DEFINING BOUNDARIES IN AL-ANDALUS

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MUSLIMS, CHRISTIANS, AND JEWS IN ISLAMIC IBERIA

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To Dan and Anna

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Introduction

In 711 Tariq ibn Ziyad, the Berber conqueror of al-Andalus, and his warriors landed at Gibraltar. Legend has it that the prophet Muhammad appeared to Tariq as he slept onboard the vessel that carried him across the straits from the northern tip of Africa to the southern promontory of the Iberian Peninsula. The Prophet, leading a ghostly host of his companions from Mecca and Medina, armed with swords and bows, greeted Tariq and enjoined him to go forward in his mission. At the end of the voyage Tariq awoke and told his men of the portentous dream that he believed augured well.[1]

This story relates the arrival of Islam in al-Andalus in a tenth-century narrative of the Arab and Berber conquest of the peninsula and history of Umayyad rule. In a few sentences, an expedition that may have started out as a raiding party acquires retrospective historical and religious significance. The dream affirms that the conquest of the peninsula was divinely guided and that the conquerors claimed the land for Islam. The author of the narrative, Ibn al-Qutiyya (d. 977), and his audience were no doubt confident

1. Ibn al-Qutiyya, *Ta'rikh iftitah al-Andalus (Historia de la conquista de España de Abenalcotía el Cordobés)*, ed. and trans. (into Spanish) Julián Ribera (Madrid: Revista Archivos, 1926), Arabic, 8; Spanish, 6; English translation, David James, *Early Islamic Spain: The "History" of Ibn al-Qutiya* (London: Routledge, 2009), 52 (English translations are my own unless otherwise indicated).

of the enduring continuity of Muslim rule and the primacy of Islam. Ibn al-Qutiyya was grounded in the history he related; he proudly traced his origins to a marriage arranged three generations earlier by the Umayyad caliph in Damascus between a client of his, ʿIsa ibn Muzahim, and Sara, a granddaughter of the Visigothic king Witiza. The son of a judge and himself a scholar who had studied with some of the prominent Andalusi jurists of his day, as well as a historian and highly regarded grammarian, Ibn al-Qutiyya was also certainly aware that the establishment of Islam in al-Andalus was a project of generations.

One of Ibn al-Qutiyya's students, Ibn al-Faradi (d. 1013), wrote a biographical dictionary of Andalusi religious scholars (*ʿulamāʾ*), organizing alphabetically the leading lights of generations of Islamic learning in the peninsula.[2] Most of his entries are about scholars who lived in the ninth and tenth centuries (including contemporaries) and testify how Andalusi scholars avidly pursued and promoted learning, traveling to study and consult with scholars abroad, primarily in the Maghrib, the Hijaz, and Egypt, and cultivating Islamic scholarship at home. Andalusi jurists of the ninth and tenth centuries, in fact, participated in a transregional, multigenerational discourse that drove the development of one of the major Sunni traditions or "schools" of law, the Maliki *madhhab*, as the following abridged example illustrates. ʿAbd al-Malik ibn Habib (d. 853), a member of a council of jurists in Cordoba and a legal scholar, added his opinion to a series of interpretations of the legal meaning and implications of a statement attributed to the second caliph, ʿUmar ibn al-Khattab (r. 634–644). ʿUmar's rule from Medina encompassed recently conquered lands beyond the Arabian Peninsula with predominantly Christian populations, and he reportedly said, "I disapprove of entering churches and prayer in them." Ibn Habib takes up a line of interpretation that begins with Malik ibn Anas's (c. 711–795) disapproval of Muslims entering and praying in churches for reasons of purity (noting the floor where unclean Christians tread) and the Qayrawani jurist Sahnun ibn Saʿid's (d. 854) position that whoever prays in a church should repeat the prayer, just as a Muslim who prays wearing Christian cloth (or clothes) should do. Ibn Habib asserts that a Muslim should always repeat prayer performed in a church if he prays without using a clean floor covering, just as one who prays on an unclean spot of ground or in unclean clothes should do, and he dispenses with qualifications having to do with circum-

2. Ibn al-Faradi, *Taʾrikh ʿulamaʾ al-Andalus*, ed. Bashar ʿAwad Maʿrouf (Tunis: Dar al-Gharb al-Islami, 2008).

stances (such as whether the actor acted out of necessity and whether the actor knew the place was unclean).[3]

The discourse presented here in brief is part of a more extended ramification of legal implications and qualifications starting from this one statement (another line of interpretation is that ʿUmar disapproved because of the images or icons in churches). The reader may be struck by the way the elaboration of opinion includes accommodation of prayer in churches (with a clean floor covering), given the original statement and its symbolic potency, but perhaps not surprised if he or she follows the given line of legal reasoning. The question that comes to mind is how the legal discourse related to practice. Generally speaking, the discourse on prayer in churches exemplifies how jurists dedicated a great deal of attention to matters of ritual purity, including consideration of various forms of contact and contexts of interaction with the non-Muslims among whom they lived. The discourse may also have had more specific practical relevance. Muslims purportedly shared the churches of St. John in Damascus and St. Vincent in Cordoba with Christians before the erection of congregational mosques on their sites; perhaps jurists thus addressed past practices. Jurists also discussed prayer in abandoned or ruined churches, which were not uncommonly turned into mosques. Andalusi jurists of the ninth and tenth centuries under the aegis of Umayyad rule engaged in the development of the Maliki madhhab as part of the process of defining Islam in their local context, a context of religious and ethnic diversity and social and cultural change. This process is the subject of inquiry of *Defining Boundaries*. Tariq's crossing in 711 and the Muslim conquest of al-Andalus that followed were the first steps toward the establishment of Umayyad rule and preliminary to the development of Islam in Iberia.

