Under Crescent and Cross

THE JEWS IN THE MIDDLE AGES

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Chapter Four

THE LEGAL POSITION OF JEWS IN ISLAM

"JEWISH LAW"—DHIMMî LAW IN ISLAM

With respect to the legal status of the Jews, two fundamental distinctions between Islam and Christendom must be established at the outset. First, Islam considers Jews and other non-Muslims living under Islamic rule (while enjoying internal autonomy in religious and most civil matters) to be subject to the jurisdiction of Islamic law. In contrast, the medieval church tended to waive jurisdiction over Jews. Moreover, where the medieval Christian state, for its part, progressively tightened its hold on the Jews until they constituted a special case of monarchical "property" outside the umbrella of evolving public law, Islamic law never asserted the ruler's powers of overreach over the non-Muslims. They were his subjects, albeit second-class ones, not his chattel.

Second, whereas in Christendom Jews were the only infidel living continuously within Christian society—hence, a special and focused object of both church and state regulation—Jews were seldom singled out by Islamic law. Rather, they were subsumed under a broader category of infidels: the dhimmîs. The dhimmîs were, in turn, the "People of the Book" (ahl al-kitâb), those non-Muslims recognized by the Prophet Muhammad as recipients of a divinely revealed scripture. Originally, this category included only Jews and Christians (plus the Sabî'ans in the Qur'an), the two monotheistic religions with which Muhammad came into contact. As Islam expanded, other religions were assimilated into the dhimmî category.

This important (and telling) distinction is seen when we compare certain features of the legal literatures of Islam and Christendom. As already noted, the Theodosian Code of the fifth century devotes a separate section to the Jews in the book which deals with relations between the church and other religions, thereby supplementing and sometimes repeating laws dispersed elsewhere under various other, general headings. As early as the ninth century, canon law was following a similar procedure. In his Decretum (ca. 1012), Bishop Burchard of Worms consolidated restrictive Jewish law provisions mainly toward the end of his fourth book, a section that deals with Christian baptism and confirmation. The first provision concerns a procedure for examining Jewish proselytes before admitting them to baptism. It begins with the traditional, offensive Christian metaphor for the obstinate Jews, drawn from the Old Testament (Proverbs

26.11, "Like a dog returning to its vomit"); "If Jews, whose perfidy frequently returns to its vomit, wish to come to the Catholic faith . . . " Ivo of Chartres recorded an even larger number of anti-Jewish canons in his compilation (ca. 1094), concentrating most of them in Book 13, where "they formed a veritable code for the Jews."

By the thirteenth century, under the rubric De judaeis, canon lawyers were regularly devoting special sections to Jewish law.

Islamic lawbooks do not include a comparable synthetic subdivision, fitâh, the Arabic equivalent of the Latin De judaeis. Not until the late Middle Ages did there appear a book that dealt comprehensively and exclusively with the more general Islamic law for dhimmîs: al-Kâhin al-ahli al-dhimma ([The Laws Pertaining to the Protected People]), by the fourteenth-century jurist Ibn Qayyim al-Jawziyya. I draw extensively upon this work (not yet published when Fattâl wrote his book), because it provides a handy synthesis of material that is widely scattered through the earlier literature.

Like Roman law, Islamic law is organized according to subject. Typically, statutes regarding the ahl al-dhimma are integrated into conventional, topical schemes—consistent with the principle that dhimmîs are subject to Islamic law. The early but noncanonical hadîth collection, Al-mawṣûl, by 'Abd al-Razzâq al-San'âni (d. 826) does have a long section, "On the People of the Book." (Kitâb fi al-ahli al-kitâb), but this is an exception.

None of the six hadîth collections considered canonical (all of them later than 'Abd al-Razzâq)—nor the Mawṣûl of Ibn Abi Shayba, "Abd al-Razzâq's contemporary (d. 849)—has such a subsection. For the most part, passages referring to dhimmî and/or the People of the Book are isolated from one another in the hadîth, even within the book on jihâd. The decentralization of statements about non-Muslims in the most important books of hadîth is consistent with the diffusion of "Dhimmi law," to adapt a term, in Islamic juristic literature (sipûh). A few examples of the diffusion and dispersal of dhimmî law throughout the Islamic legal corpus illustrate this point. The massive compendium of Fuzûlî, Kitâb al-mawṣûl, by 'Abd al-Sarîkh (d. 1090), by convention collects laws pertaining to marriage in a Book on Marriage, Kitâb al-nikah, and one of its twenty-nine chapters is devoted to dhimmî marriage. Sarakhi's Book on Sale (Kitâb al-bay') contains, as is common in Islamic law, a "Chapter on Sale by Dhimmî." Provisions regarding the dhimmîs also crop up in chapters on criminal law. The chapter on brigands (Bab jafâf al-târiq) in Sarakhi's "Book on Prescribed Punishments" (Kitâb al-jashîd) begins by declaring, "If a group of Muslims or dhimmîs attacks a group of Muslims or dhimmî, killing and stealing money, we say that the Imam shall cut off their right hands and left feet." When an Islamic legal compendium singles out one of the dhimmî sub-
groups by name, it is usually the Christians, who were immeasurably more prominent than the Jews during the centuries when Islamic law was in the process of formation. Some discussions single out Zoroastrians, mujāhīn in Arabic, for they presented the special problem that they appeared to engage in the idolatrous worship of fire and to lack a revealed book. These observations about Islamic ways of conceptualizing the legal status of non-Muslims further explicate what I mean when I say that Islamic law lacked a special focus on the Jews. The effacement of "Jewry law" behind the category of "Dhimmi law" constitutes an important distinction between Islamic and Christian approaches to the legal status of the Jews.

Islam does not single out the Jews as a group requiring a special set of laws.

Another important contrast with Christianity is that traditional Islam knows no distinction between secular and religious law, between the law of the state and the law of the "Church." This goes back to the very foundations of the Islamic polity. Muhammad began his mission as a man of religion, a prophet preaching a revealed message. But he rapidly turned founder of a religiopolitical community, which he called the umma. "Muhammad's role as a prophet (nabī) within a community that he himself had summoned into being necessarily included the functions of legislator, executive, and military commander of the umma."14

In theory, the regulations governing the conduct and treatment of Jews (and of Christians) rested in readily identifiable, fairly circumscribed laws inscribed in the Qur'ān—the Holy Law of Islam—and administered by a single authority, whether the caliph, a sultan, or an amīr (governor), through his appointed judges.

Jewry law in Christendom—with its inherent duality, secular and ecclesiastical, and its frequently arbitrary applications—offers a study in contrast with the uniformity and relative constancy of the Islamic law of the dhiḥmā. True, zealous Muslim religious leaders and scholars often exerted pressure on sultans, the official guardians of the law of the dhiḥmā, especially in the later Middle Ages. But the goal of the clerics was primarily to enforce the time-honored, though not always honored, restrictions rather than devise new, stricter ones. These factors, whose significance can be appreciated when contrasted with secular law in the Christian West, made for greater predictability and, accordingly, a greater feeling of security for religious minorities living within the orbit of Islam.

