bäkämä fätäḫä ’a’əməro wə’ətu ’əsmä kʷälomu säb’ə sutufən wəstä gə‘əzan bäsərwə fəṭərätawi wəda’əmmu ṣäb’ə wäḫaylä färäs tamäṣə’ə bommu kämä yətəqänäyu bäbäyənatihommu ’əsmä ḥəgg ṣäb’ə läwämäwi‘ə təresyommu läməwə‘an ’agəbərtä lämäwa‘əyan wä’*Orit*ni taṭiyəq kämmä yəqənyəwmu läwəṣu‘an ’əmmhaymanot wäzähi täwäldu ’əmmnihommu ’əsmä ṣəḥuf wəstita zäyəbəl yəkuni läkəmmu ’agəbərtä wä’a’əmatä ’əllä tənäś’əwommu ’əm’aḥəzab ’əlla yənäbəru bä‘awədəkəmmu. Wä’əmmnä fälsäyan ‘əllä yənäbəru məslikəmmu wä’əmmnehommu täśayäṭu wä’əmmzär’ommu zätäwäldä wəstä mədrkəmmu wäyəkunu bäkəmmu zätäwärsäwommu wälädäqiqəkəmmu ’əmmdəḫarek əmmu.
>
> According to the law of reason, all men share in freedom in accord with what is natural. However, waging war and the power of the horse brings some into the service of others, because the law of waging war and conquest establishes the conquered as slaves of the conqueror. The *Orit* shows that you must subjugate those outside the faith, and their children, because it is written: It is permissible to enslave those whom you have carried off from among the heathens and the strangers who live around and among you. You shall engage in the trade of them and their offspring who are born in your lands. And they will be an inheritance for your children after you. (my translation)

The initial statement on law establishes slavery as an ‘unnatural’ institution. This is accomplished by branding freedom as supported by “the law of reason” and existing as the natural state of all humans. However, the sentence follows gives a justification for slavery that aligns with institutional practices that were followed in the entire HOA-Red Sea-Arabian Peninsula region. War is given as the primary cause of enslavement along with a statement which gives permission to enslave non-Christians and alien residents. Further, the passage indicates that slaves were viewed as property and could be purchased, sold and inherited.

There is a substantial amount of evidence enslavement through warfare, which is found in the *Fəṭḥa Nägäśt*, was being carried in the region for a considerable amount of time. For examples in the chronical of *aṣe* Amdä Ṣəyon which details his various military campaigns into Ifat and other Muslim territories; there are several notable occasions detailing his capture and enslavement of members of the Muslim sultanates and communities he was warring against.[328]

[328] *The Glorious Victories of Amda Seyon, King of Ethiopia*, trans. and ed. G.W.B. Huntingford (Oxford: Oxford University Press, 1965).

Further, in the chronicle of Aḥmad al-Gāzī (Grañ), there are instances where former Muslims are identified who had been enslaved and forcefully converted to Christianity, as well as vice versa.[329] In these texts along with many others, there is sufficient evidence to see that, at least by the fifteenth and sixteenth centuries, slavery was practiced following both the regional norms and the *Fətḥa Nägäśt*. The *Fətḥa Nägäśt*, since it aligned with the regional view of slavery being derived from war, would have given the institution further legitimacy and justified its widespread practice.

There was undoubtedly a significant gap between theory and practice given the extent that slavery flourished in the Christian kingdom in the sixteenth century. Many Ethiopian government officials and soldiers derived part of their wealth from raiding and participating in the regional trade.[330] However, there is sufficient evidence pointing to a general knowledge and measured respect of the law contained in the *Fətḥa Nägäśt*. Habtamu Mengistie Tegegene draws attention to the fact that during the sixteenth century, when the kidnapping and trafficking of humans in the region accelerated, many followers of non-Abrahamic faiths were especially targeted and furthermore often pleaded to be converted to Christianity.[331] This can be taken on face value as an indication that general legal provisions on slavery contained in the *Fətḥa Nägäśt*, although often ignored and circumvented, were widely known throughout the regions and outskirts of the Christian kingdom.

