

# FLAWED FORENSICS: MIAPHYSITES ON TRIAL IN THE COURTS OF JUSTIN II

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## ABSTRACT

John of Ephesus did not merely catalog events but employed stylistic and organizational techniques to contextualize and direct his narrative. This is made apparent by the presentation of a series of clerical trials in the first book of his *Ecclesiastical History*. The *Ecclesiastical History* should be understood as playing a complementary role to his *Lives of the Eastern Saints*. Where the latter work presented the charismatic credentials of miracle-working saint-ascetics, the former showed the institutional soundness of the miaphysite hierarchy. He demonstrated this negatively through a chaotic account of the legal practices of the Chalcedonians.

In the legal-ecclesiastical environment of the 6<sup>th</sup> century, a demonstration of flawed legal proceedings was an attack on the institutional legitimacy of the Chalcedonian church. It was the most viable challenge to Chalcedonian patriarchs John Scholasticus and Eutychius and their imperially sanctioned enforcement of union. By contrast, it strengthened the legitimacy of the embattled miaphysites. John of Ephesus sought to



phen in such poor conditions that he died in squalor. The Severans who buried him treated his body as that of a martyr, and by this treatment, made clear that they at least did not believe he had died of natural causes. With this opener, John of Ephesus directly confronted the perceived paradox of Christian persecution in a Christian empire.

The increasing symbiosis of the church and the law between the 4<sup>th</sup> and 6<sup>th</sup> centuries has been well documented in dedicated works such as Caroline Humfress' *Orthodoxy and the Courts in Late Antiquity* and, more recently, Mary Farag's *What Makes a Church Sacred?*.<sup>3</sup> Humfress states, for example, that the legal framing of heresy and orthodoxy "necessitated the legal categorization and systematization of religious belief itself."<sup>4</sup> Laws and legal thinking were not only impositions of state power as a means of church governance. Instead, they came also to be recognized internally as valid methods of a doctrinal definition. Beyond doctrine, the church adopted the systems and definitions of Roman law for its everyday functions. For example, Farag discusses the complicated history of the church's use of the classical juristic conception of *res sacra*. Despite some to-and-fro on the subject, the simultaneous processes of adoption by the church and imposition by imperial legislation of significant elements of an idea first formulated to govern the property of pre-Christian temples show the draw

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<sup>3</sup> Caroline Humfress, *Orthodoxy and the Courts in Late Antiquity*, (Oxford: Oxford University Press, 2007). Mary K. Farag, *What Makes a Church Sacred?: Legal and Ritual Perspectives from Late Antiquity* (University of California Press, 2021).

<sup>4</sup> Humfress, *Orthodoxy and the Courts in Late Antiquity*, 268.

and influence of Roman law on the church.<sup>5</sup> Such indeed was the closeness of the two institutions that it is rare for a work on one not to refer to the other.<sup>6</sup> The impact of imperial legislation upon the church should be and has been recognized as definitive in ecclesial-imperial relations.<sup>7</sup> However, the church was not only subject to legislation but also became a significant author of its own law. The creation of canons provided forensic blueprints against which orthodoxy and heterodoxy could be tested. It was increasingly a model of orthodoxy generated by legal means that individuals conformed to or fell short of. One example of this can be seen in the excommunication of Nestorius at the Council of Ephesus in 431. While the issues at stake were theological, the method, at least according to Nestorius, was forensic but flawed: “I was summoned by Cyril, who had assembled the Council [...]. Who was judge? Cyril. Who was the accuser? Cyril.”<sup>8</sup> Thomas Graumann rightly points out that Nestorius “expects his audience to recognize

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<sup>5</sup> Farag, *What Makes a Church Sacred? : Legal and Ritual Perspectives from Late Antiquity*, 46, 51.

<sup>6</sup> See, for example, the second section (of three) in Jill Harries and I. N. Wood, *The Theodosian Code: Studies in the Imperial Law of Late Antiquity*, 2<sup>nd</sup> ed., Bristol Classical Paperbacks (London: Bristol Classical Press, 2010).

<sup>7</sup> For an example of the importance of imperial intervention in general to orthodoxy, see: Philip Wood, *'We Have No King but Christ' : Christian Political Thought in Greater Syria on the Eve of the Arab Conquest (C.400-585)*, Oxford Studies in Byzantium (Oxford: Oxford University Press, 2010), 21.

<sup>8</sup> Nestorius, “The Bazaar of Heracleides,” ed. G. R. Driver and Leonard Hodgson (Oxford: Clarendon Press, 1925), 132.

[that proper procedure had been violated] and share his expectations of due process.”<sup>9</sup>

At the risk of generalization, the focus on formally necessary elements, determined by a legal intellectual context and shored up by knowledge of Roman law, was a regular feature of contested theology in Late Antiquity. However, as we shall encounter in John of Ephesus’ account, most concerns with this method were found not in the forensic form but in its misuse.

As they were contestable, trials were considered final only in a limited manner. The Council of Chalcedon of 451 ended neither the Christological debate, nor the existence of miaphysite clergy and their congregations. Indeed, John of Ephesus’ *Ecclesiastical History* was composed between 571 and 585, over one hundred years after the council. Of course, this is by no means the most enduring result of Chalcedon, but it does affirm the continuation of the dispute to some degree among bishops in the Roman Empire. Given the circumstance of this theological dispute, the *Ecclesiastical History* is partially an apologetic, which wrestles with the implications of being ruled outside the Chalcedonian church. Like Nestorius, John questioned the formal validity of the processes that confirmed the ruling against him and his fellow miaphysites, thereby questioning the legitimacy of the ruling itself. John’s interest in the formal aspects of legal definitions of orthodoxy and communion, from the exact procedures *of* and the necessary individuals *for* rulings of orthodoxy to the precise words to be used *in*

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<sup>9</sup> Thomas Graumann, "Council Proceedings and Juridical Process: The Cases of Aquileia (Ad 381) and Ephesus (Ad 431)" (*Studies in church history* 43 [2007]), 100.

ecclesiastical government, will be a central theme of this article.

However, John's focus on the above elements is not told to us explicitly but is rather a point made apparent by literary means. John has particularly shaped the first book of his history as an ever more outrageous catalog of abuses by Chalcedonian enforcers against miaphysite clerics. The effect is that the legal process and its misuse are brought to the reader's attention both by a statement of fact and by the manner of presentation. Thus, not merely by the cataloguing of the events themselves but also by the form of expression, we are encouraged to agree with John's assessment of the institutional validity of his church and fellow bishops and the corresponding invalidity of the Chalcedonians. Muriel Debié has encouraged the reading of Syriac historians as literary agents, but the focus of this agency has perhaps been too narrowly on their purposes in developing a cultural identity.<sup>10</sup> Besides questions of identity, if we are to properly appreciate the full range of purposes that motivated these authors, it remains undoubtedly important to consider the immediate practical purposes of Syriac historians. For this task, it is essential that we bear in mind their literary methods. An assessment of Tacitus' *Annals* that ignored his authorial decision to focus on legionary rebellions in the first book would not be able to explain the purpose of

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<sup>10</sup> Muriel Debié, *L'écriture De L'histoire En Syriaque : Transmissions Interculturelles Et Constructions Identitaires Entre Hellénisme Et Islam : Avec Des Répertoires Des Textes Historiographiques En Annexe*, Late Antique History and Religion ; Volume 12 (Leuven: Peeters, 2015). "Syriac Historiography and Identity Formation" (*CHRC* 89:1 [2009]), 94.

his text fully.<sup>11</sup> It would preclude any assessment of a potential disparity between his extensive treatment of the issue and the significance of the events. Thus, by failing to analyse his method, we would be in a weaker position to determine his purpose. Matters of literary form are undoubtedly crucial in an account of the literary agency of Tacitus as a historian. Attention to the structure of John's work in this essay seeks to continue the process of affording the same fulness of agency to Syriac historians.