THE FACT OF 'UMAR

The law of the dhiḥmā has its most characteristic form in a document known as the Pact of 'Umar, a kind of bilateral contract in which the non-Muslims agree to a host of discriminatory regulations in return for protection.15 Though attested to the second caliph—'Umar ibn al-Khaṭṭāb, who ruled from 634 to 644, during the first wave of Muslim conquests outside the Arabian Peninsula—no text of the document can be dated earlier than the tenth or eleventh century.16 But the stipulations themselves evolved out of principles of pre-Islamic tribal custom, precedents established by the Prophet in Arabia, the specific circumstances of the early Islamic conquests, and influences of law in the eastern Roman and Sassanian empires. In particular, as the first wave of expansion outside the Arabian Peninsula incorporated much of the eastern Roman Empire, Byzantine Christian-Roman Jewish law had a marked influence on the content of the Islamic law of the dhiḥmā.17

Islam adopted the Persian-Greek-Roman and Christian-Roman recognition of Judaism as a licit religion. Indeed, Islam in a way carried this principle even further. Already the Qur'ān stipulates "there is no compulsion in religion."18 While it may be true that the verse was meant only descriptively—that it was unrealistic to expect naturally obdurate unbelievers to convert to Islam—later Muslims took the text as a prescription for religious tolerance and pluralism.19

Muhammad established another precedent for religious toleration in the Constitution of Medina, his compact with the Arabs and some of the Jews of Medina, which granted religious autonomy to the latter.20 True, Muhammad later fiercely repressed the Jews in reaction to their enmity and ridicule, but this kind of conduct was not the norm in Muhammad's treatment of non-Muslims. His treaties with the Jewish or Christian inhabitants of various other oases and towns in Arabia guaranteed them safety in return for tribute, called jizya (payment), a policy that endured.21

Following the Prophet's death, treaties granted during the conquests in southwest Asia and along the southern shore of the Mediterranean offered assurances of protection for persons and property, including houses of worship and freedom of religious observance. The religious duty to protect the defeated dhiḥmā reverberates in bahīth. Not atypical in an utterance attributed to the dying Caliph 'Umar (d. 644) speaking to his successor about the dhiḥmā: "I charge him with [upholding] the protection of God [allāh] and the protection of His Messenger [muhannat rasūlīh], that he should observe the compact [dhiḥm] made with them and fight those that attack them and not overburden them [with taxes] beyond their capacity."22

Such fundamental assurances of security conform with the law already in force for those Jews living in the Byzantine domains before the Muslim conquests. The Justinianic Code, the repository of law for the eastern Roman Empire, had incorporated them from the Code of Theodoric.23 Following the Arab conquests and for decades thereafter, most administrators continued to be local Christians familiar (as the Muslims were not) with administrative practice. During the Umayyad period (661–750), when the capital of the caliphate generally stood in Damascus, it would...
have been in the interest of Christians in the Muslim bureaucracy to champion protective features of Christian-Roman Jewry law in the interests of their own, suddenly disenfranchised, Christian brethren. The privileges of the conquest treaties depended on payment of jizya, now conceived of as an annual poll tax, that is, a tax on persons rather than collective tribute. Jizya is the only non-Muslim disability mentioned explicitly—and only once—in the Qur’an. “Fight against those who have given the Scripture . . . until they pay the jizya in full or accept amputation or exile” (Surah 9:29). Exegetical and juristic literature reveal that no one knew for sure what the last four words meant. Most interpretations take the words wa-hum yaghfirun to refer to the humiliated state of the non-Muslims, in keeping with the basic meaning of the root yghfr, “to be, to make little, to belittle.” From this came the term yaghfur, summarizing the entire regimen of humiliating restrictions in Islamic Dhimmī law, regularly associated with the less-legalistic synonym, hadd, or “bowliness.”

The more problematic ‘an pudu, literally, “out of hand,” gave rise to both stringent and lenient interpretations in commentaries, hadith, and juristic books. Stringent exegesis holds, for instance, that a non-Muslim must place his hands beneath that of the Muslim tax collector, ceremonially acknowledging his inferiority and subordination, or that the tax collector is to slap the nape of the dhimmī’s neck with his hand at the time of payment. A more lenient approach “translates” ‘an pudu as “according to his financial ability,” a concession interpretation implemented in some parts of the Islamic empire in the form of a graduated scale keyed to the dhimmī’s financial capacity. A hadith regarding the dhimmī who cannot pay his jizya makes the charitable statement (doubtless, rarely heeded):

One should be patient with him until he finds the means to pay, and [meanwhile] nothing should be held against him. If he becomes rich, it should be taken from him when he comes. If he is unable to comply with any part of the peace settlement to which he agreed, the burden should be lifted from him if his inability is confirmed, and the Imam shall assume the burden on his behalf.

If medieval Islamic opinions on this text are correct, we must conclude that the Qur’ān itself does not prescribe humiliating treatment for the dhimmī when paying jizya. In the eyes of Muslims later on, however, the verse contained an unequivocal warrant for debasing the dhimmī through a degrading method of remission. For Jews, who assuredly were subject to such an impost in pre-Islamic times, that fact removed some of the sting of the jizya. For Christians living in the Byzantine (and Zoroastrians in the Sassanian) lands who had been exempt, the Islamic fiscal exaction must have been a jolting blow. In the conquest treaties, the Arabs demanded that the vanquished inhab-

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The Pact of 'Umar, itself a product of cumulative development based on Muhammad’s practice, the exigencies of conquest, and the influence of Christian-Roman Jewry law, has, at first glance at least, a puzzling form. It takes the form of a letter to Caliph ‘Umar from vanquished Christians, who obligate themselves to a regimen of disabilities in exchange for a promise of security. ‘Umar grants the request “confirm what they asked”) but adds two amendments. Most scholars continue to share Tritton’s skepticism, published more than sixty years ago, about ascribing the text to the time and person of the second caliph. The principal reason for Tritton’s skepticism is, however, less compelling than the considerations mentioned at the beginning of this paragraph.

Recently, the German scholar Albrecht Nord re-opened discussion of the Pact. Nord argues that much of the shari‘i ‘umariyya (Umarian stipulations) either has its source in the conquest treaties or reflects the reality of Muslim–non-Muslim relations at the time of the conquest. He contends that the terms originally did not have the restrictive, discriminatory purpose so blatant in the text of the Pact as it existed later on. Rather, many of the stipulations were devised to protect the fragile identity of the Arab conquerors. Faced with a massive majority of non-Muslims, the conquerors instituted measures designed to distance themselves from their subjects.