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[329] Šihab ad-Din Ahmad bin Abd al-Qader bin Salem bin Utman, *Futh al-Habaša: the Conquest of Abyssinia 16th Century*, trans. and ed. Paul Lester Stenhouse and Richard Pankhurst (Los Angeles: Tsehai Publishers, 2004).

[330] Tegegne, "The Edict of King Gälawdéwos," 103.

[331] Tegegne, "The Edict of King Gälawdéwos," 103; See also Richard Pankhurst, "Slavery," in *An Introduction to the Economic History of Ethiopia: From Early Times to 1800* (London: Lalibela House, 1961), 372-388.

Despite a fair amount of documentation of the practice of slavery, enslaved individuals themselves rarely appear in the record. However, in the nineteenth and early twentieth centuries documentary evidence of enslaved individuals appear more frequently in the record. It is noted that charters of manumission become increasingly prevalent during this period.[332] This is attributed, in part, to increased government pressure to stamp out the practice. However, despite the increase in government pressure, records for the most part point to uncompelled manumissions.[333] Additionally, it is important to note that manumission existed as an enduring part of Ethiopian society but only developed into a documented tradition in this time period.[334] These manumission charters are found in a distinctive primary source known as **የርስት መዝገብ** (*Yärəst Mäzgäb*) or "register of inheritance." *Yärəst Mäzgäb* contains a variety of legal documents on inheritance, land sales and manumission and much more.[335]

The Manumission of *Mämhər* Kənfä Mika'el's Slaves

The *Yärəst Mäzgäb* in this case study belongs to Däbrä Marqos church located in a city of the same name, in modern day Misrak Goğğam zone, Amhara region. Däbrä Marqos city, formally known as Mänqorar, served as the administrative center and capital of the regional ruler, *nəguś* Täklä Haymanot.[336] The Däbrä Marqos church was established by *nəguś* Täklä

[332] Habtamu Mengistie Tegegne, "Land Tenure and Agrarian Social Structures in Ethiopia, 1636-1900," 313.

[333] Tegegne, "Land Tenure," 313.

[334] Tegegne, "Land Tenure," 311.

[335] Tegegne, "Land Tenure," 41.

[336] I am tremendously indebted to Habtamu Mengistie Tegegne who discovered and digitized this document and was kind to share with me this among many other sources to use in my research.

Haymanot around the time of his coronation in 1881. The Däbrä Marqos *Yärəst Mäzgäb* contains extensive documents dealing with the manumission. The first such document we examine, details the manumission of a group of enslaved individuals by their owner *mämhər* Kənfä Mika'el.[337] The charter is written in Amharic and states the following,

> በ፲፰፻፺፰ ፡ ዓመተ ፡ ምሕረት ፡ በሐምሌ ፡ በ፰ቀን ፡ እሁድ ፡ ቀን ፡ በማኅበሩ ፡ መካከል ፡ መጥተው ፡ የኒታ ፡ መ ምህር ፡ ክንፈ ፡ ሚካኤል ፡ ጋሎቻቸውን ፡ ሁሉ ፡ አርነት ፡ አውጥተዋል።[338]
>
> Bä፲፰፻፺፰ 'amät məḥərät, bäḥamle bä፰qän bämaḫabäru mäkakäl mäṭətäw yänita *məmhər* Kənfä Mika'el Galočačäwən hulu 'arənät 'awəṭətäwal.
>
> In 1898, in the year of mercy, on Sunday the 8th day of *Ḥamle*[339], at the center of the gathered community of witnesses, *mämhər* Kənfä Mika'el announced that he was granting freedom to all his slaves. (My translation).

The method of manumission described in this passage is important when examining it alongside the provisions in the *Fətḥa Nägäśt*. According to the *Fətḥa Nägäśt*, manumission first and foremost could only come from the owner of the enslaved individual.[340] Further, for the manumission to be valid, the *Fətḥa Nägäśt* dictates that it must be publicly declared in the church, before the bishop or a priest, or before at the minimum of three witnesses.[341] When examined alongside the account of *mämhər* Kənfä Mika'el we see the *Fətḥa Nägäśt* in practical application.