The history of the Iberian Peninsula in the medieval period offers numerous examples of regimes founded by conquest and ruling over conquered populations made up of different faiths and cultures. Careful and detailed studies of the Christian kingdoms of Iberia have shed light on the status and circumstances of Muslims and Jews under Christian rule and of

3. Ibn Rushd (al-Jadd), *al-Bayan wa-l-tahsil wa-l-sharh wa-l-tawjih wa-l-ta'lil fi masa'il al-Mustakhraja*, ed. Muhammad Hajji (Beirut: Dar al-Gharb al-Islami, 1984–1987), 2:225–226; the characterization of Ibn Habib's opinion follows Ibn Rushd. See Sahnun ibn Saʿid, *al-Mudawwana al-kubra l-il-imam Malik* (Beirut: Dar Sadir, 1997), 1:90–91, and Ibn Abi Zayd al-Qayrawani, *al-Nawadir wa-l-ziyadat*, ed. ʿAbd al-Fattah Muhammad al-Hulw et al. (Beirut: Dar al-Gharb al-Islami, 1999), 1:219–223, for varied reports of the opinions of these jurists about this subject and further development of the discourse. Legal discourse about ritual purity/impurity will be discussed in chapter 3.

patterns, structures, and shifts in intercommunal relations.[4] In every case the conquered population posed challenges not only for security and administration but also for political ideology, social status, and religious identity, and not only in the immediate postconquest era but also throughout the history of the regime. Political and religious leaders and local communities of Christians, Muslims, and Jews continuously adapted to shifts in political, economic, social, and cultural conditions in ways that in turn affected intercommunal relations.

A book about Islamic rule over Christians and Jews in medieval Iberia requires a distinctive approach. Islamic rule over Christians and Jews in Umayyad al-Andalus (756–1013) and intercommunal relations cannot be examined from the kind of archival base that is available to historians of the Christian kingdoms. In fact, no archival records exist, and it is not possible to develop a comparably dense and historically refined study. The political history of Umayyad al-Andalus has been constructed by a number of historians from a corpus of Andalusi and Maghribi narratives, but the relationship of the regime to the Christian and Jewish communities under its rule can be viewed only dimly from scattered evidence in the Arabic-Islamic literary sources. Scholarship centered on the Christian (Mozarab) communities has been constrained by the small number and parochial view of the Latin literary sources from the period, although work on Arabic writing by Christians in this period and later opens another avenue for understanding Christian culture under Islamic rule and situates the history of the Christian communities of al-Andalus more fully in the Islamic context.[5] Jewish sources are largely post-Umayyad; the modern historiography of the Jews in al-Andalus essentially begins in the tenth century with the Jewish courtier

4. See, for example, Mark D. Meyerson, *The Muslims of Valencia in the Age of Fernando and Isabel: Between Coexistence and Crusade* (Berkeley: University of California Press, 1991); David Coleman, *Creating Christian Granada: Society and Religious Culture in an Old-World Frontier City, 1492–1600* (Ithaca, NY: Cornell University Press, 2003); and Brian A. Catlos, *Victors and the Vanquished: Christians and Muslims of Catalonia and Aragon, 1050–1300* (Cambridge: Cambridge University Press, 2004). On the changes of the thirteenth century, see Teofilo F. Ruiz, *From Heaven to Earth: The Reordering of Castilian Society, 1150–1350* (Princeton, NJ: Princeton University Press, 2004); and Jonathan Ray, *The Sephardic Frontier: The* Reconquista *and the Jewish Community in Medieval Iberia* (Ithaca, NY: Cornell University Press, 2006). See in addition two interesting studies about how subjected populations preserved their identity and protected their interests: Elka Klein, *Jews, Christian Society, and Royal Power in Medieval Barcelona* (Ann Arbor: University of Michigan Press, 2006); and Kathryn A. Miller, *Guardians of Islam* (New York: Columbia University Press, 2008).

5. Cyrille Aillet, *Les mozarabes: Christianisme, islamisation et arabisation en péninsule ibérique (ix^e–xii^e siécle)* (Madrid: Casa de Velázquez, 2010).

Hasday ibn Shaprut.[6] Given the lack of documentary evidence and the limitations of the literary sources, my interest in Umayyad rule over Christians and Jews led me to turn to early Andalusi and Maghribi Maliki legal texts (primarily from the ninth and tenth centuries) for evidence that could contribute to a fuller picture of social life in al-Andalus in the period.[7] The texts include considerable casuistic discourse about relations between Muslims and *dhimmī*s ("protected persons"—People of the Book, such as Christians and Jews, living under Muslim rule) and about how to negotiate a common physical and social environment. The nature of the texts prompted my decision to focus on law as a boundary-making mechanism and investigate the recursive relationship between the legal discourse and trends of social differentiation and cultural change in al-Andalus in the ninth and tenth centuries.