To this we may add the following: The literary form of the Pact—a letter to the caliph by the conquered subjects, which made Tritton and then others so skeptical about its ascribed origin—becomes less mysterious if we view the document as a kind of petition from the losers promising submission in return for a decree of protection (aman, dhimmā). Normally, administrative enactments in Islamic government originated in response to petitions, either for redress of grievances or for confirmation of privileges. Thus, the Pact of ‘Umar may be seen as an outgrowth of the conquest treaties (Nord’s view) but transformed into the mold of a petition. Its epistolary style, probably the very form of the primitive Arabic petition, was then embellished with details of the cumulative practice of the first centuries of Muslim–dhimmī encounters.

Virtually all versions of the Pact of ‘Umar mention Christians, and several of the religious restrictions refer only to Christian ritual. Doubtless,
Houses of Worship

In its first stipulation, the Pact of 'Umar echoes Christian-Roman Jewish law, ruling that non-Muslims may not build new houses of worship or even make repairs to existing buildings that had fallen into ruin.40 If vigorously enforced, this restriction would have severely limited the growth of the non-Muslim communities.

The categorical stipulation in the Pact of 'Umar seems to have evolved over time. Regulation of houses of worship does not appear to have concerned the early caliphs at all, and some of them actually permitted dhimmis to construct new ones.41 The presence of synagogues and churches in "new" post-conquest Islamic cities such as Kufa or Cairo strongly indicates that Jews and Christians were successful in circumventing the law. The pious Umayyad caliph, 'Umar II (717-720), may have been the first to forbid construction of new houses of worship. Thereafter, historical sources report instances of churches or synagogues ordered destroyed or converted into mosques, of mobs incited by clerics to attack religious buildings (especially in the late Middle Ages), but also episodes in which the authorities allowed the restoration of buildings.42

With only intermittent interest on the part of Islamic authorities in enforcing the letter of the law regarding dhimmis' houses of worship, Islamic law annotated around the categorical prohibition in complex ways. Exemptions arose. The criterion for deciding whether to permit a house of worship became the status of its town at the time of the conquest. Minor differences of opinion characterized each of the four orthodox schools of Sunni law.43 A pair of treatises written in the mid-fourteenth century by the jurist al-Suhki discusses construction and repair of houses of worship in great detail.44 And there are many more of this genre from the late Middle Ages. It is not surprising that we find a separate juristic literature on the status of dhimmis' houses of worship, for these constituted the most conspicuous aspect of non-Muslim religious life and therefore a natural target for complaint.

The various views on the topic were summarized in the eighteenth century by the Egyptian scholar Shaykh Dumnahshih, responding to a question about the status of the churches of Cairo. He explained that the Hanafi school allowed houses of worship to be erected in towns taken from non-Muslims by peace treaty provided the treaty stipulated that the land belonged to the indigenous inhabitants and they paid kharaj (land tax). If the terms of the surrender considered the land Muslim and imposed the poll tax on the native inhabitants, their places of worship were not allowed.45 Reconstruction of a permitted building after it had been destroyed or upon its impending collapse was strictly regulated so as not to seem to be "new." Its building materials had to be identical to those of the original structure.46 By the letter of Islamic law, the churches of Cairo should not have been allowed to stand; characteristic, however, Dumnahshih's treatise did not lead to their destruction.47

Al-Suhki insists that claims against houses of worship must meet the test of Islamic laws of property and evidence.48 Historical and documentary sources bear this out. In the year 1038, for example, the Jews of Old Cairo (Fustat) were accused of possessing a synagogue that was "modern, built only recently." The leader of the Jewish community was summoned before a Muslim tribunal, where he testified to the antiquity of the building. To support the claim, he brought with him a large contingent of Muslim witnesses who confirmed that the "synagogue was of ancient construction and not recently built." The judge "gave judgment in accordance with the facts and findings and made his decision compulsory." The synagogue was saved. Fortunately for the historian, the Jewish community of Cairo also saved the judicial decision in its archives, to be produced as proof of the antiquity of the synagogue should the question arise again.49

The second example, from the later Middle Ages in Egypt, reveals the predictable, though potentially uneasy, modus vivendi between dhimmis and Islamic religious and legal authorities over the status of houses of worship. A chance conjunction of Islamic historical and Jewish documentary (Geniza) sources regarding a Cairo synagogue in 1442 tells an interesting story. Looking for signs of illegal repairs during a routine inspection of a synagogue, a delegation of Muslim religious authorities discovered an almost obliterated Arabic inscription carved on the minbar, or "preacher's platform." They read the words Ahmad and Muhammad, two names for the Prophets, and concluded that they had come upon a case of the capital crime of blasphemy—Jews treasuring on the name of the founder of Islam. Even in this late period of increasing oppression of the non-Muslim population, the judges and the melhishah (market inspector) pursued their investigation and prosecuted three alleged Jewish perpetrators with relative judicial objectivity. Eventually, satisfied that the community as a whole had nothing to do with the alleged misdeed, the judges ordered only that the minbar be destroyed; and no additional harm to the structure occurred. Nor was the episode accompanied by the kind of collective punishment that likely would have occurred in a German town of the period had a real or alleged Jewish anti-Christian act been so "discovered." Only the confessed perpetrators were punished and publicly beaten.50
CHAPTER FOUR

The Jewish community of the time was deeply concerned about an internal crisis: the misrule of its Head. In their petition (the Geniza document) to the Mamshik sultan, asking him to unseat the man from office and replace him with a "venerable" former holder of the office, the Jews insisted their argument with an allusion to the evil-doing Head, suggesting that he had some culpability in the blasphemy of the minbar.

Even when controlled in their anti-dhimmis violence, such violations of the contract between the dhimmis and his Muslim overlords could spell danger. The discovery in one Cairo synagogue in 1442 prompted the Muslim authorities to investigate other non-Muslim houses of worship. This aroused much fear within the protected communities. Several churches came under suspicion, as did a Karaita Jewish house converted into a house of prayer. In the end, Jewish (Rabbanite and Karaita), Samaritans, and various Christian leaders were summoned before a Muslim judge and compelled to renew their allegiance to the venerable Pact of 'Umar.57

THE PUBLIC DISPLAY OF RELIGION

Related stipulations in the Pact of 'Umar have to do with the public display of religion. In order to protect its own superiority, Islam intended primarily to minimize the visibility of dhimmis religion. Christianity rather than Judaism was the main concern, for Oriental Christianity conducted many of its ceremonies outdoors. These form the backdrop for such proscriptions as the one forbidding the display of crosses and sacred books in the roads or markets, the prohibition against beating the clappers outside the walls of a church, and the stipulation forbidding dhimmis from raising their voices too loudly during church services or when participating in funeral processions. Christians had to forgo public processions on Palm Sunday and Easter. Because Islam considered Christianity idolatrous, Muslims could become quite exercised over this issue.48