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[337] *Yärəst Mäzgäb*, Däbrä Marqos, (Private Dgitized Collection: Habtamu Mengistie Tegegne), picture #269.

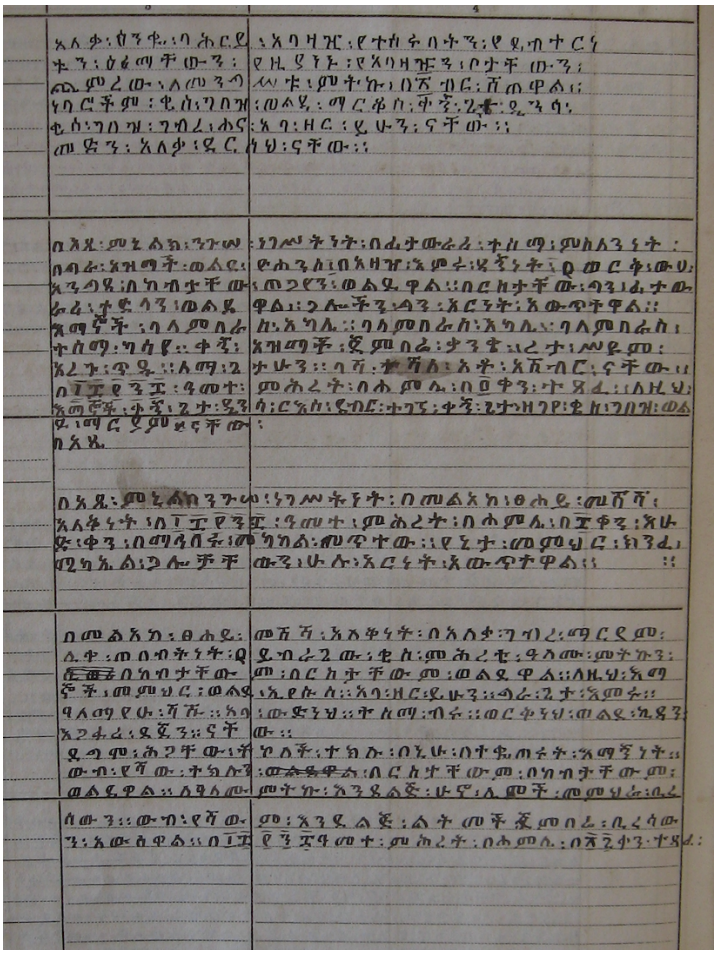
[338] *Yärəst Mäzgäb*, Däbrä Marqos, (Private Dgitized Collection: Habtamu Mengistie Tegegne), picture #269

[339] Sunday, July 15, 1906.

[340] Tzadua, *Fetha Nagast*, 176; *Fetha Negest.* [15th Century], British Library, EAP 432/1/132, picture #87 and #88, ff. 84r, c-84v, a.

[341] Tzadua, *Fetha Nagast*, 176; *Fetha Negest.* [15th Century], British Library, EAP 432/1/132, picture #88, f. 84v, b.

Picture #5: *mämhər* Kənfä Mika'el's manumission charter, third paragraph from the top. *Yärəst Mäzgäb*, Däbrä Marqos, picture #269, (Private Collection: Habtamu Mengistie Tegegne).



Mämhər Kənfä Mika'el's manumission charter meets every criterion as required by law for a valid manumission. First, the *Fətḥa Nägäśt* requires that the manumission be declared publicly at the church. The Däbrä Marqos *Yärəst Mäzgäb* confirms that his public declaration of the manumission of his slaves took place at Däbrä Marqos church and on a Sunday. The *Fətḥa Nägäśt* also states that the manumission must take place either before the bishop or a priest or at least three witnesses. The text clearly indicates that his manumission took place in front of a group of witnesses. In addition, given that it is a Sunday and located at a church, there would likely have been many community members, priests and scholars present to serve as witnesses.