At the heart of this book, then, is an experiment in interpretation of Islamic legal texts as sources for understanding intercommunal relations in a specific legal and historical context. My approach to the texts, as to the book, reflects a necessary adaptation to quantitative and qualitative problems of evidence. I will discuss the legal evidence and navigation of its limitations in more specific terms later in this introduction, but first I need to acknowledge the fact that the nature of the evidence imposes a (mostly) one-sided orientation to law as boundary making. We may be able to discuss the conceptualization, the expression, and (sometimes) the imposition of boundaries by rulers, judges, and jurists, but we have very little evidence about how ordinary Muslims, Christians, and Jews understood identity and community or recognized boundaries and symbolized them for themselves in their everyday interactions. Some of what Anthony Giddens calls the "duality of structure"—the dynamic interplay of structure and agency —remains hidden from view.[8] The sources record legal opinions discussed and affirmed by

6. David J. Wasserstein reflects on the lack of archival evidence to study Jews and Jewish culture in al-Andalus before the "Golden Age": "We know too little, and are not likely ever to know much more, of that dark age of two and a half centuries between the [Muslim] conquest and the middle of the tenth century." Wasserstein, "The Muslims and the Golden Age of the Jews in al-Andalus," *Israel Oriental Studies* 17 (1997): 184.

7. "Identity and Differentiation in Ninth-Century al-Andalus" developed out of my interest in intercommunal relations and the use of legal sources. Some of the issues and evidence discussed in that article appear in fuller development and context in the first three chapters of this book; see Janina M. Safran, "Identity and Differentiation in Ninth-Century al-Andalus," *Speculum* 76 (2001): 573–598.

8. The "duality of structure" is central to Anthony Giddens's theory of structuration, describing the interrelationship between structure and agency. See his definition and discussion, for example, in *The Constitution of Society* (Berkeley: University of California Press, 1984), 25–28.

jurists and some of the legal decisions pronounced by judges and acted on by rulers, but we know very little about how individuals and collectivities (Muslim and non-Muslim) situated and reproduced opinions and decisions across space and time. This book explores boundary testing as a mechanism for both the transmutation and the continuity of regular social practices, but more often than not boundary testers appear in the sources as archetypes rather than as individuals with names, and even when we have names, we have very little more. The relationship between rules and daily practice may be glimpsed from some of the evidence, but to a great degree we must understand the relevance of legal opinion to lived experience from the perspective of rulers, judges, and jurists and in theoretical terms.

Jewish legal sources might deepen our contextual understanding of the interplay of structure and agency if there were enough material to demonstrate how the Jewish community in the circumstances of Islamic rule and Muslim boundary making in al-Andalus defined, maintained, and tested boundaries in this period; this book will draw on some limited evidence of individual Jews using the Islamic legal system. Although the oldest extant Iberian halakhic writing dates to the eleventh century and is largely beyond the time frame of this book, scholarship based on material from the treasure trove salvaged from a synagogue repository known as the Cairo Geniza, including legal texts, illuminates many aspects of Jewish life in the Islamic world, and interesting work is still forthcoming.[9] Gideon Libson's study of halakhic literature, including responsa issued by the gaons (leaders of the Jewish academies) of Babylonia (Iraq) between the seventh and eleventh centuries (the geonic period), provides insight into how Jewish law was adapted to the circumstances and interests of Jewish society and its religious leadership in the Islamic world in a process that he argues was influenced by the system of Islamic law.[10] He observes that the gaons accommodated Jewish law, sometimes diverging from the Talmud, with reference to custom as part of an effort not

9. See Eliav Shochetman, "Jewish Law in Spain and the Halakhic Activity of Its Scholars before 1300," in *An Introduction to the History and Sources of Jewish Law*, ed. N. S. Hecht, B. S. Jackson, S. M. Passamaneck, D. Piatelli, and A. M. Rabello (Oxford: Clarendon Press, 1996), 271–298. Marina Rustow's book *Heresy and the Politics of Community: The Jews of the Fatimid Caliphate* (Ithaca, NY: Cornell University Press, 2008), for example, uses documents from the Cairo Geniza to develop a sophisticated history of the Qaraite and Rabbanite (Babylonian and Palestinian) communities in Egypt in the tenth and eleventh centuries grounded in the politics of the Fatimid regime.

10. Gideon Libson, *Jewish and Islamic Law: A Comparative Study of Custom during the Geonic Period* (Cambridge, MA: Harvard University Press, 2003). For an overview of the legal sources, biographies of select gaons, and characteristic features of the law of the geonic period, see Libson, "Halakhah and Law in the Period of the Geonim," in Hecht et al., *Introduction to the History and Sources of Jewish Law*, 197–250.

only to facilitate interaction with non-Jews in the courts of rulers and in Islamic courts of law, in commerce, and in shared neighborhoods but also to protect Jewish autonomy and to deter conversion to Islam. Libson's work provides an overview of Jewish legal boundary making in a context of economic, social, and cultural change across the Jewish diaspora under Muslim rule (albeit without special attention to al-Andalus) and another perspective on boundary making as a process that involves accommodation and the shifting of markers.