These limitations seem to have had little effect on the Jews. Where Arabic historical sources record numerous incidents in which Christians celebrating a ritual within view of Muslims are ordered to desist, Jews are rarely singled out.49 In part, this was because most Jewish rituals took place indoors and contained nothing that Islam could easily construe as idolatrous. Moreover, centuries of care not to offend Christians by praying too loudly within earshot, or by appearing in public at Easteride, had prepared the Jews to accept the Muslim restriction with equanimity. (The one outdoor religious practice that caused problems for Jews was the one that could not be avoided—funeral processions.)50

Early Christian-Roman Jewry law contains a rough parallel to this stipulation in the Pact of 'Umar, forbidding Jews from hanging Haman in effigy on the festival of Purim.51 Similarly, ecclesiastical law from as early

as the sixth century imposed on the Jews a curfew during Easteride, lest, as Pope Innocent III wrote, "the Jews, contrary to ancient custom, publicly run about streets and public places and everywhere desire as they are wont Christians because they adore the crucified on the Cross, and attempt, through their improprieties, to dissuade them from their worship."52

Comparison with the Pact of 'Umar underscores an important difference between Muslim and Christian attitudes toward Judaism. Christianity legislated against the public display of infidel blasphemy. The latter represented a challenge to the truth of the Christian religion. Islam, much less dialectical than Christianity in its relationship to prior monothestic religions, concerned itself with the public exhibition of Jewish and especially Christian ritual, not on account of blasphemy but because it wished to keep Jews and Christians and their religions in their deserved humble position. Hence, hierarchy, more than theology, motivated Islamic law in this matter.53

PROSLEYTIZATION AND DHIMMI CONVERSION TO ISLAM

Alongside the ban on public celebration of religious rituals, the Pact of 'Umar commands non-Muslims not to proselytize or place obstacles in the path of coreligionists who wished to convert to Islam. This last stipulation recalls the Christian-Roman Jewry law: "Jews shall not be permitted to disturb any man who has been converted from Judaism to Christianity or to assail him with any outrage."54 But the context is different. Christianity fought hard to prevent neophytes from backsliding to Judaism, which had an unsettling effect on Christian self-assurance. Conversion or relapse from Christianity to Judaism represented an ideological blow to Christianitat's fundamental tenet that Judaism had "died" at the hour of Chris- tendom's birth. The stipulation in the Pact of 'Umar does not suggest concern with relapse. Asserting its superiority, Islam simply prohibits conversion to any religion other than itself.

SYMBOLS OF SEPARATION AND HUMILIATION

As part of the humiliation of the dhimmis, the Pact of 'Umar requires them to rise in the presence of Muslims when the latter sit down. The dhimmis also have to demonstrate their low status by refraining from mounting on saddles and by not bearing arms.55 The Pact further admonishes dhimmis to construct their houses at a lower elevation than those belonging to Muslims.

Another group of conditions dhimmis had to accept were those meant to distinguish them from the dominant group. They must speak differently from Muslims (the exact meaning of this is uncertain), avoid the use of
honorary names (names beginning with "Abi") and of Arabic inscriptions on their seals, and dress in distinctive garb. The requirement to dress differently from Muslims apparently is the source of the Christian prescription that first made its appearance in the canons of the Fourth Lateran Council in 1215. In Christendom, the original purpose was to bar sexual relations between Christians and Jews. Enforcement of the canons by secular rulers proceeded gradually and unevenly. Where the "Jewish badge" was not commuted into cash payment, it served to underline the alien, outsider status of the Jews and render them more vulnerable to violence from the populace.

The circumstances surrounding the origin of the law requiring non-Muslims to distinguish themselves in dress are revealingly different. As Tritoan has observed, in the beginning, non-Muslim inhabitants of the conquered lands would have been readily distinguishable by their clothing from the rugged, desert Arabs of the conquerors. Later, when non-Muslims sought to evade the oppression that attended their political condition, and as Arabs themselves adopted a more "civilized" garb, often imitating the habit of the indigenous people, the motive to dress like the Muslim ruling class, and hence to indentify this, would have increased. This reasoning underlies Tritoan's skepticism about the overall authenticity of the Pact of 'Umar.

Tritoan and other scholars after him believe that the pious Unmayyad caliph 'Umar ibn 'Abd al-'Aziz ('Umar II) was the first to impose the dress restrictions on the non-Muslims, including the famous 'ummar (girdle or belt). In his article on the Pact, however, Albrecht Noth suggests that the 'ummar regulation (and, by extension, other external signs of non-Muslim status) could have originated earlier, even as early as the time of 'Umar himself, products of the circumstances of the conquests. Noth speculates that 'ummar (which, he notes, derives from a Greek loanword, 2μαρινός) originally was part of the normal garb of Christians, which the Arabs insisted they retain as a distinctive identifying mark. The language in the Pact of 'Umar, he argues, proves this: The 'ummar regulation begins with the Christian promise, "We shall always dress in our traditional fashion and we shall bind the 'ummar around our waists." As Tritoan had noted but apparently without seeing the implications, the belt (called a zonata, perhaps pronounced zonvara, in Syriac) was worn by Christians well before the advent of Islam. It was even employed as a distinguishing mark of clothing. According to a passage in the Nestorian Chronicle of Seir, Nestorian Catholics (head of the Church of Iraq and Iran) Mar Emmech (Maramma), who died after a three-year reign during the caliphate of 'Uthman (644-56), decreed that schoolboys must wear the 'ummar as a kind of uniform to distinguish them from others: "He was the first to order schoolboys to fasten the 'ummar around their waists so that they would be distinguished from others." The 'ummar, therefore, was an article of clothing worn by indigenous Christians in the conquered territories. Far from being a stigma, however, and continuing a tradition from pre-Islamic times, it was an insignia of high status. In an episode from the second century, under the Roman emperor Tiberius, reported by the sixth-century Monophysite churchman John, bishop of Ephesos (d. 580), we read that the emperor, wishing to demonstrate his fear of God, summoned Roman officials to hear a recitation of acts committed by the pagans ("whether in the East or the West"): "And whosoever was not present he gave orders that his girdle (Syriac: zonat) should be cut, and he should lose his office." Even if this passage stems from an early, non-Christian Roman source, it nonetheless indicates that in the sixth century, Syriac Christians considered this belt an item of clothing that signified status, one whose removal was a sign of degradation.

Taken together, these and other passages confirm Noth's speculation that the 'ummar was not invented by the Arabs to discriminate against non-Muslims but, rather, was intended to perpetuate a distinction in external appearance in place at the time of the conquest. Jews also, it turns out, sometimes wore the zonata belt in pre-Islamic Palestine. The goal, Noth maintains, was to sharpen the boundaries between the massive indigenous, conquered populace and the insecure Arab ruling minority.