This is also an important aspect of the process as the *Fətḥa Nägäśt* also dictates that witnesses be upright and of "high status and faith."[342] Given the importance of Däbrä Marqos church it is likely that the witnesses also met the above legal criteria for witnesses. Further, completing the procedure at an important church, in front of prestigious Christian witnesses additionally fits well with what the *Fətḥa Nägäśt* states on manumission. The *Fətḥa Nägäśt* holds that granting an enslaved individual their freedom is both a perfect deed and a form of charity.[343] Accordingly, the procedure of manumission taking place at Däbrä Marqos has a dual purpose. On the one hand it gives it the legal validity that such an important legal procedure requires. Next, it also allows the slave owner, in this case *mämhər* Kənfä Mika'el, to engage in a very public display of piety. Consider the fact that the *Fətḥa Nägäśt* indicates that granting freedom is not only a form of charitable alms, but also aligns with the first law or natural law which dictates all humans' natural state is to be free.[344] In addition, the call for at least three witnesses in the *Fətḥa Nägäśt* aligns with the norms in legal procedure found in both the Old and New Testament.[345]

It is important to reiterate that the process of manumission recorded in the Däbrä Marqos *Yärəst Mäzgäb* was not new. What was new in this case is the recording of the manumission charter. Habtamu Mengistie Tegegne argues that the procedure and language of manumission

[342] The *Fətḥa Nägäśt* dictates that nearly every legal process required at the minimum two to three witnesses or more. In addition, the code dictates that witnesses had to be trustworthy, over the age of twenty, and clean before God. Tzadua, *Fetha Nagast*, 264-265.

[343] *Fetha Negest.* [15th Century], British Library, EAP 432/1/132, picture #88, f. 84v, a.

[344] See page 126.

[345] For biblical passages on the need of two or three witnesses, see Deuteronomy 17:6, 19: 15; Matthew 18:6; 1 Timothy 5:19 and more.

was well developed by the time these charters became available.[346] The language and more so the procedure are clearly drawn directly from the *Fətḥa Nägäśt*. This indicates that the procedure for manumission in the *Fətḥa Nägäśt* was likely in practice and developed over centuries prior to the recorded cases in the Däbrä Marqos *Yärəst Mäzgäb.* More evidence of well-developed practice surrounding the manumission of the enslaved is found further in the pages of the Däbrä Marqos *Yärəst Mäzgäb.* Additionally, these cases we will examine reveal the 'mechanisms for mobility' in the process of legally manumitting the enslaved according to the provisions found in the *Fətḥa Nägäśt*.

Slave Manumission, Adoption and Succession

The following case study on manumission and inheritance is also drawn from the Däbrä Marqos *Yärəst Mäzgäb*. One entry detailing the manumission of a slave gives an interesting account of a woman named Qäṭäro Wäldəya. According to the passage Qäṭäro Wäldəya was without children of her own and accordingly manumitted and adopted a slave she owned and received as a gift from *ase* Mənilək II (r. 1889-1913).[347] The entry goes on to state that Qäṭäro Wäldəya, by witness, announced all her property including land and cattle to be controlled and owned by her now former slave.[348]

The Passage aligns with the legal provisions on manumission and inheritance laid out in the *Fətḥa Nägäśt*. In chapter 42 of the *Fətḥa Nägäśt* there are extensive laws on succession

[346] Habtamu Mengistie Tegegne, "Land Tenure and Agrarian Social Structures in Ethiopia, 1636-1900," n. 121, p. 311.

[347] The charter does not indicate whether the enslaved individual is man or a woman. *Yärəst Mäzgäb*, Däbrä Marqos, picture #290 (Private Collection: Habtamu Mengistie Tegegne).

[348] *Yärəst Mäzgäb*, Däbrä Marqos, picture #290 (Private Collection: Habtamu Mengistie Tegegne).

including those that deal with enslaved persons. In the section which deals with the enslaved as well as the manumitted, the law establishes first that a slave cannot inherit or stand as heir to their master, unless the master establishes them as a rightful heir first.[349] The *Fətḥa Nägäśt* further elaborates on the assertion stating

> No one except his master can succeed him, because he is a thing belonging to his master… The estate left by the master cannot be assigned to the slave, because in the will the slave is an object belonging to the master.[350]

Accordingly, the provision in the *Fətḥa Nägäśt* indicates that the slave would have to move up in social class in order to inherit property from their master. If their status was that of a slave they were viewed as property that could be inherited, purchased and sold.