Uriel Simonsohn examines Christian (eastern and western Syrian) legal sources (canonical treatises and acts of synodical assemblies) and Jewish geonic responsa in the same time frame in his inquiry into the negotiation of justice in the context of legal pluralism that prevailed in the Islamic world. His book *A Common Justice: The Legal Allegiances of Christians and Jews in Early Islam* demonstrates how ecclesiastical and Rabbanate leaders promoted judicial exclusivity in a variety of ways but also allowed for recourse to Islamic courts in certain specific circumstances.[11] Simonsohn challenges the conventional representation of the legal autonomy of the Christian and Jewish communities under Muslim rule as idealized—too close to the corporate perspective of the religious elites.[12] *Common Justice* and *Defining Boundaries*, from different perspectives, both approach legal stipulations, judgments, and discourse as evidence of efforts by political and religious elites to protect communal boundaries, acting in tension with a complexity of social networks, personal bonds, and competing sources of authority.

In the Andalusi context the evidence for Christian boundary making in the Umayyad period is scant and derives from literary rather than legal sources, but it is suggestive and has been incorporated into my analysis.[13] One reads and might speculate about, for example, the development of monasteries like Tabanos in the early ninth century as a response to Muslim rule and to changes in Christian society. The most compelling evidence of the controversies among the Christian leadership over the status of the church and the safeguarding of the Christian community and faith under Muslim rule comes

11. Uriel I. Simonsohn, *A Common Justice: The Legal Allegiances of Christians and Jews under Early Islam* (Philadelphia: University of Pennsylvania Press, 2011).

12. See also Rustow, *Heresy and the Politics of Community*, 67–108, for a detailed discussion of the notion and the limits of autonomy in the Egyptian context.

13. No church, monastic, or Christian communal archival material exists for the Umayyad period, and the practice of law in the Christian community is a cipher. The extant evidence generated by the Christian community is material and literary. For a study of literary evidence in this period that constitutes what the author describes as "a series of brief lives of a small cast of characters, which deepen our understanding of the situation of the christians in al-Andalus," see Ann Christys, *Christians in al-Andalus (711–1000)* (Richmond, Surrey: Curzon Press, 2002).

from the ninth-century martyrologies of Eulogius and Paul Albar. The writings of Eulogius and Albar and the events they describe challenge boundaries and reflect divisions among Christians. The evidence in Arabic texts of Christian participation in revolts against the Umayyad regime describes another form of boundary testing.

The background for understanding the structuring of Islamic rule over non-Muslims and the boundary making of legal-religious scholars in al-Andalus is in part external to the circumstances of the Iberian Peninsula. The historical definition of the Muslim self in relation to the non-Muslim other begins with the foundational period of Islam, identified with the revelation of the Qur'an and the mission of the Prophet in the years between 610 and 632 of the common era. It is true enough to say that from its origins Islam has been defined in relation to Judaism and Christianity. The Qur'an conveys a history of revelation to humankind that commemorates God's covenant with Abraham and the mission of the prophets who followed, including, most prominently, Moses and Jesus. The revelation to Muhammad was fundamentally the reiteration of the call to recognize the one God and be mindful of the Judgment Day. At the same time, the Qur'an and the instruction of the Prophet present Islam as the true calling for a new era and articulate significant ways in which Islam is distinguished from Judaism and Christianity. The accounts of Muhammad's teachings, behavior, and attitudes preserved as oral tradition (the hadith literature) provide further examples of an awareness and process of differentiation.

The formative period for Islamic jurisprudence, ethics, theology, and mysticism, for the development of distinct traditions of learning, aesthetics, and literature, and for the articulation of distinctive political and religious symbolism and ritual, in short, for the development of Islamic civilization, took place after the Islamic conquests of the seventh century brought diverse populations under Muslim rule. The caliphal empires encompassed people who professed different religions and followed a variety of cultural traditions. The context of coexistence, especially of dynamic interaction, transculturation, and conversion, extending over centuries, stimulated the men of faith who undertook the scholarly elaboration of Islam and the development of Islamic legal traditions to structure conversion and intercommunal relations and to define and refine the boundaries between believers and unbelievers.[14] M. J. Kister emphasizes the significance of this boundary

14. In the words of Ze'ev Maghen: "Islam's relationship with the People of the Book has had its ups and downs. The growing familiarity of the inhabitants of the Arabian peninsula with the ideas, institutions and communities of the surrounding monotheisms, followed by the initial and increasingly

making early in the postconquest period for the definition of Islam and the organization of social life: "The main concern of the religious leaders of the Muslim society was to establish some boundaries between the Muslim community and the communities of Jews, Christians, and Magians. This separation was to be upheld in various spheres of social relations, as well as in rites and customs."[15]

Islamic rule in al-Andalus from its establishment was integrally defined by coexistence with Christians and Jews and the concept of *dhimma* (protection). The inquiry into Muslim boundary making in al-Andalus in the Umayyad period exposes a process of working out the meaning of dhimma in practice. One challenge for inquiry from the vantage point of modern scholarship is to read the evidence of ninth- and tenth-century al-Andalus in relation to contemporary legal discussion, teaching, writing, and practice elsewhere in the Islamic world without presuming or imposing the priority, primacy, or even relevance of any particular text, opinion, or discussion absent careful consideration and justification for doing so. However, I do think that one can safely identify some broadly common constructs and principles that governed legal thinking and action regarding non-Muslims across the Islamic world in the ninth and tenth centuries.