The regimen of special clothing for non-Muslims did not arise from discriminatory or stigmatizing motives, let alone those intended to prevent accidental defilement through sexual intercourse, as was the case with the imposition of the "Jewish badge" in the Christian West. The Arab conquerors insisted that the Christians continue to wear their traditional garb lest the Arabs be unable to distinguish them. Simultaneously, Muslim tradition implored Arabs not to imitate non-Muslim mores. But Muslims observed the so-called khafif-juha rule largely in the breach; the gradual adoption of the many dress habits of indigenous non-Muslims in the Islamic empire constitutes one example.

Only secondarily, and later—perhaps already by the time of 'Umar II—did the Islamic dress code serve to reinforce the humbling laws of the dhimmis, and even then, the code was enforced unevenly and sporadically. From Abbadus ibn al-Mu'tawakkil, in the year 850, comes the first extant edict spelling out the type of restrictive dress required of the dhimmis, including the 'ummar. Jews in early Abbasid Babylonia seem to have honored the requirement to don the distinctive 'ummar belt.

In succeeding centuries, the dress laws, often in tandem with the prohibition of riding horses, were renewed sporadically, long after Islam had achieved demographic superiority, an indication of how often the rules fell into disuse. There are abundant references in the Geniza to clothing and other passing evidence in the documents, indicating no differences be-
between the attire of Jews and Muslims during Fatimid and early Ayyubid times (mid-tenth to the late twelfth century). To the contrary, it seems that it was often difficult to tell them apart. Only later on was the discriminatory measure regularly enforced. Even then, in contrast to Europe, there is no indication that Muslims—at least, Sunni Muslims—feared contracting impurity through intimacy with Jews and Christians; they could marry their women and eat their meat. Shiism considers dhimmi to carry ritual impurity, nizah, based on a broad interpretation of the Qur'anic pronouncement (immediately preceding the jiyya verse), "O ye who believe! The idolaters only are unclean (najis). So let them not come near the things that are War则 (that is, the holy mosque in Mecca) [Sura 9:28]. Shiites took this to apply to all infidels without distinction, but even some of them agreed with the Sunnis that the meat of Jews and Christians was permitted. It seems, therefore, that the concern of Islam in requiring distinctive dress of non-Muslims was not simply to discriminate but to demonstrate unambiguously who were the rulers and who the ruled, to delineate boundaries, and to facilitate the proper functioning of an interethnic etiquette in an inherently hierarchical society. In Christendom, by way of contrast, the distinctive garb regulation, motivated in the first instance by fear of physical contamination through sexual contact, was designed to segregate and exclude.

The Slaves of Dhimmi

The Pact also deals, albeit briefly and unclearly, with dhimmi possession of slaves, a question that occupies considerable prominence in Christian-Roman Jewry law. The non-Muslims promise that they would not "take slaves who have been allotted to the Muslims." A clause in one of the earliest conquest treaties stipulates that any slave wishing to become Muslim must be sold to a Muslim. This parallels the determination of Christian-Roman Jewry law and subsequent church councils, canon law books, and papal missives to prevent Jewish ownership of Christian slaves. The motive for the slave clause is not stated in the Pact. In his commentary, Ibn Qayyim al-Jawzīya, citing classical Muslim jurists, states that the clause refers to slaves taken captive by Muslims, who must not be sold to Jews or Christians. This circumstance is discussed in hadith, where attention is paid to "young" pagan captives, who were ripe candidates for conversion to Islam, as well as to Judaism and Christianity. If the (pagan) slave is still young, Ibn al-Qayyim explains, his sale to an unbeliever is forbidden on the grounds that if the youthful pagan remains in Muslim hands, he is a ready and willing candidate for conversion to Islam. One authority dissentes, claiming that there is no assurance that the slave will accept Islam. If the captive is an adult and presumably unlikely to change his religion, a Muslim may sell him to a non-Muslim, provided the buyer is not a native of a land outside the Domain of Islam, lest he return there and the former captive give information that is helpful to the enemies of Islam. There is a noteworthy distinction between Muslim concern with slaves owned by dhimmi and Christian concern about slaves possessed by Jews. Christian-Roman Jewry law (and, later, canon law) make the Jewish-Christian conflict the central issue. Christian sources simmer with deep-seated fear of Jewish power over Christians and of the Judaeization of pagans or Christians come into the service of Jews. As the theological concept of the "perpetual servitude" of the Jews took hold in the thirteenth century, it became taboo in Jews to even hire Christians for domestic service. The guiding principle behind the rulings on slaves is revaluation at the thought that a Jewish slaveowner might convert his servant to the "pollution of his own sect," in which case the slave would be damned. The concern that Jews would convert their slaves was not unfounded, however; Jewish law required owners to convert slaves in their households. Canon law heaped up canons on the subject, with conversion to Judaism the main worry.

Islam differed in this matter in one significant respect. The language of discourse on dhimmi possession of slaves suggests that Islamic authorities were driven more by fear of violating the hierarchy than by fear of the nefarious influence of Judaism. In actuality, the Geniza proves that Jews commonly possessed slaves, mainly as domestics. Geitenk speculates that, in the case of slaves, the Islamic law forbidding conversion to any religion other than Islam "was largely disregarded."
ward Muslims, and would unhesitatingly cheat them. It was feared that dhimmis in high places might betray their Muslim overlords to foreign rulers who shared their own religious persuasion (the main concern, of course, was with Christian dhimmis). Jurists found an abundance of statements in the Qur'an and hadith literature warning of dhimmis' enmity and treachery. Qur'anic verses specifically understood to forbid employment of non-Muslims in civil service include Sura 5:51: "O ye who believe! Take not the Jews and Christians for friends. They are friends one to another. He among you who taketh them for friends is [one] of them. Lo! Allah guideth not wrongdoing folk." 

Apparently, the first Muslim rulers to order non-Muslims expelled from government office was Umayyad caliph Umar ibn 'Abd al-Aziz. The practice did not end there, however. In his decree of 850, Abbasid caliph al-Mutawakkil had to reiterate the ban on dhimmis state service. "He forbade their employment in government office and on official business where they would have authority over the Muslims." As rationale for the order, the caliph's decree stated that the dhimmis "oppress them [the Muslims] and stretch out their hands against them in tyranny, deceit, and enmity." The justification recalls the one cited by Christian legates for excluding Jews from public offices. The allegation was substantiated by Qur'anic and post-Qur'anic stories of Jewish treachery toward the Prophet in Medina.