The increasing entanglement of Roman legal and intra-ecclesial conflict resolution is typified in Justinian's novels, which frequently deal with matters of church government. While relying on canons as a source of evidence for right practice in ecclesiastical matters, they nevertheless produce their own normative statements in support of the canons' contents and the authority of canons as legally binding in ecclesiastical matters.<sup>12</sup> Altogether, the approach is not so much merely belt and braces, but indeed belt *as* braces and vice versa; canon law and secular law regulate the same things, and often refer to the authority of the other source in defence of their stipulations. Therefore, it is unsurprising that John of Ephesus was keen to

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<sup>11</sup> See e.g. F. R. D. Goodyear, *The Annals of Tacitus*, Cambridge Classical Texts and Commentaries 15, 23 (Cambridge: Cambridge University Press, 1972), 30. A. J. Woodman, "Mutiny and Madness: Tacitus "Annals" 1.16-49" (*Arethusa* 39:2 [2006]).

<sup>12</sup> The following three examples show three different relationships: 1) the regulation of clerics in a civic context, 2) the regulation of monastic rules themselves by the imperial government and 3) imperial support of internal canonical regulation. N. 3 (535) limits the number of clergy in the principal church of the city to 420. N. 5 (535) provides monastic regulation. N. 6 (535) states that the canonical regulation of ordination has the force of secular law.

document the ongoing legal and semi-legal processes that established orthodoxy in the Chalcedonian-miaphysite dispute. In such a context, the validity of either side's position was highly dependent on correct process.

John of Ephesus was not a disinterested third party in these proceedings but was personally involved in the trials, mediations, and reported injustices of the persecutions under Justin II and his successor Tiberius II. Raised in Amida's "eastern miaphysite monasticism," John claims that he led imperial missionary appointments in 542 under Justinian, which earned him the title "who is over the heathen" (ܩܕܝܫܐ ܕܥܠ ܗܝܬܐܝܢ) and "idol breaker" (ܩܕܝܫܐ ܕܩܝܕܐܝܢ), and was consecrated bishop of Ephesus in 558 by Jacob Baradaeus.<sup>13</sup> His two surviving works are his *Lives of the Eastern Saints* and the third part of his *Ecclesiastical History*. The former deals almost exclusively with the activities of miaphysite saints in the East, while the latter handles the later marginalization and persecution of the miaphysite hierarchies by Justinian's successors. John of Ephesus' fortune was varied. Under Justinian, he had been an important agent in the evangelistic mission in Anatolia. Under Justin II, he was an imprisoned and marginalized prelate whose position as bishop of Ephesus was now titular in the barest sense

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<sup>13</sup> Alexander Petrovich Dyakonov, *John of Ephesus and His Ecclesiastical-Historical Works* (Saint Petersburg: V. F. Kirschbaum, 1908), 5. For further background on John of Ephesus see Jeanne-Nicole Mellon Saint-Laurent, *Missionary Stories and the Formation of the Syriac Churches, Transformation of the Classical Heritage* 55 (Oakland, California: University of California Press, 2015), 72-79. *HEPT*, book 2, chapter 4; 58.



Despite the repetition of material within the work, and the author's admission of haste owing to the adverse conditions of persecution and imprisonment, John's handling of legal events and processes, things which had become the building blocks of orthodoxy, must be acknowledged to be extremely careful. Brooks' uncharitable characterization of John as "not a literary writer" should be reconsidered.<sup>15</sup> John structured his history to present increasingly chaotic and informal proceedings in the reign of Justin II against the miaphysites. Thus, he undermined the forensic process of orthodoxy and the strong contemporary position of the Chalcedonians by calling into question the validity of their formally irregular activities. He thereby sought to justify in his work the refusal of miaphysite clergy to accept the council of Chalcedon and its enforcement by rendering the legal practices of its proponents suspect.

However, this aim must be refined a little further. John of Ephesus' administrative roles in the 540s and his high degree of education make it seem certain that he could have written his history in Greek. Debié has written that, through his appointments and education, John had "un hellénisme parfaitement assimilé."<sup>16</sup> Given then that he wrote in Syriac, his purpose could not have been to persuade the Chalcedonian population of Constantinople of his position. Rather, the work

<sup>15</sup> John of Ephesus, *Lives*, PO 17.1, xii.

<sup>16</sup> Debié, *L'écriture De L'histoire En Syriaque*, 441.



of Michael Rabo for lost material, although, as Brooks admits, “since he abbreviated his source in this part, it offers almost nothing for the correction of the text.”<sup>20</sup> This very compact manuscript tradition justifies the continued use of Cureton’s careful transcription of the principal manuscript. His greater attention to the dots assists reading, mainly due to the large number of Greek loanwords in the text.

The work as a whole was divided into three sections, which were in turn subdivided into books. Although the first two sections of the text, which covered all history from Adam to Justinian I, are largely missing, except as quotation in later chroniclers, the third part in six books, which handles contemporary events, remains largely intact. Although the text of this third section is incomplete, John’s structural efforts can still be seen in books one and two of the extant text. These are marked as a unified production by a self-conscious restart at the outset of book three. The dating undertaken by Cureton and presented in the preface to his edition offers *termini post quos* based on the events of the narrative, which, although given as dates of composition, by no means preclude the alternative suggested above, namely that books one and two were composed together before book 3.<sup>21</sup> The internal dating puts book one after 581 and book two after 577. Given that the two books seem to have been composed together but that the first deals with later events, these dates alone, which demonstrate a non-chronological approach to his subject matter, argue for John’s deliberate presentation of material. Books 3-6 will be largely excluded, firstly because they are not the product of the

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<sup>20</sup> Brooks, *HEPT - Textus*, iii.

<sup>21</sup> *Ibid.*, vi.

same effort as the first two books, and secondly because their concern moves away from trial scenes. It would be unfair to allow the disruptive circumstances of John's life, which caused his history to be written piecemeal, to give a falsely disrupted sense of his work. This would be false in that when circumstances allowed and John wrote continuously, such as in books 1 and 2, his writing was not marked by "some confusion in his narrative, some repetitions, and apparent contradictions" but instead demonstrates structural and thematic coherency.<sup>22</sup>

### THE MIAPHYSITE CHURCH UNDER JUSTINIAN

It is worth briefly surveying the legal treatment of miaphysites under Justinian and Theodora so that the changed circumstances under Justin II can be better appreciated. Muriel Debié calls John "simultaneously the victim, the witness, and the whistleblower" of the Justinianic persecution.<sup>23</sup> Van Ginkel writes that the primary consideration for inclusion in the *Lives of the Eastern Saints* was the demonstration of steadfastness in the face of Chalcedonian persecution.<sup>24</sup> Indeed, the reality of the Justinianic persecution is borne out in Menze's study of the attack on the heart of the miaphysite movement in the monasteries and Justinianic legislation against the ownership and production of miaphysite texts.<sup>25</sup> The "obvious patronage," as Alexander Dyakonov put it, of Justinian's rule seems to have

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<sup>22</sup> Ibid., vi.