When examining the provisions in the *Fətḥa Nägäśt* alongside the case of Qäṭäro Wäldəya, many parallels are immediately apparent. First, Qäṭäro Wäldəya's slave could not have inherited had they not been manumitted first. The designation as property had to be removed before the enslaved individual would be able to inherit according to the law. Second, the *Fətḥa Nägäśt* further states that inheritance can only go to relatives of the deceased.[351] While manumission theoretically made the slave eligible to inherit, claiming a relation would provide a legal safety net should anyone contest the will. Accordingly, Qäṭäro Wäldəya's manumission of her slave created the eligibility while the adoption of the slave secured both the freedom of the enslaved and their right to inherit. Finally, the *Fətḥa Nägäśt* also dictates that the master cannot

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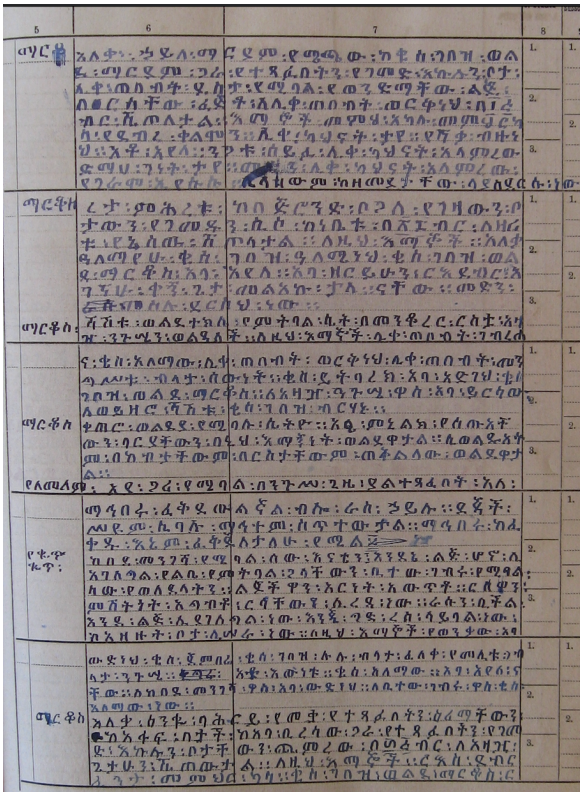
[349] Tzadua, *Fetha Nagast*, 245; *Fetha Negest.* [15th Century], British Library, EAP 432/1/132, picture #111, ff. 107v, c-108r, a.

[350] Tzadua, *Fetha Nagast*, 245; *Fetha Negest.* [15th Century], British Library, EAP 432/1/132, picture #111, ff. 107v, c-108r, a.

[351] Tzadua, *Fetha Nagast*, 245; *Fetha Negest.* [15th Century], British Library, EAP 432/1/132, picture #111, ff. 107v, c-108r, a.

manumit their slave and send them away without any material wealth.[352] These provisions in the law act as 'mechanisms for mobility' in that they encourage manumission, demand that the liberated receive material wealth, and create a pathway from their status as property to a property owner. Accordingly, Qäṭäro Wäldəya's manumission was true to the spirit and the letter of the law in the *Fəṭḥa Nägäśt*.

Picture # 6: Qäṭäro Wäldəya's manumission charter is the middle of the five paragraphs starting with the word "ቀተሮ" (Qätaro). *Yärəst Mäzgäb*, Däbrä Marqos, picture #290 (Private Collection: Habtamu Mengistie Tegegne).