The legal construct of the *ʿahd al-dhimma* (pact of protection) used to define the legal status of People of the Book (*ahl al-kitāb*) under Islamic rule emerged from the theoretical elaboration of the rules of war and terms of surrender derived from the experience and practice of the Muslim commanders who led the conquests of the seventh century and was informed by the example of the Prophet and his companions and by Qur'anic verses that recognize a distinct status for People of the Book. The association of the exchange of protected status for payment is identified, in particular, with sura 9, verse 29, which enjoins Muslims to "fight those who believe not in God nor the last day nor hold that forbidden which has been forbidden by God and His Messenger, nor acknowledge the religion of truth, from among the People of the Book, until they pay the *jizya* with willing

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intensive encounters of the nascent Muslim *umma* with the same, bred the complex mixture of attitudes to Judaism, Christianity and Zoroastrianism discernible throughout the classical literature of the faith." See Maghen, "The Interaction between Islamic Law and Non-Muslims," *Islamic Law and Society* 10 (2003): 267–268.

15. M. J. Kister, "'Do Not Assimilate Yourselves . . .': La tashabbahu . . . ," *Jerusalem Studies in Arabic and Islam* 12 (1989): 134. On Muslim communal solidarity and the emergence of distinctive Islamic ritual practices in the postconquest era (focusing on Iraq), see Michael G. Morony, *Iraq after the Muslim Conquest* (Princeton, NJ: Princeton University Press, 1984), 431–466.

submission, and feel themselves subdued."[16] Juridical discussions of jihad (after the conquests) established the general principle that if the people of a town or region surrendered peacefully to the Muslim leadership, they were accorded a grant of protection under which they retained their liberty and property and the right to live by their own laws and practice their own faiths on condition of payment of the jizya, which by the early eighth century had become defined as a poll tax on adult male non-Muslims.[17] If the people in a town or region did not agree to terms of surrender and their territory was taken forcibly, the lives of the men, the liberty of the women and children, and the property could be forfeit.

In the analysis of jurists in the postconquest era, the world was divided into Dar al-Islam (the Domain of Islam) and Dar al-Harb (the Domain of War). Dar al-Islam included all territory under Muslim rule and a population that included Muslims as well as non-Muslims, who became known as *ahl al-dhimma*, "people of the (pact of) protection," or in modern usage, dhimmis (the individual "protected person" is a dhimmi). The pact of protection extended to future generations on condition of continued payment of the jizya and submission to Muslim rule. Dar al-Harb represented the legitimate domain of expansion, and the people there might be referred to in legal texts as the *ahl al-ḥarb*, "people of (the domain of) war" (an individual might be referred to as a *ḥarbī*).

A text sometimes attributed to the second caliph, ʿUmar ibn al-Khattab, outlining the terms of protection offered to the Christians of Syria, the "Pact of ʿUmar," has been treated by modern scholars as a basic framework for understanding the rights and restrictions of dhimma and the status of People of the Book throughout the Islamic world. Here we shift from the discussion of general principles to an instance of a particular text used more or less definitively to describe the legal status of dhimmis in the Islamic world in a way that can be obfuscating if one is interested in intercommunal

16. All English translations of the Qur'an cited here follow the interpretation of ʿAbdullah Yusuf ʿAli with slight modification of language ("you" for "ye," "God" for "Allah," "has" for "hath," "polytheists" for "pagans," "among " for "amongst," and "to" for "unto") and capitalization in consultation with the interpretations of Allan Jones and N. J. Dawood alongside the Arabic; ʿAbdullah Yusuf ʿAli, *The Meaning of the Holy Qur'an* (ninth edition; Beltsville, MD: Amana Publications, 1997); *The Qur'an*, trans. Alan Jones, published by E. J. W. Gibb Memorial Trust (Exeter, UK: Short Run Press, 2007); N. J. Dawood, *The Koran with Parallel Arabic Text* (London: Penguin Books, revised edition, 2000).

17. Morony's study of the conquest history of Iraq suggests how the formal identification of dhimmi status with payment of a poll tax developed over time: "The emergence of protected (Ar. *dhimmī*) status and the definition of *jizya* as the poll tax on non-Muslim subjects appears to have been achieved only by the early eighth century." See Morony, *Iraq after the Muslim Conquest*, 110.

relations in a specific historical context. Because the text is commonly used as a reference, the textual criticism undertaken by other scholars bears repeating in brief; as the reader will see, my approach in this book is to set the text aside altogether.