<sup>23</sup> Muriel Debié, "Du Grec En Syriac : La Transmission Du Récit De La Prise D'amid (502) Dans L'historiographie Byzantine" (*Byzantinische Zeitschrift* 96:2 [2004]), 606.

<sup>24</sup> J. van Ginkel, "John of Ephesus: A Monophysite Historian in Sixth-Century Byzantium" (Rijksuniversiteit Groningen, 1995), 41, 44.

<sup>25</sup> Menze, *Justinian and the Making of the Syrian Orthodox Church*, 135.

been received principally by John himself.<sup>26</sup> In his dealings with the miaphysite hierarchy concerning their Christology, Justinian is unequivocal. As early as 536, Justinian's Novel 42 declared anathema on Severus of Antioch and other members of his party under the charge of contravention of the canons of Chalcedon. The punishment demanded was deposition from their episcopal seats, internal exile, and the repossession of property: "*expellere vero sancimus eos de civitatibus ab eis turbatis ... [constitutiones] et domos ipsas in quibus tale aliquid agitur et praedia ex quibus alimenta ministrantur sanctissimis ecclesiis assignant.*"<sup>27</sup> Justinian's *Tractatus contra Monophysitas* of 542/3 is equally damning. The unity of the church is described as a requirement of both reason and charity (τοῦ λογισμοῦ καὶ τῆς χάριτος), and, if any doubt remained concerning who threatened this unity, a series of eleven anathemas were appended, including "Εἰ τις οὐχ ὁμολογεῖ δύο φύσεις τῆς θεότητος καὶ τῆς ἀνθρωπότητος εἰς μίαν ὑπόστασιν συνδραμεῖν ... ἀνάθεμα ἔστω."<sup>28</sup> Justinian actively sought both practically and theologically to undermine the miaphysites for the better part of his reign. Despite this, John is somewhat ambivalent about Justinian's emperorship. John

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<sup>26</sup> Dyakonov, *John of Ephesus*, 5. "явное покровительство". For an account of John's use of these imperial funds see Debié, *L'écriture De L'histoire En Syriaque*, 137.

<sup>27</sup> N. 42.3 (536) (We declare that they certainly be expelled from the cities they have troubled ... and (our) constitutions designate to the most holy churches the very houses themselves in which [the heresies of Severus or Nestorius were preached] and the farms from which they supplied food).

<sup>28</sup> PG 86.1, 1103 B; 1143-4 (If anyone does not accept that two natures, of divinity and of humanity, came together into one person (hypostasis) ... let him be anathema).

likewise defends Tiberius II as Caesar, documenting his rebuke of the patriarch John Scholasticus for persecuting the miaphysites upon his admission that “they are not pagans... neither, my lord, are they heretics” (ܐܝܢ ܕܥܪܐ ... ܥܡܝܬܝܢ ܕܥܪܐ ܥܡܝܬܝܢ ܕܥܪܐ), a sentiment later echoed by the emperor Maurice.<sup>29</sup>

An explanation for John’s even-handedness might be found in the fact that Justinian’s position is perhaps a little less clear cut than the harsh measures of Novel 42 suggest. Hamilcar Alivisatos suggested that the strictness of the measures of Novel 42 might have been necessitated as an indication of good-will to Rome: “Justinian war aber nicht nur Theologe, sondern auch Kaiser ... Wäre die Synode und das Edikt von 536 nicht gekommen, so wäre gleich nach dem ersten (acacianischen) Schisma ein zweites mit Rom dagewesen”.<sup>30</sup> Michail Grazianskij has more recently divided Justinian’s religious policy into four distinct phases, and argues that in each instance, Justinian balanced contemporary political considerations with his theological intentions. Thus, for example, he has likewise characterized the early period of Justinian’s reign (532-536) by both a sensitivity to the position of the Roman church following the Acacian schism and the continued need to reconcile the miaphysites.<sup>31</sup> As an example of the complex

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<sup>29</sup> *HEPT*, book 1, chapter 37, 47.

<sup>30</sup> Hamilcar Spyridonos Alivisatos, *Die Kirchliche Gesetzgebung Des Kaisers Justinian I*, Neue Studien Zur Gesch. D. Theol. U. D. Kirche 17 (Berlin: Trowitzsch & Sohn, 1913), 26.

<sup>31</sup> Michael V. Grazianskij, “Kaiser Justinian Und Das Erbe Des Konzils Von Chalkedon” (Franz Steiner Verlag, 2021), 170. A similar account of how the 6<sup>th</sup> century emperors were attentive to both eastern and western

relationship, Grazianskij considers the appointment of Anthimus as the patriarch of Constantinople. Formerly, this appointment has generally been thought of as either an example of Justinian's shrewd ecclesiastical politics or the result of Theodora's interference. Grazianskij argues that a reassessment of the sources rules out the latter option.<sup>32</sup> If we suppose that Justinian exclusively favoured the Chalcedonians, then Anthimus' appointment had little to commend it. Anthimus' translation from Trebizond rendered his position in Constantinople canonically suspect, and he favoured compromise over total Chalcedonian victory. He was, therefore, neither legally nor doctrinally bulletproof from a Chalcedonian perspective. Grazianskij proposes that this was deliberate. It provided Justinian with the possibility of the reconciliation of the parties around a mutually agreed position and with an easy, non-doctrinal reason for his deposition should the negotiations fail.<sup>33</sup>

For our current purposes, two conclusions should be drawn from this. Firstly, it demonstrates the practically-oriented ambivalence of Justinian's policy. John may have harboured hope of future favour if the miaphysites could provide a reasonable path to unity. Secondly, it again demonstrates the (ab)use of legal mechanisms in the church disputes of the 6<sup>th</sup> century.

Nevertheless, however justified his position might have seemed through a practical consideration of recent history, it

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problems can be found in Averil Cameron, "The Early Religious Policies of Justin II" (*Studies in Church History* 13 [1976]).

<sup>32</sup> Grazianskij, "Kaiser Justinian Und Das Erbe Des Konzils Von Chalkedon," 182.

<sup>33</sup> *Ibid.*, 184.





An ideological consideration is necessary, given John's personal experience of persecution, imprisonment, and destitution. In other words, given that John frequently suffered at the hands of the emperors, we must ask why he was so positive about them. Indeed, when detailing the supposed demonic possession of Justin II at the beginning of book three, John explicitly stated that his earlier circumlocution of the issue throughout the second book was out of loyalty to the imperial office: "So that it not be considered as if for the shame or disgrace of the high institution of kingship" ( **ἵνα μὴ θεωρηθῇ ὡς ἐκ τῆς αἰσχρῆς καὶ ἐνδοξοῦς βασιλικῆς ἐκείνης**).<sup>40</sup> This is further evidence of John's hope to preserve the reputation and position of the earthly king, and suggests that his assessment of the imperial institution is positive by default. Van Ginkel has argued that the *Ecclesiastical History's* complex process of composition can explain John's sometimes inconsistent approach to his imperial subjects: "When writing during the life

<sup>40</sup> *HEPT*, book 3, chapter 1, 120.

of Justin II, John blamed most of the evil deeds of his reign on his advisors. But in chapters written after his death, the emperor is held fully responsible and justly punished (mental derangement) to save him from a worse fate.”<sup>41</sup>

Even so, his generally positive account of the institution merits further attention. Following Hartmut Leppin, we might consider the nature of John’s literary activity. Leppin has described the *Ecclesiastical History* as “a variant of Greek Christian historiography as it developed in the late antique Roman Empire.”<sup>42</sup> This is, in a sense, unsurprising. Greek was the language of ecclesiastical history writing. It seems likely that John’s adaption of this genre for a Syriac-language work was nevertheless a significant choice. While considerations of the audience might explain his choice of language, his choice of genre is remains best described as a product of his cultural *Romanitas*. Leppin’s description of John’s pro-Roman account as the product of a writer “attached” to the empire is undoubtedly correct, but it needs further substantiation.<sup>43</sup> John’s reliance on the methods of ‘legal orthodoxy’ is the backdrop to his account of the trial scenes, which will form the subject of the main argument of this article. Leppin’s account of John’s Roman viewpoint will be strengthened by showing his invest-

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<sup>41</sup> J. van Ginkel, “John of Ephesus on Emperors: The Perception of the Byzantine Empire by a Monophysite,” (*Orientalia Christiana Analecta* 247 [1994]), 330.