This leaves the question, what were the possible motives behind Qäṭäro Wäldəya's adoption, manumission, and generous gift to her former slave? While we can only speculate,

[352] Tzadua, *Fetha Nagast*, 178; *Fetha Negest.* [15th Century], British Library, EAP 432/1/132, picture #88, ff. 85r, b.

there are several issues which may have factored into this decision. First, as previously mentioned, manumitting a slave is seen as great act of piety. Second, having no children of her own certainly factored in Qäṭäro Wäldəya's decision. The *Fətḥa Nägäśt* after all, dictates that should a person die without a legally recognized heir, all their property would go to the Church or to the royal treasury at which point her slave would be manumitted.[353] In addition, the process of adoption for individuals without heirs, served as a form of insurance for them in old age and in death. Some adoptions required individuals to remain with the adopted parent and take care of their physical needs as they grew old. Additionally, in death, the adopted individual would often bear the responsibility of taking care of the funeral expenses and organizing and celebrating the anniversary commemoration feasts for the departed.[354] The *Fətḥa Nägäśt* requires that "gravediggers be compensated," and that the yearly anniversary commemoration for the dead, should be accompanied by a feast and charitable works for the poor.[355] In like manner to our examination of *mämhər* Kənfä Mika'el 's case, Qäṭäro Wäldəya process of manumitting and leaving her property to her former slave is informed greatly by the laws contained in the *Fətḥa Nägäśt*.

The Will of *Mämhər* Kənfä Mika'el

[353] In the section on slavery, it states that if an individual dies without heir (except the Church or state) their slaves must be set free. In the section on succession, it states if a person dies without heir their property goes to the royal treasury unless the deceased was priest. In the case that the deceased had served as a priest, all their property would go to the Church he served, should he have no heirs. Tzadua, *Fetha Nagast*, 177, 246; *Fetha Negest.* [15th Century], British Library, EAP 432/1/132, picture #111, ff. 107v, c-108r, a; Richard Pankhurst, *A Social History of Ethiopia: The Northern and Central Highlands from Early Times to the Rise of Emperor Tewodros II* (Trenton: Red Sea Press, 1992), 64-65.

[354] Tegegne, "Land Tenure," 307.

[355] Tzadua, *Fetha Nagast*, 122-123.

The third case we will examine is also drawn from the Däbrä Marqos *Yärəst Mäzgäb* and reflects the abovementioned designation of enslaved human beings as property. While many wealthy slaveowners in this time period may have been motivated to manumit their slaves, many ignored both the government and religious motivations of piety and retained their human property. As previously mentioned, in terms of succession, slaves were not treated as free individuals but were instead designated as property. Under these provisions, slaves could not theoretically inherit property as they were counted as property and would have to first be manumitted.

This concept is also reflected in the Däbrä Marqos *Yärəst Mäzgäb.* In one entry, *mämhər* Kənfä Mika'el appears in the record again, as a slaveholder.[356] In the brief passage *mämhər* Kənfä Mika'el indicates that he wishes to include the son and successor of *nəguś* Täklä Haymanot, *ras* Haylu (1868-1950), as his heir.[357] He further states that he intends to bequeath his property and slaves to *ras* Haylu. The pious attitude of the previous case involving *mämhər* Kənfä Mika'el is clearly absent in this document. Not only does *mämhər* Kənfä Mika'el ignore the pressures from the central government, but also the pious encouragement of the *Fətḥa Nägäśt* where it describes the natural state of humans is to be free. In contrast he coolly describes his slaves alongside his property to be inherited by *ras* Haylu, in like manner to an individual inheriting a material object or a piece of land.