The full text of the "Pact of ʿUmar" as it is commonly cited in current scholarship clearly defines the fundamental difference between the dhimmis who submit to Muslim rule and the Muslims who tolerate them. It can be read as a means to assert the humiliation of the defeated and the exaltation of the believers: "We shall show deference to the Muslims and shall rise from our seats when they wish to sit down." It can also be read as part of an effort to forestall potential Muslim apostasy or reversion from Islam: "We shall not hold public religious ceremonies. We shall not seek to proselytize anyone." In general, it establishes clear and recognizable boundaries between Muslims and non-Muslims: "We shall not attempt to resemble the Muslims in any way with regard to their dress, as for example, with the *qalansuwa* [conical hat], the turban, sandals, or parting the hair (in the Arab fashion). We shall not speak as they do, nor shall we adopt their *kunya*s."[18]

The "Pact of ʿUmar" has been taken as a template for understanding Muslim attitudes toward, and relations with, Christians and Jews; although it may be useful in some circumstances as a stylization of dhimmi status, its relevance as evidence in historical interpretation must be carefully evaluated with attention to legal and social contexts. Historians interested in intercommunal relations in the Islamic world have observed that many of the restrictions articulated in the "Pact of ʿUmar," for example, those on dress, the employment of non-Muslims, or the construction of churches and synagogues, were not enforced in a variety of times and places and perhaps did not apply.[19]

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18. A *kunya* is an agnomen—Abu (father of) so-and-so—one of the names common to an individual in addition to his given name and his patronym: Ibn (son of) so-and-so. English translations of the "Pact of ʿUmar" from al-Turtushi's (d. 1126) *Siraj al-Muluk* may be found in Bernard Lewis, *Islam: From the Prophet Muhammad to the Capture of Constantinople* (New York: Oxford University Press, 1987), 2:217–219 (quoted here); Norman A. Stillman, *The Jews of Arab Lands: A History and Sourcebook* (Philadelphia: Jewish Publication Society of America, 1979), 157–158; and Milka Levy-Rubin, *Non-Muslims in the Early Islamic Empire: From Surrender to Coexistence* (Cambridge: Cambridge University Press, 2011), 171–172.

19. See Kristen Stilt's discussion of the relevance of the text (with variations and interpolations) in Mamluk Egypt in *Islamic Law in Action: Authority, Discretion, and Everyday Experiences in Mamluk Egypt* (Oxford: Oxford University Press, 2011), 106–126, with discussion of the destruction of a church, clothing, the employment of non-Muslims, and payment of the jizya as case studies. In contrast, Rustow does not find evidence in the Geniza documents that stipulations regarding dress were applied to Jews in Egypt in the Fatimid period (affirming S. D. Goitein's similar observation in *A Mediterranean Society*) except during the rule of al-Hakim (966–1021). She describes how Jews served in high positions at court and notes that "the writers who voiced their objections never did

The identification of the text with the caliph ʿUmar ibn al-Khattab is not clearly established, and its characterization as an original pact of surrender has long been subject to criticism. These concerns in themselves have already had serious implications for the way historians interpret its significance. In his 1930 study *The Caliphs and Their Non-Muslim Subjects*, A. S. Tritton argued that the "Pact of ʿUmar" resembles a pattern treaty like the one preserved in al-Shafiʿi's *Kitab al-umm* rather than an actual surrender treaty, which would have been short and simple. He observed that the text "presupposes closer intercourse between Christians and Muslims than was possible in the early days of the conquest."[20] Antoine Fattal took up the interrogation of the text and suggested that the "Pact of ʿUmar" represents an amalgamation of conditions of surrender and restrictions imposed periodically on dhimmis during the first three centuries of Islam (notably by the Umayyad caliph ʿUmar ibn ʿAbd al-ʿAziz, r. 717–720, and later the Abbasid caliph al-Mutawakkil, r. 847–861) that were retroactively attributed to ʿUmar ibn al-Khattab.[21] For example, he identifies restrictions against elevating voices during prayer and ringing church bells, riding on saddles, and wearing certain clothes with ʿUmar ibn ʿAbd al-ʿAziz. Fattal shows that the earliest extant text of a treaty between ʿUmar ibn al-Khattab and the Christians of Syria is quite simple and directly reflects immediate postconquest interests. In comparison with the versions of the "Pact of ʿUmar" referred to by modern historians, it lacks many social distinctions and restrictions. The surrender treaty, recorded in a work commissioned by the Abbasid caliph Harun al-Rashid (r. 786–809), basically states the aid the Christians of Syria were required to provide the Muslims, including three days' pasturage,

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so on the grounds of the Pact [of ʿUmar]." Rustow also observes that new houses of worship were built in her discussion of the circumstances of Jewish communities after al-Hakim's destruction of synagogues. Rustow, *Heresy and the Politics of Community*, 119–125 (quotation 122–123), 184–185; see also S. D. Goitein, *A Mediterranean Society: Volume 2: The Community* (Berkeley: University of California Press, 1971), 286.

20. A. S. Tritton, *The Caliphs and Their Non-Muslim Subjects: A Critical Study of the Covenant of Umar* (1930; repr., London: Frank Cass, 1970), 5–17 (quotation, 10).