<sup>42</sup> Leppin, “The Roman Empire in John of Ephesus’ Church History: A Romano-Syriac’s Perspective” 131. A similar view is found in van Ginkel, “John of Ephesus on Emperors: The Perception of the Byzantine Empire by a Monophysite”, 331.

<sup>43</sup> Leppin, “The Roman Empire in John of Ephesus’ Church History: A Romano-Syriac’s Perspective”, 125.



latter. John's continued hope for the rehabilitation of the emperor is the explanation for this difference in approach. Alternatively, we might understand Paul's antagonism towards Rome as a particularly unwelcome criticism of the imperial family. In that case, this could be explained by his complex relations with Athanasius, his opponent in Alexandria, and a descendant of Empress Theodora.<sup>47</sup>

However, John saw emperors as essentially good and interested in the truth (ܐܝܬܐ). In a passage referenced above, Tiberius began his interrogation of Patriarch John Scholasticus with "I want the truth" (ܐܝܬܐ ܐܢܐ ܐܚܝܬܐ). Even concerning events as shocking, and possibly open to hysterical treatment, as an apparent sacrifice to Zeus uncovered at Edessa in 579 following an investigation into Paganism at the behest of Tiberius, the emperor established a court to uncover "the truth of the matter" (ܐܝܬܐ ܡܝܬܐ), rather than show trials.<sup>48</sup> In this instance, the emperor is introduced as the "merciful emperor" (ܡܠܟܐ ܚܝܬܐ), but in a turn of events parallel to John's own case, the emperor's negligence of the affairs of justice led to injustice, corruption, bribery, and finally, a massive riot.<sup>49</sup> Despite the emperor's ultimate responsibility, the blame is laid squarely with lower officials, many of whom John believed guilty of paganism themselves. Although they are not equated explicitly with the Chalcedonian party, John noted the location of the trial to create a link between this miscarriage of justice and Chalcedonian theology: "and [the appointed judg-

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<sup>47</sup> Marianna Mazzola, "Bar 'Ebroyo's Ecclesiastical History: Writing Church History in the 13<sup>th</sup> Century Middle East" (Université Paris sciences et lettres; Universiteit Gent, 2018), 241.

<sup>48</sup> *HEPT*, book 3, chapter 30; 159.

<sup>49</sup> *HEPT*, book 3, chapter 31; 159–163.

es] were sitting and examining the matter in the great palace  
of the kingdom that was called Placidia for many days” (ἡμεῖς  
καθήμενοι ἐν τῇ βασιλείᾳ τῆς βασιλίσσης Πλακιδίας πολλὰ  
καιρὰ διεξέτατον).<sup>50</sup> The Palace of Placidia  
was the home of the papal apocrisiarius (at the time, the fu-  
ture pope Gregory the Great). This is a subtle but definite indi-  
cation by John of where he saw the problem.

In John's case, rather than the emperor, it is the Chalcedonian clergy who are charged explicitly with deceit, perjury, and breaking oaths: "promises of deceit and oaths of falsehood of those against us; we know that there is no truth with them" ( $\text{ἡμεῖς οὐκ ὀμνῶμεν τοῖς ἐναντίοις ὑμῶν ψευδῆ καὶ ἀπαρνήσασθαι τὰς ἐλπίδας αὐτῶν}$ ).<sup>51</sup> Therefore, it is unsurprising that earlier ecclesiastical struggles are framed as created by hostile clerics, not the emperor himself. In the life of Z'ura, Pope Agapetus (another inhabitant of the Palace of Placidia) bears the brunt of John's ill will for his attempted use of force in bringing Z'ura to court. John's holy man makes clear that the outrage is two-fold, seamlessly joining canon and private law. Agapetus' demand cannot be met during their current observance of a fast, and his forcible removal would involve trespass on private property donated by Theodora.<sup>52</sup> This case shows that John saw both the perpetrators of the persecution and their illicit methods as similar under Justinian and Justin. He stressed in Z'ura's life, as he would throughout the *Ecclesiastical History*, the formal irregularities in the behaviour of the Chalcedonians and their lack of respect for due process. However, by keeping

<sup>50</sup> *HEPT*, book 3, chapter 30; 159.

<sup>51</sup> *HEPT*, book 1, chapter 22; 29.

<sup>52</sup> John of Ephesus, *Lives*, PO 17.1, 27–28.

the focus on truth in his presentation of legal proceedings, John equally realizes a tension between courts as an accepted instrument for the discovery of the truth and their frequent failure to do so. In contrast to the unfavorable view of Chalcedonian clerics, John's presentation of the imperial hierarchy is, if not balanced, at least complex.

### THE BIBLICAL FRAMEWORK OF THE *ECCLESIASTICAL HISTORY*

John presented court cases with dynamism and created a rapidly developing narrative. This narrative licence is one of the primary indications that John's history is best understood less as a chronicle of events and more as a political *apologia*. Below, this will provide the bulk of the material for analysing John's use of literary structure to defend his church. However, it is thematically situated in an overarching biblical and eschatological structure that frames the court cases.

Although, as mentioned above, the very beginning of the Third Part of John's work is no longer extant, the first few lines of the remaining text set up this biblical framework. The following analysis is an impressionistic rather than exhaustive demonstration of John's skill as a literary historian in that it makes no claims to exhaust his use of scriptural framing. The beginning of the text, as it remains, is dense with quotations from Matthew's Gospel, which are deployed non-sequentially and drawn from across the book. Matthew 4 moves into Mathew 24 before an extended quotation from Matthew 10, which places the court proceedings documented above explicitly in the Biblical context of persecution: "Beware of people

delivering you to the courts and in their synagogues you will be beaten and you will be brought before governors and kings for my sake as a witness for them and the Gentiles.”<sup>53</sup> John is clear that this is precisely what is taking place in his own time by capping the quotation with “We are already seeing these things clearly.” Equally striking is John’s omission of the end of verse 22, “but he that endures to the end shall be saved”, choosing to remove any silver lining from his bleak narrative of earthly persecution.

However, John does not settle for this concluding exegesis and omission but is prepared to add to the biblical text. His quotation of Matthew 24, which follows Christ’s declaration of the end times and the second coming, matches the Peshitta except for a final added participle (ܡܪܝܢ) which enlivens the quotations to the present time of writing: “when you see all these things *which are* [now]” (ܡܪܝܢ ܕܗܝ ܗܝܬܝܢ ܕܡܪܝܢ ܕܗܝܬܝܢ ܕܡܪܝܢ).<sup>54</sup> Although so much of John’s evidence is uncorroborated and frequently demands a suspension of disbelief, an awareness of John’s historiographical framework allows the text to be approached with specific caution. John not only presented his miaphysite history within the context of biblical persecution but also employed literary manipulation for added immediacy. The cases John presented frequently contribute explicitly to the realization of his biblical eschatology, either by participating typologically in the biblical narrative or serving simply as evidence of the present end times. To appreciate the cumulative impact of John’s structural development, the cases will be handled sequentially, following his order. The

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<sup>53</sup> *HEPT*, book 1, chapter 3; 3 cf. Matt 10:17–18.