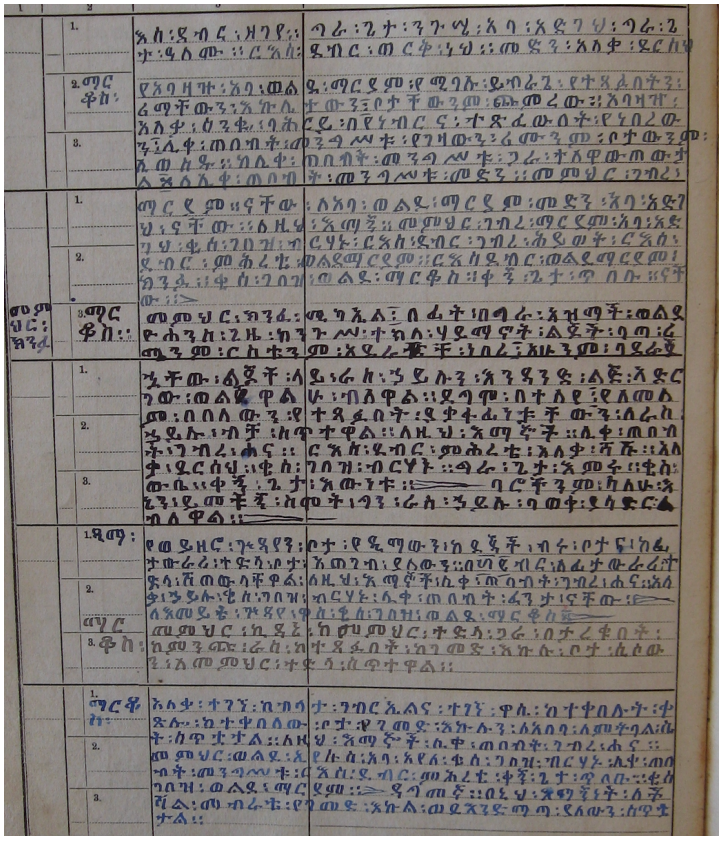
When comparing the earlier account of manumission with this will of inheritance, it seems likely that *mämhər* Kənfä Mika'el did not manumit all his slaves. The *Fətḥa Nägäśt* does not require a slaveholder to manumit all his slaves but leaves it at their discretion. It explains that

[356] *Yärəst Mäzgäb*, Däbrä Marqos, picture #291 (Private Collection: Habtamu Mengistie Tegegne).

[357] *Yärəst Mäzgäb*, Däbrä Marqos, picture #291 (Private Collection: Habtamu Mengistie Tegegne).

if a slave holder owned three slaves and manumitted only one, it was within their right to do so.[358]Accordingly, *mämhər* Kənfä Mika'el was by law, in his right to both manumit and retain some of his slaves and leave them as an inheritance for his heirs. Therefore, in manumitting some of his slaves in a public display of piety, and bequeathing some to an heir, his actions are aligned with the legal theory in the *Fətḥa Nägäśt* which gives him the exclusive right as a slaveowner to make these decisions.

Picture #8: *Nəguś* Täklä Haymanot's passage is the middle paragraph in bold black ink. *Yärəst Mäzgäb*, Däbrä Marqos, picture #291 (Private Collection: Habtamu Mengistie Tegegne)



[358] *Fetha Negest.* [15th Century], British Library, EAP 432/1/132, picture #111, f. 108r, ab; Tzadua, *Fetha Nagast*, 176.

These case studies reveal that, while slavery certainly had a protracted history in Christian Ethiopia, manumission likely did also. The norms of the institution in slavery in Ethiopia and the HOA fit well with the provisions in the *Fətḥa Nägäśt*. War was the primary means of enslaving people in the region among a variety of peoples, faiths, and geographical locations in the region. Arabs, Africans, Muslims, Christians, and more all participated in enslaving enemies and trafficking them in the commercial trade.[359] The legal theory in the *Fətḥa Nägäśt* provided the justification for what was generally the normal practice in the region prior to the adoption of the code. However, the law also encourages manumission, by declaring the natural state of humanity as free, and manumission an act of pious charity. The late nineteenth and twentieth century manumission charters affirm that manumission was a well-developed process by the time it was recorded in these written charters. The various legal scenarios recorded in the *Fətḥa Nägäśt* that deal with manumission are confirmed as greatly informing or directly influencing the process of manumission which developed in the centuries leading up to when written records became popularized.