21. Antoine Fattal, *Le statut légal des non-musulmans en pays d'Islam* (Beirut: Imprimerie Catholique, 1958), 68–69, 96–99. Fattal provides a complex view of the status of dhimmis based primarily on legal and judicial sources; Yohanan Friedmann also investigates the corpus of legal sources to discuss interfaith relations in Islam in *Tolerance and Coercion in Islam: Interfaith Relations in Muslim Tradition* (Cambridge: Cambridge University Press, 2003). Both authors include in their discussions variations across and within the different schools of law. However, these studies also have limitations for historical analysis; they tend to draw on opinions, positions, and sources from a span of centuries to characterize, in the case of Fattal, the legal status of dhimmis in the Islamic world from 622 to 1517 or, in the case of Friedmann, to investigate the "ethos" of tolerance and coercion in traditional Islam, providing only limited guidance for understanding juridical developments in sociohistorical context.

the construction of bridges, and the lighting of signals for Muslim combatants. They were not to injure or strike a Muslim or reveal points of vulnerability to their enemies. The treaty also established the security of churches, required that the beating of clappers (*nāqūs*, pl. *nawāqīs*) not take place before or during the Muslim call to prayer, and prohibited the display of banners and the carrying of arms in the celebration of feasts.[22]

Albrecht Noth also compares the *shurūṭ ʿUmariyya* or "ordinances of ʿUmar" with early examples of surrender treaties but does not find the differences to be significant. He argues that the few ordinances with no parallels in surrender treaties (such as those having to do with dress) derived from the immediate postconquest period, perhaps even the period of ʿUmar ibn al-Khattab's rule, although he explicitly avoids drawing conclusions about the date of the text's composition.[23]

Mark R. Cohen, who has examined "approximately thirty specimens of the "Pact of ʿUmar" in medieval Arabic sources," argues that the literary form of the text follows that of a petition rather than a surrender treaty. In his view, the text is a "pseudoepigraphic invention" that grew out of the conquest treaties but "incorporates features that are characteristic, not of the conquest situation, but of the administrative procedures of the developed Muslim state, wherein decrees were issued in response to petitions." The date of the text remains unfixed; Cohen notes that al-Shafiʿi's treatment of the status of dhimmis and al-Mutawakkil's decrees suggest awareness or promotion of stipulations similar to the "Pact of ʿUmar" in the early ninth century, but he finds the earliest example of the text with its characteristic elements in Abu Bakr al-Khallal's (d. 923) collection of the opinions of Ahmad ibn Hanbal (d. 855).[24]

Milka Levy-Rubin, following Fattal and Cohen, situates the invention of the "Pact of ʿUmar" in the postconquest period. She reads the text as the

22. Fattal, *Statut légal*, 60–69.

23. Albrecht Noth, "Problems of Differentiation between Muslims and Non-Muslims: Re-reading the Ordinances of ʿUmar (al-Shurut al-ʿUmariyya)," in *Muslims and Others in Early Islamic Society*, ed. Robert Hoyland (Aldershot: Ashgate, 2004), 103–124.

24. Mark R. Cohen, *Under Crescent and Cross* (Princeton, NJ: Princeton University Press, 1994), 55–57; Cohen, "What Was the Pact of ʿUmar?," *Jerusalem Studies in Arabic and Islam* 23 (1999): 100–133 (quotation, 128); al-Khallal, *Ahkam ahl al-milal min al-jamaʿ li-masa'il al-imam Ahmad ibn Hanbal*, ed. Kisrawi Hasan (Beirut: Dar al-Kutub al-ʿIlmiyya, 1993), 357–359. Matthias Lehmann has also revisited the debate about the "Pact of ʿUmar." He considers the text to be a legal fiction (based on capitulation treaties) that has the form of a model treaty rather than a petition. See Matthias Lehmann, "Islamic Legal Consultation and the Jewish-Muslim 'Convivencia,'" *Jewish Studies Quarterly* 6 (1999): 25–54.

product of an effort in the eighth and early ninth centuries to establish an agreed-on "uniform set of regulations applicable to all *dhimmī*s living under Muslim rule" that would override all the previous diverse and outmoded conquest agreements. The effort emerged out of protracted experience of coexistence and amid burgeoning juridical debates about the social and legal status of dhimmis and resulted in various formulations, including two by the eminent jurists Abu Yusuf and al-Shafiʿi, as well as the "Pact of ʿUmar." At the core of the "Pact of ʿUmar" and more evident than in the other two formulations are the restrictions about *ghiyār* (distinguishing marks) that symbolize the social subordination of dhimmis and that Levy-Rubin finds rooted in Sasanian concepts, values, and status symbols. The assertion of such restrictions began with the caliph ʿUmar ibn ʿAbd al-ʿAziz and found fuller expression in the set of restrictions promulgated by al-Mutawwakil. In Levy-Rubin's opinion, al-Mutawwakil's restrictions may have followed, rather than preceded, formulation of the text of the "Pact of ʿUmar." In any case, from al-Mutawwakil's reign forward, she argues, the "Pact of ʿUmar" "acquired priority" and became "canonic."[25]