<sup>54</sup> *HEPT*, book 1, chapter 3; 3 cf. Matt 24:33.

examples are laid out below in tabular form for quick reference.

MIAPHYSITES ON TRIAL

Defendant	Prosecutor	Judge <sup>55</sup>	Place in work
Stephen the presbyter	mob	prefect	Book 1, chapter 9
Paul of Asia	John Scholasticus	-	Book 1, chapter 14
Elisha of Sardes	John Scholasticus	-	Book 1, chapter 15
Stephan of Cyprus	John Scholasticus	Justin II	Book 1, chapter 16
John of Ephesus, Paul of Antioch, Stephan of Cyprus, Elisha of Sardes	John Scholasticus	John Scholasticus, afterwards the senate and	Book 1, chapters 24, 27-29

<sup>55</sup> Note the lone ecclesiastical figure. The lack of named Chalcedonian prelates, the roles of lay officials, and the considerable involvement of John Scholasticus may be intended to compare unfavorably with the trial by gathered peers documented at the ecumenical councils. Artur Steinwenter noted the aspirational correspondence of ecclesiastical process to the Gospel and Pauline injunctions on Christian conflict resolution: Artur Steinwenter, "Der Antike Kirchliche Rechtsgang Und Seine Quellen," (*Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Kanonistische Abteilung* 23:1 [1934]), 3. Nevertheless, the councils (including Ephesus II) displayed a variety of lay and ecclesiastic leadership. The emphasis, as will be developed later, is rather on John Scholasticus' particular overreach than an error of form in this respect. The erroneous impression is certainly given by this list that the miaphysite majority was under persecution from a tiny number of influential Chalcedonians. For details of presidency and trials at the councils see Richard Price, "Presidency and Procedure at the Early Ecumenical Councils" (*Annuario Historiae Conciliorum* 41:2 [2009]).





In the cases of Paul of Asia, the miaphysite bishop of Aphrodisias, and Elisha of Sardes, John Scholasticus is the instigator of both prosecutions, actively seeking the bishops from their monasteries where each “was sat in his monastery in peace” (ܩܥܡ ܕܗܘ ܒܥܠܝܐ ܡܢ ܡܢܚܝܬܐ), bringing them to Constantinople as the patriarch’s captives, “and he imprisoned them in the bishop’s own house” (ܡܠܝܬܐ ܕܡܢܚܝܬܐ ܕܡܢܚܝܬܐ ܕܡܢܚܝܬܐ), to impose new holy orders on them.<sup>57</sup> Paul’s acquiescence under compulsion to the patriarch’s desire to have him ordained a second time elicits ridicule from his clerics who “were calling him ‘double dunked!’” (ܡܬܕܝܬܐ ܕܡܢܚܝܬܐ ܡܠ ܩܥܡ ܕܡܢܚܝܬܐ ܡܠ ܩܥܡ ܕܡܢܚܝܬܐ), whereas Elisha’s resistance is met with exile and monastic relocation.<sup>58</sup> Neither of these makes any pretense to being a legally proper action. No judge or charge is specified. Instead, these cases build momentum concerning the illegal actions and depraved character of John Scholasticus.

The contrast can be drawn out by a comparison of the events here, and of Paul (and John’s own) ordination by miaphysite clergy in John’s *Lives of James and Theodore*. Here, the ordinations described of miaphysite clergy were performed “according to the sense of the canons” (ܕܡܬܥܝܢ ܕܡܬܥܝܢ), and John informs us that James (Jacob Baradaeus) performed these ordinations “with the rest the bishops” (ܕܡܬܥܝܢ ܕܡܬܥܝܢ).<sup>59</sup> However, we might be able to detect here some of John’s sleight of hand. We are told in the *Lives* that James and Theodore “made bishops for the countries of Egypt according to the command of the blessed patriarch Theodosi-

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<sup>57</sup> *HEPT*, book 1, chapter 14; 14.

<sup>58</sup> *Ibid.*

<sup>59</sup> John of Ephesus, *Lives*, *PO* 19.2, 156, 158.

us” (መመገብ ለቤተ ጳጳሳዊ ወላጅነት ማስገባት  
 ለመገኘት ለቤተ ጳጳሳዊ).<sup>60</sup> This certainly legitimized their  
 actions in Egypt, but John is notably silent on their ecclesiasti-  
 cal authorization to ordain in Asia. One explanation for John’s  
 insistent focus on the canonical legitimacy of his fellow bish-  
 ops in the *Ecclesiastical History* might therefore be an aware-  
 ness that they were particularly vulnerable to accusations in  
 this area. This might further explain John’s  
 (mis)representation of John Scholasticus’ somewhat unbeliev-  
 ably forceful and capricious approach in these trials.

The significance of Elisha’s relocation is made amply clear  
 by Justinian’s 5<sup>th</sup> novel, in which it is written that monks who  
 leave their monasteries either for the outside world or another  
 monastery must leave all their property with the monastery:  
 “*substantia maneat et vindicetur a priori monasterio*.”<sup>61</sup> This  
 punishment, therefore, not only disrupted miaphysite net-  
 works, but also stripped the miaphysite leaders of their means.  
 Conversely, the clerical ridicule Paul received for accepting  
 reordination serves as the *vox ecclesiae* protesting uncanonical  
 measures and alerting the reader to unlawful actions. John  
 Scholasticus’ two supposed motives are made explicit in the  
 cases of Elisha and Paul: pecuniary advantage and a sheer de-  
 sire for outrage.

However, Elisha’s punishment is perhaps not as harsh as  
 John makes it seem. Elisha was relocated from Beth Dios (ቤተ  
 ዳዮስ) to Beth Abraham (ቤተ ሉዊስ). Beth Dios was a monas-  
 tery of the pro-Roman and Chalcedonian Acoemetæ. By con-

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<sup>60</sup> Ibid., 157.

<sup>61</sup> N. 5.7 (535) (Let their property remain and let it be vindicated by their  
 former monastery).

trast, it seems that Beth Abraham was possibly founded on premises gifted to John of Ephesus by the chamberlain Callinicus.<sup>62</sup> The relocation is, therefore, a case of miaphysite containment rather than isolation. This calls into question John's earlier claim that the bishops were dwelling peacefully in their monasteries and instead suggests, as in the case of Stephen, that militant miaphysism was being addressed and contained by the Chalcedonians. Indeed, although an illness accompanies the relocation, this is not described as the intended consequence, something John is quite happy to heavily imply in Stephen's case. The distinct methods and implications of the persecutions are already apparent. While the first case of Stephen the presbyter provides a grassroots denunciation working its way toward the ecclesiastical hierarchy, the second cases show the far-reaching influence of the Constantinopolitan patriarch in enforcing his orthodoxy. John thus provides a Caiaphas and a mob to condemn the Christlike miaphysite clergy. As noted above, the similarity is certainly intentional. Even in the similar punishments inflicted, the differentiation of the harsh treatment rendered to presbyters and bishops is striking; the conflict over Stephen the presbyter's corpse contrasts somewhat sharply with Elisha's enforced retirement. Nevertheless, John's structure has highlighted two propositions to which these initial examples should lead us. Firstly, he stresses the possibility of the misuse of judicial mechanisms, and secondly, he proposes John Scholasticus' predisposition to engage in such conduct.