Conclusion

What these few examples reveal is that contrary to some assertions the *Fətḥa Nägäśt* was indeed a foundational legal text in the organization of the Christian kingdom and its legal system. The direct references found in these case studies point out that the code was widely applied in important matters regulating the economics, finances, and the possession, transfer, and

[359] Tegegne, "The Edict of King Gälawdéwos," 94; Parallels in practice across socio-religious lines can be seen in that *šarī'a* Law directly aligns with the legal theory in the Fetha Nagast. *Šarī'a* Law asserts that "captivity [is] the only means by which slavery [can] come into existence," and the natural status of humans is that they are born free, and slavery is contingent. Wael B. Hallaq, *Sharī'a: Theory, Practice, Transformations* (New York: Cambridge University Press, 2009), 307 n. 59.

dispensing of various types of property, including enslaved humans. The legal language and procedure used in managing the institution of slavery were well developed over centuries by the time we reach the late nineteenth century. Detailed legal procedures, preserved in oral form over centuries are finally revealed with the development of keeping detailed records and charters. These charters provide a window into the social and legal life of Christian Ethiopia. The laws on slavery and manumission in the *Fəṭḥa Nägäśt* contain "mechanisms for mobility' which in theory allowed for slaves to move up in social status. The manumission charters provide concrete evidence that in practice, the enslaved could gain status and acquire land in some cases.

Furthermore, the evidence drawn from these case studies demonstrates that many areas of legal procedure were also influenced if not drawn directly from the *Fəṭḥa Nägäśt*. While much of the evidence does not come in the form of a direct reference, comparatively examining the cases alongside the *Fəṭḥa Nägäśt* often unveil much more than a simple direct reference to the code. Overall, what can be further drawn from these few examples is that there remains much work to be done in this field which can further our understanding of the legal systems in Christian Ethiopia as well as more on how the *Fəṭḥa Nägäśt* fits in.

Chapter 6: Conclusion

The central argument of this dissertation is that the *Fətḥa Nägäśt* was a central legal text in the organization and administration of the Ethiopian Christian kingdom, between the sixteenth and twentieth centuries. The prevailing literature on law in Ethiopia and Africa, in general, emphasize 'customary law' as dominating the legal landscape. This study has established that, in fact, the influence of the *Fətḥa Nägäśt* on law in the Christian kingdom was far-reaching, beyond what previous studies have asserted. My research has further provided a more useful framework to examine Ethiopian law in the Christian context, by deconstructing western concepts that place firm boundaries between so-called 'secular' and 'spiritual.' I offer instead the concept of *mänfäsawi wä'alämawəyat* ('of the spirit, and the world or flesh) which encapsulates the Ethiopian experience, where the 'secular' is informed by, and amalgamated with the religious or sacred.

In order to establish the importance of the *Fətḥa Nägäśt* in the legal landscape of Christian Ethiopia, clarifying the arrival of the text in the kingdom was utilized as a starting point. Accordingly, a variety of sources from Ethiopia, Egypt, Portugal and more, have provided strong evidence that the text was in Ethiopia, and in use by the early sixteenth century, at the latest. The hagiography of Ewosṭatewos, and the religious controversies during the reign of *aṣe* Zär'a Yaʿəqob push it back to an earlier date, possibly the early-fourteenth to early-fifteenth centuries. Over the next several centuries, the *Fətḥa Nägäśt* was integrated into the Ethiopian Christian legal tradition, through the indigenous school system, and novel interpretation methods. Lists of legal scholars known as *mämhəran* identify expert teachers and legal scholars trained in the study of *Fətḥa Nägäśt* from the late-fifteenth century. The list of these scholars and

their titles identify patterns of authority which are confirmed in primary source records, which detail the appointment of judges and legal advisors. Further, the tradition among the nobility to contribute greatly to the building of churches and the donation of texts, including the *Fətḥa Nägäśt*, in turn greatly influenced the spread of its influence on the regions outside the center.

The real achievement of this dissertation is in identifying strong evidence of the *Fətḥa Nägäśt* in practical application. The various legal records consulted here, reveal the various ways the *Fətḥa Nägäśt* informed the making of law and legal procedure. They further identify the intertwined nature of law in Christian Ethiopia, where 'secular' matters such as property, slavery, adoption, inheritance, and more, were informed by the Church, and spiritual matters such as the afterlife were considered when making legal contracts. Accordingly, this study fills a glaring gap in the literature on law in Ethiopia and Africa more broadly. Still, there remains a wealth of 'Medieval-Earl-Modern' Ethiopian source material, which present opportunities to expand our understanding, and comparatively analyze a law 'of spirit and flesh' in Christian Ethiopia.

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