Nonetheless, over the centuries, al-Mutawakkil's decree, and many others like it, were only sporadically enforced. Complaints that non-Muslims exploited the power and wealth that often came with government office were time and time again in Muslim sources. For centuries throughout the Muslim world, even during the period of decline after the twelfth century, effective administration continued to depend on Christian, Jewish, and in Persia, Zoroastrian bureaucrats.

The dhimmis' ubiquitous presence in Arab ruling circles involved them in the business of state in ways unimaginable for Jews in Christian northern Europe. It gave them influence and honor and imparted to the minority communities to which they belonged a feeling of embeddedness in the larger society. To some extent, this diminished the marginalization imposed on the non-Muslims by law and religion.

This was certainly the case with the illustrious Jewish courtiers of Muslim Spain. Hasday ibn Shaprut played a very important role in the diplomacy of the Andalusian caliphate in tenth-century Cordova, and his importance to the Muslim rulers, which Arab writers acknowledged, certainly bestowed on his Jewish community pride and self-esteem. A century later, the Jews of the Berber kingdom of Granada derived similar gratification and honor from the knowledge that their rabbinic and communal leader, Samuel ibn Nagrela, served as vizier and head of the army. To be sure, there were limits to Jewish empowerment. More than one Jewish courtier lost his life when he was perceived as jostling it over Muslims. Both Arab and Jewish sources attest that the vicious assassination of Joseph, Samuel's son and successor, in 1066 came about because the Jewish courtier had become haughty in his position.

A few examples of the opposition to dhimmis officials will illustrate the pervasive phenomenon of non-Muslim involvement in the political life of medieval Islam. The Fatimid dynasty in Egypt (969–1171) was notorious for condoning dhimmis participation in state service. Geniza documents provide evidence of the widespread professional involvement of non-Muslims in Fatimid government. A fragment from an Arabic epistolographic manual for chancery secretaries (būhīs), transcribed into Hebrew letters (presumably for easier reading), was certainly meant to be read by Jews destined for that profession. A famous satirical Arabic poem decrying what the poet viewed as an intolerable abuse references (though not by name) to a powerful Jew in the Fatimid court in the mid-eleventh century, Abū Sa'd al-Tustarī:

The Jews of this time have attained their uttermost hopes, and have come to rule. Glory is upon them, money is with them, and from among them come the counsellor and the ruler.

O People of Egypt, I advise you, turn Jew, for the heavens have turned Jew.

A Coptic Christian "monk" in the Fatimid civil service during the twelfth century, infamous for his fiscal extortions affecting all classes of the population, comes in for condemnation both in Islamic literary sources and in incidental comments in contemporary Jewish correspondence preserved in the Geniza.

Inevitably, discomfort with dhimmis service in government became more pronounced as the relative leniency of the classical Islamic period gave way to the harsher, more intolerant late Middle Ages. Citing Qur'anic texts which speak of the enmity non-Muslims held for Muslims, a fatwā (responsum) of the thirteenth century rulers that a Jew may not be engaged as inspector of coins in the state must. A dignitary from Morocco visited Egypt at the beginning of the fourteenth century, at a time when the disabilities of the dhimmis, including the exclusion from public office, were rigorously enforced in his home country. Indignant at what he observed of non-Muslim evasion of the ban on office-holding as well as of the sumptuary laws in general, the visitor prevailed on the Mamluk authorities to order the enforcement of the relevant provisions of the Pact of 'Umar. We are told that the Christians and Jews offered large sums of money, albeit unsuccessfully, to avert the severe decree. This tactic, identical to the common strategy of bribery employed by Jews of Europe to stay off
oppression and violence, may have come into greater use by Jews (and Christians) in the late Islamic Middle Ages, when the comparative security of the earlier age had diminished. 88

Conversion to Islam by non-Muslim courtiers suspected of desire to retain office accelerated in the post-classical period. The allegedly recalcitrant neophytes in Egypt were given the diminutive, hence pejorative, name of mušlumysql (plural mušluyma) instead of mušlum.89 To deal with heresy and blasphemy, Islam had its own version of the Inquisition, which usually took the form of investigation by a regular court of Muslim judges. Mušluyma suspected of loyalty to their original religion also came under judicial scrutiny.90

Tracts on dedicated wholly or in part to expounding, bemoaning, or calling for the elimination of the evil practice of non-Muslim service in government abroad after the twelfth century.91 The most common accusations were corruption, fiscal oppression of the populace, unbelief (kufr), the spread of moral laxity, dishonesty, favoritism toward conciliators, anti-Muslim plotting, and treachery. Thus, in the Islamic world the issue was the improper subordination of Muslims to non-Muslims and the intolerable non-Muslim oppression of Muslims that might ensue. One charge that appears not to figure in the various campaigns to remove dhimmis from positions of authority is that they will blaspheme the Prophet. This not withstanding the fact that, in Islam, blasphemy is one of the gravest sins, and despite that it is the first cause for revocation of the Pact of ‘Umar discussed by Ibn Qayyim al-Jawziyya.92 We have already seen how a case of alleged blasphemy affected the Jews of Cairo in 1442. Apparently, however, fear of blasphemy was not offered as justification for excluding non-Muslims from the government bureaucracy.

THE POLL TAX

Earlier in this chapter we discussed the Qur’anic basis for the poll tax, or jizya, and the systems of tribute that evolved during the early Islamic conquests.93 Since jizya is the only one of the dhimmis disabilities mentioned in the Qur’an, detailed discussion of the legal status of the non-Muslims often appears in Muslim juristic literature under the jizya rubric. Thus, for example, Abū Yūsuf’s Kitab al-ḥanāfī (Book on Taxation), commissioned by Caliph Harun ar-Rashid at the end of the eighth century,94 includes, immediately following the expected chapter on jizya, another one on the distinctive dress of non-Muslims, and, a bit further on, a third entitled “Churches, Synagogues (bīsṭ), and Crosses.” Characteristic of the centrality of the poll tax in Dhimmi law, that chapter contains a summary of all the dhimmis obligations, mentioning the attendant peace settle-

ment (ṣalṭ), which, in Abū Yūsuf’s words, was given “in return for payment of the jizya.”95

Kitab al-ṣanūn, the great compilation of Islamic law by the jurist al-Shafi’i (d. 820), contains several chapters on the dhimmis in its Kitab al-jizya (Book on the Poll Tax). Shafi’i discusses the various groups that belong to the “People of the Book” (hence were privileged to pay the jizya). A key chapter opens, “If the Imam wishes to write a document for the poll tax of non-Muslims, he should write ... .” There follows a much amplified, juridical description of all the stipulations found in the later texts of the Pact of ‘Umar, plus the poll tax itself, along with several other items.96 Another chapter in Shafi’i’s Kitab al-jizya lists the obligations the Imam should impose on dhimmis living in garrison towns. They were more or less the same as the disabilities in the Pact of ‘Umar. The next chapter catalogs the types of protection the Imam owes the dhimmis in return for their submission.97 At the beginning of his Akhīn abī al-dhimmīn, Ibn Qayyim al-Jawziyya declares that he had composed his comprehensive treatise on the laws of the dhimmīn in response to a request for a detailed explanation of the poll tax.98