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<sup>62</sup> Susan Ashbrook Harvey, *Asceticism and Society in Crisis: John of Ephesus and the Lives of the Eastern Saints*, Transformation of the Classical Heritage (Berkeley: University of California Press, 1990), 29.

The extraordinary presence of the emperor encourages an extraordinary narrative and outcome in John's third case. The treatment of Stephan, bishop of Cyprus, dismisses any idea of episcopal deference. John again invokes *Acts* when he describes Stephan's Pauline recovery after the violence of the *excubitores* (ܡܚܬܝܒܝܢ): "he revived as if from amongst the dead" (ܡܬܝܠ ܡܬܝܬ ܡܪܝܚ).<sup>63</sup> John Scholasticus is recorded as having sent an armed force to Plataea, where Stephan had been banished, to compel him through violence to enter communion with the patriarch. Stephan's speeches to the patriarch and the emperor in Constantinople concerning proposed reordinations reveal specific concerns. While his speech to the patriarch focuses on the theological inconsistency of reperforming sacramental baptism and ordination, his speech to the emperor relies on persuasion by canonical inaccuracy:

Woe! Christianity has died, all the statutes of the church of the Christians are corrupted (ܡܬܬܝܠ ܡܬܝܬ ܡܪܝܚ) all statutes and all canons of the church of God are confused, muddled and corrupted. What is this unlawful impiety that the priesthood of Orthodox Christians is abrogated by those who are now in power, and ordained afresh elsewhere? It has been twenty years since I, though unworthy, was ordained a bishop by the orthodox in accordance with the canons under Theodosius of Alexandria.<sup>64</sup>

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<sup>63</sup> *HEPT*, book 1, chapter 16; 16 cf. Acts 14:19.

<sup>64</sup> *Ibid.*



Justin sides wholly with the miaphysites in defence of single ordinations saying of John Scholasticus' initiatives: "In truth, this is evil and without law and outside all the canon of the church" (ⲕⲁⲧⲁ ⲙⲁ ⲉⲓ ⲛⲁⲗⲁ ⲛⲁⲩⲁⲛⲁ ⲛⲁⲩⲁⲛⲁ ⲛⲁⲩⲁⲛⲁ ⲛⲁⲩⲁⲛⲁ ⲛⲁⲩⲁⲛⲁ).<sup>68</sup> We are therefore told that Stephan received a favourable ruling within a context of *persecutio renovata* by appealing to the canonicity of his holy orders. In his account, John has, for the time being, obscured the Christological controversy in favour of more technical questions. By temporarily dividing theological and legal orthodoxy, John enabled a miaphysite victory in an imperial context. This encourages a more nuanced approach to miaphysism as a legally defined heresy in Justin's empire. If, as this example demonstrates, matters of ecclesiastical organization within canon law could be settled in favour of a miaphysite and against the patriarch of Constantinople, 'the orthodox' were defined as much in legal rulings on the canonicity of practical questions of authority and competencies as they were by doctrinal statements. Stephan had submitted to communion with the "Syn-

<sup>67</sup> Denis Feissel, "Pétitions Aux Empereurs Et Formes Du Rescrit" in *La Pétition En Byzance*, ed. Jean Gascou Denis Feissel (Paris: Peeters, 2004), 41.

<sup>68</sup> *HEPT*, book 1, chapter 16; 18.





[illegible]

<sup>72</sup> *HEPT*, book 1, chapter 12; 12.

Given what I will argue is a deliberately chaotic set of legal proceedings, it is worth briefly outlining for the sake of clarity the events in question, and the series of disagreements and the concomitant legal proceedings to which they led. It also seems prudent to lay out in more detail the normal legal options open to a plaintiff in the 6<sup>th</sup> century. After this, we will have the best viewpoint from which to see how John of Ephesus created his crescendo of flawed forensics. It is worth mentioning from the outset that the legal methods which will be discussed are those proper to 'secular' law rather than ecclesiastical law. It may therefore seem that their use here is not appropriate to the nature of the dispute, namely a matter of church order between the emperor, the patriarch of Constantinople, and a group of bishops rather than a single defendant. Nevertheless, the conclusion of the episode in a trial before the senate and a magistrate encourages us to blur the lines. Furthermore, these will be used as types not of the precise methods of restitution, but rather of the various processes which were certainly recognisable to citizens. As Steinwenter noted, there is no reason to doubt extremely close interactions between "state" and ecclesiastic legal procedure.<sup>73</sup> John of Ephesus presented accounts of subverted mediation, arbitration, and adjudication as touchstones of legal process for his readers.

### THE NARRATIVE OF JOHN'S TRIAL

The first part of the dispute between John Scholasticus and the miaphysite bishops whom he had imprisoned in Constantinople, including John of Ephesus, took the form of a letter in

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<sup>73</sup> Steinwenter, "Der Antike Kirchliche Rechtsgang Und Seine Quellen" 6.

<sup>75</sup> *HEPT*, book 1, chapter 17; 19.



of a “quaternity” (ܩܘܩܬܝܢܐ).<sup>77</sup> This first attempt by the two parties to settle their differences without a third party was unsuccessful.

After further descriptions of the lawlessness of the patriarch, John introduced the emperor’s role in their case for the first time. This takes the form of Justin submitting to the miaphysite bishops an edict of union, complete with doctrinal statements, which he apparently encouraged them to edit as they saw fit to ensure its orthodoxy. The whole episode has the character of Roman arbitration. We see a third party acting as an interlocutor between two groups, proposing and counter-proposing solutions which he hopes will satisfy both parties. Importantly, the Roman arbitrator did not act as a judge, nor were his suggestions binding, unless oaths were sworn by the two parties agreeing to the terms.<sup>78</sup> Had his intervention been

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<sup>77</sup> HEPT, book 1, chapter 18; 20. The criticism of a Chalcedonian doctrine of ‘quaternity’ is also found in John of Tella’s *Profession of Faith*. See Volker L. Menze and Kutlu Akalin, *John of Tella’s “Profession of Faith”: The Legacy of a Sixth-Century Syrian Orthodox Bishop*, Texts from Christian Late Antiquity (Piscataway, NJ: Gorgias Press, 2009), 49. That this was a popular criticism is testified to by Justinian’s *Tractatus Contra Monophysitas*: “Οὐτε γὰρ τετάρτου προσώπου προσθήκην ἐπιδέχεται ἡ ἁγία Τριάς ... καὶ οὐκ ἄλλον τὸν Θεὸν Λόγον καὶ ἄλλον τὸν Χριστὸν ἐπιστάμεθα, ἀλλ’ ἓνα καὶ τὸν αὐτὸν Θεὸν Λόγον Κύριον Ἰησοῦν Χριστὸν ὁμολογοῦμεν.” (Nor does the Holy Trinity take on the addition of a fourth person ... and we do not know one “God the Word” and another Christ, but we accept one and the same God the Word the Lord Jesus Christ.) PG. 86.1, 1107, C

<sup>78</sup> Caroline Humfress, “Law and Legal Practice in the Age of Justinian” in *The Cambridge Companion to the Age of Justinian*, ed. Michael Maas (Cambridge University Press, 2005), 180. Leanne Bablitz, “Roman Courts and Private Arbitration” in *The Oxford Handbook of Roman Law and Society*, ed. Paul J. du Plessis, Clifford Ando, and Kaius Tuori, Oxford Handbooks (Oxford: Oxford University Press, 2016), 236.

intended as the final word, it is unlikely that John and the other bishops would have been able to continue the contest in official channels. Zeno's *Henotikon*, an earlier example of a joint production of emperor and patriarch, might provide an example of how the emperor could have acted if this first intervention had been meant to bind.<sup>79</sup> Of course, we are again dealing with John's presentation of events. It is possible that Justin and John Scholasticus fully intended for this proposal of unity to bind the miaphysites. John nevertheless presented this as part of an ongoing discussion and negotiation.