All the discussion centered on the dating, form, and dissemination of the basic text of the "Pact of ʿUmar" is pertinent to, but cannot resolve, the matter of its application as a legal standard and its usefulness for understanding relations between Muslims and dhimmis. To some extent I am writing against a conception of the pact as a universally agreed-on and applied code and against the relevance of the pact for understanding law and society in al-Andalus in the Umayyad period. To turn briefly to the evidence of al-Andalus, the recorded text of a surrender treaty in al-Andalus between ʿAbd al-ʿAziz ibn Musa and the Christian lord of Murcia, Theodemir, dated 713, is simple in its terms and in this way appears remote from the extant versions of the "Pact of ʿUmar" (as one might expect from the arguments originating with Tritton). The text guarantees the lives of the men and women of the seven towns under Theodemir's control and promises that the inhabitants "will not be coerced in matters of religion, their churches will not be burned, nor will sacred objects be taken from the realm." In exchange, Theodemir "will not give shelter to fugitives, nor to our enemies, nor encourage any protected person to fear us, nor conceal news of our enemies. He and [each of] his men shall [also] pay one dinar every year, together with four measures of wheat, four measures of barley, four liquid measures

25. Levy-Rubin, *Non-Muslims in the Early Islamic Empire*, 68 (quotation); she notes that if the *isnād*s (chains of transmission) are reliable, the text may have existed in some form in the mid-eighth century, but it was not yet established as canonical (61–62).

of concentrated fruit juice, four liquid measures of vinegar, four of honey, and four of olive oil. Slaves must each pay half of this amount."[26]

Andalusi historical texts provide narrative evidence that treaties such as that between Theodemir and ʿAbd al-ʿAziz ibn Musa, that between the Visigothic prince Artabas and the conqueror Tariq ibn Ziyad (reportedly confirmed by the caliph al-Walid), or those stipulating the terms of capitulation of Cordoba and other cities were abrogated. Treaty arrangements in al-Andalus, contracted between individuals, could be, and were, renegotiated. Interpretations of how modes of submission applied in specific circumstances were subject to debate, and adjudication took place on a case-by-case basis. Much of the legal discourse that pertains to dhimmis centers on matters of individual Muslim-dhimmi interaction. In evaluating the meaning of protected legal status it is important to investigate, alongside stipulations presented by treaties or by official decrees, the jurisprudence regarding Christians and Jews and their relations with Muslims that developed over the centuries after the conquests and, to the extent possible, accounts of legal decisions and practice. Well beyond the mid-ninth century, jurists expressed legal opinions that were part of a process of negotiation and contestation in the interpretation of dhimma. It is important to note that Maliki jurists of the ninth and tenth centuries, in the texts I have examined, do not refer to the "Pact of ʿUmar" or *shurūṭ ʿUmariyya* (in this regard the text does not appear to be "canonic"), nor do they detail comparably specific terms of any other surrender treaty or contract of protection between Muslims and Christians and Jews.[27] They do occasionally refer to statements by ʿUmar

26. Translation by Olivia R. Constable, "The Treaty of Tudmir," in *Medieval Iberia: Readings from Christian, Muslim, and Jewish Sources*, ed. Olivia Remie Constable (Philadelphia: University of Pennsylvania Press, 1997), 37–38; Arabic text: al-Dabbi, *Bughyat al-multamis fi ta'rikh rijal ahl al-Andalus*, ed. F. Codera and J. Ribera, *Bibliotheca Arabico-Hispana 3* (Madrid: Josephum de Rojas, 1885), 259.

27. Mark Cohen, "What Was the Pact of ʿUmar?," 121–122, points out that the Zahiri jurist Ibn Hazm included versions of the "Pact of ʿUmar" in *Kitab al-muhalla* and in *Maratib al-ʿijma*. Lehmann identifies two references to the *shurūṭ ʿUmariyya* in two fatwas in al-Wansharisi, *al-Miʿyar al-muʿrib wa-l-jamiʿ al-mughrib* (Rabat: Dar al-Gharb al-Islami, 1981–1983), 2:254–255, 214–253. The older reference comes from an unnamed jurist from Tangier at the turn of the twelfth century. In his response to a question about a Jewish doctor named Ibn Qanbal who reportedly dressed like Muslim notables (or better), the jurist quotes the *shurūṭ ʿUmariyya* about showing respect for the Muslims and agreeing not to resemble the Muslims in dress and in other ways. The other reference comes from al-Wansharisi himself in his long fatwa on the synagogues of Touat, in which he provides the full text of al-Turtushi's rendition of the "Pact of ʿUmar" (2:237–238). (The *shurūṭ* quoted by the unnamed jurist and the corresponding passages in the full text do not match exactly; also, al-Wansharisi's version differs slightly from the version in the edition of al-Turtushi's *Siraj al-muluk* [Cairo: Bulaq, 1872], 229–230, translated by Lewis in *Islam* and by Stillman in *Jews of Arab Lands*.) Lehmann, "Islamic Legal Consultation and the Jewish-Muslim 'Convivencia,'" 28–41,