Jurists debated whether the jizya mandated by the Qur’an constituted a penalty (ṣuqūq; that is, a means of debasement) or a fee (ṣawāq), paid to secure physical protection and residential rights. Most authorities held that it was a penalty.99

Islamic jurists discussed the amount of the jizya. Some schools of law set it at a fixed rate; others made it a graduated impost (12, 24, or 48 dhimmī), depending on the financial means of the dhimmī and consistent with a widespread interpretation of “am yudin in the Qur’anic jizya verse. The latter method had been the practice of the Sassanians and remained in force in Islamic Iraq.100 The poor did not escape the poll tax obligation, though certain other categories did. According to most jurists, since the poll tax represented a monetary payment in lieu of military service, logically those disqualified for army service did not have to pay. This category included women, the prepubescent young, slaves, and the infirm.

As mentioned, the poll tax was supposed to be collected in a manner that emphasized the dhimmīs’ “holiness.” Numerous humiliating ceremonies were employed, such as the hand-slap on the neck. Sometimes, the humiliating ritual was omitted. The hadith literature preserves an oft-quoted tradition counseling moderation when collecting the jizya, which may have been intended to justify such a departure from the norm. 101

Husayn b. Hākim b. Hāmid found a man who was the governor of Himyar making some Corps [ṣulūk al-qall] stand in the sun for the payment of jizya. He said: What is this? I heard the Apostle of Allah [may peace be upon him] as
CHAPTER FOUR

saying: Allah Most High will torment those who torment the people in this world. 111

In addition, there are statements in the Islamic literature that seek to restrain public degradation of the non-Muslim poll taxpayer once he had remitted his annual "penalty":

If you take the poll tax from them, you have no claim on them or rights over them. . . . (Do) not enslave them and do not let the Muslims oppose them or harm them or devour their property except as permitted, but faithfully observe the conditions which you have accorded to them and all that you have allowed to them. 112

And:

The Prophet said: "He who rob s a dhimmis or imposes on him more than he can bear will have me as his opponent." 113

According to Islamic law, dhimmis paid twice the commercial taxes levied upon Muslims, usually 5 percent. Tajīl al-maḥān, "merchants from the Domain of War," paid 10 percent. Geniza documents reveal that Jewish communities, like those in Christian Europe, periodically endured other huge tax levies in connection with one or another governmental fiscal need. 115

Payment of the poll tax is the one disability imposed upon the non-Muslims about which we hear frequent, mainly financial complaints in the Geniza correspondence. 116 For the poor and those with modest incomes, it constituted a burden, and Jewish communal or private charity often had to defray the expense for those who could not afford it. The dhimmis had to produce proof of payment. In certain periods, the humiliating seal stamped on the sack served as receipt for payment of the jizya. 117 The Geniza indicates that the receipt took the form of a piece of paper called ha'ada, “quittance.” Anyone caught by the revenue authorities without it might have to remit his poll tax a second time that year. 118 A ruler might on occasion raise the amount of the poll tax to extortionate levels. 119 The real-life evidence of the Geniza correspondence regarding the burden of the poll tax belies the conclusions of many modern devotees of the myth of the interfath utopia who claim that historically, the jizya had no humiliating connotation and that Muslims collected it only with compassion. 120

Conceived as "protection money," however, jizya played a constructive role, exactly as it was intended by the Qur'anic commandment. It guaranteed non-Muslims protection at an annual price ("fight against [them] . . . until they pay the jizya."). The very regularity of the jizya assured dhimmis of regular and continuous security. 121 Here, again, a story preserved among the Geniza fragments offers contemporary evidence.

THE LEGAL POSITION IN ISLAM

The tale, apparently told by Jews of Iraq in the tenth century, indicates how valuable a protection they considered the annual capitation to be. The manuscript fragment containing the narrative apparently belongs to an account of the exploits of wealthy Jewish court bankers in early tenth-century Abbasid Baghdad, whom we will meet again in Chapter 5. 122 The protagonist, Netira, was the son-in-law of the merchant-banker Joseph bin Shleah. Combining motifs found in other Jewish stories, the anecdote relates how the caliph al-Mutʿaddid (Abbasid caliph from 892 to 902), encouraged by a Hannun-like adviser, issues a decree to harm the Jews. But the Prophet Elijah appears to the caliph in his dreams and warns him that dire consequences will ensue should he carry out his malevolent plan. The caliph then summons Netira, who comes, somewhat like Joseph before Pharaoh or Esther before King Ahasuerus, fearing for his life and clothed in a shroud. When Netira identifies Elijah as the divinely appointed guardian of the helpless Jews, the caliph relents. Among the rewards he offers the Jewish notable is cancellation of the jizya payment of the Jews. Netira rejects the offer. His rationale reflects the ambivalent feelings Jews had about the poll tax:

O my lord, by the jizya the Jew spares his life. If they are exempted from it, their lives will surely become forfeit. Moreover, those who come after them will not be safe in the future, because (payment of) what they had previously been excused from will be demanded from them, and they will be obligated to pay it all at once, thereby becoming ruined and impoverished. The kindest thing [to do] for them is to have them pay the jizya according to the will of the Commander of the Faithful [i.e., the caliph], may God lengthen your life, with maximum compassion, and to impose it mercifully. Thereupon [the caliph] said: “You collect it from them in accordance with the custom of the Prophet, peace be upon him, as was done in his day.” [Netira] compiled, and the Jews lived in peace and tranquility for the nine and a half remaining years of al-Mutʿaddid’s reign without enduring harm or affliction. 123

Underlying this tale is the ambivalent attitude of tenth-century Iraqi Jews toward the poll tax. Indeed, the levv was normally collected with harshness (hence, Netira’s plea that it be collected in the future “with maximum compassion”). But the Jews relied on it to guarantee the protection promised by Islamic law, consistent, as it were, with the Muslim jurist’s opinion, mentioned above, that the jizya payment represented a fee in return for physical protection and residential rights. Underscoring this, the story relates that the caliph severely punished some Muslim Sufis who later on tried to disturb the Jews’ peace. 124 A story about a persecution of the Jews in Baghdad in the first half of the twelfth century related in another Geniza fragment states quite explicitly
that payment of jizya benefited the Jews (bi'nat hasanah labahun) whereas exemption from it could lead to trouble (qibb, lit. "punishment"). A harsh (albeit minority) legal opinion of the fifteenth-century North African antijewish qadi al-Maghili cites tax enforcement by the Muslims of the jizya collectable from the Jews as a rationale for canceling their Pact and for wreaking physical violence against them.