This point is highly significant. Following the counterproposals of the Chalcedonian faction, John and his fellow miaphysite bishops were unwilling to agree to the edict.<sup>80</sup> John made what he considered the likely duplicity of the Chalcedonians the chief reason for the miaphysite refusal to agree to the new terms, and in doing so, he was keen to show that he and the other bishops had not walked away from the negotiating table.<sup>81</sup> Again, this makes sense if the episode is understood as an exercise in imperial arbitration. A willingness to remain in negotiations with 'Synodites' is not obviously desirable for John's relationship with his audience unless there was something to be gained from the discussions.

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<sup>79</sup> Henry Chadwick, "Zeno's *Henotikon*, Rome's Fury, and the Acacian Schism: Dionysius Exiguus," in *East and West: The Making of a Rift in the Church: From Apostolic Times until the Council of Florence*, (Oxford University Press, 2003), 50.

<sup>80</sup> *HEPT*, book 1, chapter 20; 27.

<sup>81</sup> *HEPT*, book 1, chapter 22; 29 (The untrustworthiness of the Chalcedonian party's oaths was implicitly contrasted with the oaths of the miaphysite party, which, once given in good faith, were abused by the patriarch).

[illegible]

The second part of John's trial saw an unexpected return from the patriarch's court to the former, extra-curial process highlighted above. A personal letter from the emperor to the

<sup>82</sup> *HEPT*, book 1, chapter 23; 29–30.

<sup>83</sup> Ibid; 30.

<sup>84</sup> For further discussion of this model “show trial” for the miaphysites, see Price, “Presidency and Procedure at the Early Ecumenical Councils,” 252–254.





contrasting sharply with the plight of the imprisoned bishops, the significance of John's presentation of events is twofold. The emperor undermined the process of mediation by proceeding to act immediately on the advice of only one of the parties which had the freedom to approach him, and more strikingly, his role in the proceedings shifted quickly to the distinct position of adjudicator. Justin's next step in summoning the two parties before the senate and a magistrate (the quaestor) as *iudices*, (ἰαδικῆς καὶ ἀποκριταῖς) marks the beginning of formal litigation after ineffectual and half-hearted attempts at an extra-curial solution.<sup>88</sup> It is also importantly distinct from John Scholasticus' ecclesiastical court. Whereas this second mediation or possible imperial arbitration was a bargaining process, seeking a compromise between the two parties, adjudication and the subsequent *iudicium* decided unreservedly for either party. John's inclusion of the earlier deceit of the Chalcedonians in enticing the miaphysite bishops to communion aims to demonstrate why *prima facie* the move to the public proceedings of the adjudication was preferable. Under the formal *litis contestatio*, the process would be public and open to scrutiny. The underhanded machinations attributed to the Chalcedonians by John would not be possible in such circumstances. We have been led to expect by John's focus on canonicity that, if properly conducted, formal and thorough legal proceedings would favour the miaphysites.

Given however that in the present case the senate decided wholeheartedly against the miaphysites, John sought to undermine this public and binding *iudicium* by recording irregularities in the process. Not only does John present the legal sta-

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<sup>88</sup> *HEPT*, book 1, chapter 29; 39.



violent removal of the bishops from court: “they ordered that they should be violently dragged from before them” (ܡܠܟܐ ܕܡܢ ܕܡܠܟܐ ܕܡܢ ܕܡܠܟܐ ܕܡܢ ܕܡܠܟܐ). This court room violence provides a third point of judicial irregularity. The confused legal process and the following show trial create overwhelming sympathy for the miaphysite position. However, this incident equally forms part of John’s presentation of eschatology, for the author himself has been brought before “governors and kings for my sake”.<sup>91</sup> The clear schematic of imperial judge, miaphysite defendant, and Chalcedonian prosecutor which was evident in the first three cases has given way to a foiled mediation, patriarchal machinations, and an unjust trial. The movement from order to chaos is striking.

The rest of John’s extant history moves away from the specifically forensic scenes treated above. It is reasonable to suppose that this change of focus is a deliberate choice as John moves from a Roman and ecclesiastical context, to first the treatment of lay miaphysites, and then persecution outside the empire under the Sassanians. With the guise of legality cast off, future clerical persecutions would make no claims to any kind of legal process. The cupidity and overreach of John Scholasticus still loom large in the narrative, but the persecution of the priests Andrew and two Sergii was mob action undertaken through treachery and violence “in the likeness of Judas” (ܕܡܠܟܐ ܕܡܢ ܕܡܠܟܐ).<sup>92</sup> The account of the Sassanian persecution which follows is notable because it lays the blame for the occurrences in Persia directly on the irregular Roman example:

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<sup>91</sup> Matt 10:18.

<sup>92</sup> *HEPT*, book 2, chapter 13; 75.

When the Magians and princes of the Persians learnt that by the commandment and will of the king of the Romans, all persons, in every land and city of his dominions, were required to conform themselves and come over to his faith; and that such as refused and were disobedient to his will and commandment, were by his orders persecuted and imprisoned, and their goods spoiled, and finally delivered up even to death; 'lo!' said they, 'in all the dominions of the Romans these things are now being done, and it is but just for us also to do the same in all our dominions, and convert to our own religion all other religions within our realm'.<sup>93</sup>

It is surely an attack on the institutional propriety of the Roman actions to appose so closely the persecutorial actions of the Persian king. Roman judges sat like Christians, but in practice had judged the servants of God in an exemplary manner for Persian pagans.

### CONCLUSION

John's carefully structured presentation of trials, law, and lawlessness in the *Ecclesiastical History* serves principally to undermine the practice of these once sure determiners of orthodoxy and justify the miaphysite position outside the legal orthodoxy of the Chalcedonian Church. He employs a Biblical eschatological decline narrative as special pleading for a group which found itself on the wrong side of the institutions which

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<sup>93</sup> *HEPT*, book 2, chapter 18; 80, trans. Robert Payne Smith (Oxford: Oxford University Press, 1860).

had come to hold central importance in defining orthodoxy. By his presentation of events in order of their legal irregularity rather than strict chronology, John causes his reader to focus on the institutional errors of the Chalcedonian church. He thereby systematically undermined the intention, the process, and the outcome of the legal proceedings against the miaphysites to exculpate himself and his co-confessionals. The glimmer of hope and imperial indulgence of the earliest trials demonstrate John's belief that forensic orthodoxy, if undertaken correctly and pervaded with truth, could deliver for the miaphysites. In all the above cases, there is a marked absence of supernatural assistance for the miaphysites. The stress on the institutional validity of *his* miaphysite position (if only by contrast with the lawlessness of the Chalcedonians) serves to make the *Ecclesiastical History* a companion volume to the charismatic authority of holy men in his *Lives of the Eastern Saints*. In order to demonstrate this institutional authority, John of Ephesus was compelled to demonstrate fraud, lawlessness, and wilfulness in the process of the Chalcedonians. In the legal-ecclesiastical environment of the 6<sup>th</sup> century, a demonstration of flawed forensics was the most viable challenge to John Scholasticus and Eutychius in their imperially sanctioned enforcement of union.