For a greater appreciation of the perception of security that the Jews of Islam associated with payment of the jizya, consider the more unstable situation of the Jews of Europe. The Jews there paid numerous and often unreasonably high and arbitrary taxes to the ruling authority, but—until 1342 in the Holy Roman Empire—no regular poll tax in return for official protection. Safety constituted a unilateral gift of the state, tended because Jews were useful to the economy and/or dependable (because increasingly vulnerable, hence dependent) taxpayers. When physically threatened (which happened much more frequently than in the Islamic world), the Jews of Europe routinely resorted to bribery to purchase or restore protection. This reliance on bribery created uncertainty, instability, and collective anxiety, for one never knew when a payoff might be required or whether the sum offered would be sufficient.

A sign of the widespread utilization of bribery in Jewish life in Latin Christendom is the regular use of the verb le-shahd (from the biblical noun shahd, "bribery"), rare in mishnaic Hebrew, to express the action. In Islam, as in Christendom, many a ruler discovered that the threat to enforce the sumptuary laws among the dhimmis was a convenient ploy to raise cash at a substrate. But by contrast, I know of little evidence from the classical Islamic period that bribing officials to prevent violence against persons became a regular Jewish practice. Carrying the comparison further, in the Latin West, Jewish residential security was often linked to their economic utility. Thus, in England in 1290, when tallages had ceased to yield significant sums from the increasingly impoverished Jews, King Edward I canceled their right of residence and expelled them, confiscating what little remained of their property.

Despite the humiliating connotations and the financial burden, the Jews of Islam had in the jizya a surety of protection from non-Jewish hostility than their distant brethren had in the Latin West. The "testament" of Caliph 'Umar, the purported originator of the Pact bearing his name, stipulates regarding the Protected People, that Muslims must "do battle to guard them, and put no burden on them greater than they can bear, provided they pay what is due from them to the Muslims, willingly or under subjection, being humbled." This principle was not always upheld, but it remained a steadfast cornerstone of Islamic policy toward the non-Muslims even into late medieval and early modern times.

The legal position in Islam

The Pact of 'Umar and the European Charters

The Pact of 'Umar operated differently from the charters of privileges granted to the Jews in Europe. The Latin charter constituted the normal instrument by means of which lords expressed the obligations and privileges of groups within their domain: churches, monasteries, towns, and vulnerable dependents like the Jews. It was normal for each ruler to renew the patent upon his accession. This created a certain amount of insecurity for the Jews, for the new king or emperor might arbitrarily opt not to renew their guarantee of security. Or as often happened, the ruler might alter the privileges by removing former protections or adding new restrictions (or, for that matter, new privileges—another sign of arbitrariness). Similarly, the Constitutio pro Judaeis of the papacy had to be reissued by each new pope, placing on the shoulders of Jewish intercessors the burden of periodically petitioning to have Jewish rights renewed.

Islamic jurists debated whether the stipulations (shari'ah) of the Pact of 'Umar needed to be renewed by an Imam if, for some misdeed of the dhimmis, the Pact had been annulled. Conservative jurist Ibn Taymiyya, Ibn Qayyim al-Jawziyya's mentor, opined that it was not necessary—in fact, it was to no avail legally—to promulgate the compact anew: the original Pact issued by Caliph 'Umar and carried out after him "by caliphs of excellent reputation" sufficed for all later generations. By the same token, a ruler could not grant relief to the dhimmis from any of the Pact's restrictions.

Muslim abhorrence of unacceptable "innovation" (ha'a in Arabic) assured non-Muslims that the authorities would neither arbitrarily add nor detract from the canon of disabilities and protection that regulated their relations with the majority society. Similarly, Latin Christendom, with its more complex and diffuse legal system, abhorred innovatio (the word is Latin, of course). But it seems to have been able to sustain changes in the legal status of the Jews by relying on appropriate ancient precedents or rationales. In a clear-cut example of this, the authors of German law codes in the thirteenth century were able to justify the German emperor's overlordship over the Jews as "serfs of his imperial chamber" and also of their servile status on the basis of an ancient story told by Josephus, according to which the Jews who survived the Roman siege of Jerusalem were sold into slavery to the victorious Roman emperor Vespasian (or, alternately, Titus).

When, on occasion, it became necessary to enforce some neglected restriction or restrictions in the Pact of 'Umar, authorities might repudiate the entire Pact as a reminder to the violators, who, we read, might actually disclaim direct knowledge of the compact. In the late Middle Ages, for example, we find Mamlok sultans reissuing the Pact, incorporating-
ing the demand that dhimmis be excluded from the service of the state.\textsuperscript{132} This latter clause did not constitute an innovation, for, as we have seen, the regulation had been part of the restrictive regimen since as early as the eighth century, and it was frequently invoked when a ruler or religious scholar wished to remove non-Muslim secretaries from the administrative apparatus.

The most eccentric departure from the traditional stipulations came during the indiscriminate persecution in Egypt and Syria by Fatimid caliph al-Hakim (996–1021). Among other innovations, he made Jews and Christians wear a humiliating symbol around their necks in the public bath (the Jews, a heavy wooden image of the golden calf "which their ancestors had worshipped," and the Christians, a long wooden cross). Muslim chroniclers recognized these and other outrageous impositions by the "mad" caliph as going far beyond the law of the Pact of Caliph 'Umar ibn al-Khattab—"the stipulations which al-Hakim added to the 'Umairiyyan ones," as one medieval Arab historian put it dryly.\textsuperscript{133}

For non-Muslims, therefore, the relative stability over time of the basic law regarding their legal status assured them a considerable degree of continuity in this important matter. Further, Islamic judges remained faithful to the principle of noninterference in the adjudication of intra-Jewish issues unless brought before them voluntarily by the parties. Even when this occurred, as it did quite frequently, qadis especially observed the rule of nonintervention when the matter related to personal status, as evidenced, for example, in the phrase \textit{la nata'awad fi dhalika (or: lihna) li-mukkin 'aqaf al-dhimma}, "we do not interfere in this matter (or: with them) on account of the dhimma pact," sprinkled through a discussion of dhimma marital law.\textsuperscript{134}

Finally, as is well known, in Christian lands the Jews often endured collective punishment for the alleged or real transgressions of individuals. The view of one of the stricter Islamic schools of law, the Makkite, is that Islam should not impose collective retribution for one person's violation of the Pact if the other non-Muslims repudiate the act or are found to have transcended under compulsion.\textsuperscript{135} Instances of mob assault on an entire Jewish community because one Jew violated the Pact are, in fact, extremely rare. They include the pogrom in 1066 in Granada, a favorite of the counterwryth revisionists but, nonetheless, an exception to the rule in the classical period of Islam.