## BIBLIOGRAPHY

### Primary Sources

- Brooks, E. W., ed. *Lives of the Eastern Saints: John of Ephesus* Vol. 17, *Patrologia Orientalis*. Paris: Firmin-Didot, 1923.
- , ed. *Lives of the Eastern Saints: John of Ephesus* Vol. 19, *Patrologia Orientalis*. Paris: Firmin-Didot, 1926.

Cureton, William, ed. *The Third Part of the Ecclesiastical History of John, Bishop of Ephesus*. Oxford: University Press, 1853.

John of Ephesus. *Historiae Ecclesiasticae Pars Tertia - Textus*. CSCO. Paris: Typographeus Reipublicae, 1935.

Justinian. "Corpus Iuris Civilis, Vol.3: Novellae." edited by R. Schoell and G. Kroll. Dublin: Weidmann, 1972.

Nestorius. "The Bazaar of Heracleides." edited by G. R. Driver and Leonard Hodgson. Oxford: Clarendon Press, 1925.

Schwartz, Edward, ed. *Acta Conciliorum Oecumenicorum* Vol. 1. Berlin: Walter de Gruyter & co., 1933.

Payne-Smith, Robert, trans. "The Third Part of the Ecclesiastical History of John, Bishop of Ephesus." Oxford: Oxford University Press, 1860.

#### Secondary Sources

Alivisatos, Hamilcar Spyridonos. *Die Kirchliche Gesetzgebung Des Kaisers Justinian I*. Neue Studien Zur Gesch. D. Theol. U. D. Kirche 17. Berlin: Trowitzsch & Sohn, 1913.

Ashbrook Harvey, Susan. *Asceticism and Society in Crisis : John of Ephesus and the Lives of the Eastern Saints*. Transformation of the Classical Heritage. Berkeley: University of California Press, 1990.

Bablitz, Leanne. "Roman Courts and Private Arbitration." In *The Oxford Handbook of Roman Law and Society*, edited by Paul J. du Plessis, Clifford Ando and Kaius Tuori. Oxford Handbooks. Oxford: Oxford University Press, 2016.

Booth, Philip. "Towards the Coptic Church: The Making of the Severan Episcopate." *Millennium* 14 (2018).

- Cameron, Averil. "Early Byzantine Kaiserkritik: Two Case Histories." *Byz. mod. Greek stud* 3, no. 1 (1977): 1-17.
- . "The Early Religious Policies of Justin II" *Studies in church history* 13 (1976): 51-67.
- Chadwick, Henry. "Zeno's Henotikon, Rome's Fury, and the Acacian Schism: Dionysius Exiguus." In *East and West: The Making of a Rift in the Church: From Apostolic Times until the Council of Florence*, 50-54: Oxford University Press, 2003.
- Debié, Muriel. *L'écriture De L'histoire En Syriaque : Transmissions Interculturelles Et Constructions Identitaires Entre Hellénisme Et Islam : Avec Des Répertoires Des Textes Historiographiques En Annexe*. Late Antique History and Religion ; Volume 12. Leuven: Peeters, 2015.
- . "Du Grec En Syriaque : La Transmission Du Récit De La Prise D'amid (502) Dans L'historiographie Byzantine." *Byzantinische Zeitschrift* 96:2 (2004): 601-22.
- . "Syriac Historiography and Identity Formation." *CHRC* 89:1 (2009): 93-114.
- Dyakonov, Alexander Petrovich. *John of Ephesus and His Ecclesiastical-Historical Works*. Saint Petersburg: V. F. Kirschbaum, 1908.
- Farang, Mary K. *What Makes a Church Sacred? : Legal and Ritual Perspectives from Late Antiquity*. University of California Press, 2021.
- Feissel, Denis. "Pétitions Aux Empereurs Et Formes Du Rescrit." In *La Pétition En Byzance*, edited by Jean Gascou Denis Feissel, 33-52. Paris: Peeters, 2004.

- Goodyear, F. R. D. *The Annals of Tacitus*, Cambridge Classical Texts and Commentaries 15, 23 (Cambridge: Cambridge University Press, 1972).
- Graumann, Thomas. "Council Proceedings and Juridical Process: The Cases of Aquileia (Ad 381) and Ephesus (Ad 431)." *Studies in church history* 43 (2007): 100-13.
- Grazianskij, Michael V. "Kaiser Justinian Und Das Erbe Des Konzils Von Chalkedon." Franz Steiner Verlag, 2021.
- Harries, Jill, and I. N. Wood. *The Theodosian Code: Studies in the Imperial Law of Late Antiquity*. Bristol Classical Paperbacks. 2nd ed. London: Bristol Classical Press, 2010.
- Humfress, Caroline. "Law and Legal Practice in the Age of Justinian." Chap. 7 In *The Cambridge Companion to the Age of Justinian*, edited by Michael Maas, 161-84. Cambridge: Cambridge University Press, 2005.
- . *Orthodoxy and the Courts in Late Antiquity*. Oxford: Oxford University Press, 2007.
- Leppin, Hartmut. "The Roman Empire in John of Ephesus' Church History: A Romano-Syriac's Perspective." In *Historiography and Space in Late Antiquity*, edited by Peter van Nuffelen. Cambridge: Cambridge University Press, 2019.
- Mazzola, Marianna. "Bar 'Ebroyo's Ecclesiastical History: Writing Church History in the 13th Century Middle East." Université Paris sciences et lettres; Universiteit Gent, 2018.
- Menze, Volker L. *Justinian and the Making of the Syrian Orthodox Church*. Oxford Early Christian Studies. Oxford: Oxford University Press, 2008.



- Menze, Volker L., and Kutlu Akalin. *John of Tella's "Profession of Faith": The Legacy of a Sixth-Century Syrian Orthodox Bishop*. Texts from Christian Late Antiquity. Piscataway, NJ: Gorgias Press, 2009.
- Price, Richard. "Presidency and Procedure at the Early Ecumenical Councils." *Annuaire Historiae Conciliorum* 41:2 (2009): 241-74.
- Saint-Laurent, Jeanne-Nicole Mellon. *Missionary Stories and the Formation of the Syriac Churches*. Transformation of the Classical Heritage ; 55. Oakland, California: University of California Press, 2015.
- Steinwenter, Artur. "Der Antike Kirchliche Rechtsgang Und Seine Quellen." *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Kanonistische Abteilung* 23:1 (1934): 1-116.
- van Ginkel, J. "John of Ephesus : A Monophysite Historian in Sixth-Century Byzantium." Rijksuniversiteit Groningen, 1995.
- . "John of Ephesus on Emperors: The Perception of the Byzantine Empire by a Monophysite." *Orientalia Christiana Analecta* 247 (1994): 323-33.
- Wood, Philip. "The Idea of Freedom in the Writings of Non-Chalcedonian Christians in the Fifth and Sixth Centuries." *History of European ideas* 44:6 (2018): 774-94.
- . *'We Have No King but Christ': Christian Political Thought in Greater Syria on the Eve of the Arab Conquest (C.400-585)*. Oxford Studies in Byzantium. Oxford: Oxford University Press, 2010.
- Woodman, A. J. "Mutiny and Madness: Tacitus "Annals" 1.16-49." *Arethusa* 39:2 (2006): 303-29.