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## The *Dhimmī* as the Other of Multiple *Convivencias* in al-Andalus

Protection, Tolerance and Domination in Islamic Law

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## Abstract

The figure of *dhimmī* is certainly the most emblematic juristic figure in the history of Islamic law. Strangely, it also has the juristic status of being the most ambiguous and complex, as it lacks a coherent, genuine legal shape and doctrine. Quranic references to *dhimma* or *ahl al-kitāb* (People of the Book) complicate the landscape. However, the *dhimmī*'s juristic corpus has played a major role in organising the cohabitation, domination or exclusion of non-Muslims in conquered territories for centuries.

*Convivencia* in al-Andalus represents a unique experience in the history of Islamic law and Europe, the results of which are still felt today. But what is to be learned from the former inclusion/exclusion of *dhimmī*? This issue, linked to understanding ›otherness‹, is fundamental to studying *Convivencia* and grasping its mechanisms. Monotheistic Others in Islam (Jews and Christians) can thus teach us about Islam and guide us as we do.

Iberian *Convivencia*, seen as a narcissistic injury and repressed memory to this day, is a historical and cultural chance to reflect upon and research the Self and the Other. If Muslims in Europe today consider themselves, often unconsciously, as being a kind of *dhimmī*, it is because Islamic discourse on the Self and the Other is profoundly inscribed into this juristic and historical heritage. Understanding facets of *Convivencia* / (de-) *Convivencia* from an Arab-Islamic view requires examining *dhimmī* in all states: protected, tolerated, dominated or persecuted. Focusing on *dhimmī*'s legal status is methodologically fruitful, as pitfalls in research based solely on Islamic legal texts are avoided. It further does justice to the often obscured human dimension of Muslims and *dhimmī* living together.

Keywords: *Dhimmī*, *Convivencias*, al-Andalus, Islamic law, the Other



Raja Sakrani

## The *Dhimmī* as the Other of Multiple *Convivencias* in al-Andalus

Protection, Tolerance and Domination in Islamic Law

### 1 Introduction

Who among us has not been gripped with marvel and curiosity standing in front of the Great Mosque of Córdoba, the Palacio Real Alcázar of Sevilla, the Alhambra in Granada or the Mezquita-Iglesia del Salvador and Iglesia de San Román in Toledo?

Who among us has not been flooded by waves of wonder feeling the vibrations of an Andalusian guitar, a broken flamenco voice singing of loss and separation, or a »gipsy« who makes the ground tremble under her feet with a defiant gaze? Who among us has not been stopped in their tracks by the still visible traces of a »co-living« or a »co-excluding« in present-day *Andalucía*, Toledo and

elsewhere? How, during the Middle Ages, were Muslims able to live side-by-side or separate, impassioned by love and hate for the »Other«, dominant or dominated, together on European soil with the *dhimmī*, who are non-other than Christians and Jews? Which role was attributed, assumed or negotiated by the one towards the other during the eight centuries that made both the soft and cruel facets of *Convivencia* possible?

When I published my first article in the journal *Rechtsgeschichte* in 2014, I did not know that beyond the history and »The law of the [Muslim] Other« in medieval Europe,<sup>1</sup> what haunted me deep down was his *alter ego*, the non-Muslim, the *dhimmī*. And when Thomas Duve later kindly proposed that I participate in the *Convivencia*



Fig. 1. Mezquita-Iglesia del Salvador, Toledo



Fig. 2. Iglesia de San Roman, Toledo

1 The Law of the Other. An unknown Islamic chapter in the legal history of Europe is, in fact, a crucial issue for a better understanding of Islamic pasts in Europe, from the conquest of the

Iberian Peninsula until today. Emphasis was especially put on the problem of European historiography – particularly on the field of legal history on the one hand, and the

question of Islamic otherness in Europe on the other. SAKRANI (2014).

research group at the Max Planck Institute for European Legal History,<sup>2</sup> he unwittingly offered me the chance to enrich my own research and venture into the history of Islamic law in order to explore – with this buried desire – the enigmatic and fascinating »theory« of *dhimma* in Islam. This essay is the fruit of a perpetual quest for meaning, of modest scientific exploration that has had the fortune of being able to feed off the reflexive work of a team. It has benefited from a group dynamic that permitted – thanks to its interdisciplinarity – casting a different glance on personal questions and incessantly renewing its research problems. It is also an attempt to overcome, to break free, as much as possible, from the methodological confinement imposed by one's own discipline.

The point of departure is a question that has stuck with me since I first became interested in the history of Islamic law and, in particular, in otherness within Arabic culture: Why have Muslim legal scholars never taken it upon themselves to construct a proper »theory« on *dhimma*, or *ahl al-dhimma* (people of *dhimma*), even at moments when the Islamic empire extended from India and the borders of Asia to all of Arabia, all the way to the Iberian Peninsula and the South of Europe, passing through Northern Africa? Why are

the few legal rules on *dhimmī* scattered here and there in classical manuals on *fiqh*,<sup>3</sup> Arab historiographical chronicles and literary texts of all sorts, without forgetting the *fatāwā* and compilations of *masā'il* or '*amal* (judicial cases and questions)<sup>4</sup> typical of the Islamic West (*al-gharb al-islāmī*)?

That these questions interest me is one thing; that I share them with colleagues, who are increasingly growing in number and working on the status of *dhimmī* and the question of *dhimma*, is another. However, the fact that my work on »the theory« of *dhimma* – if such a theory exists – should become fundamentally anchored in the experience of *Convivencia* on the Iberian Peninsula changes matters completely. How come? There are only very few foundational juridical texts extant on the status of *dhimmī*. We shall come back to this point. These texts were born, for the most part, in a specific geopolitical and historical context in Arabia – and are therefore far removed from the Iberian Peninsula. By contrast, it is particularly the *dhimma* of Medieval Spain who does not cease to intrigue researchers due to certain specific traits.<sup>5</sup> To access them, we have a privileged key: *Convivencia*, even if it may still elicit historical debates and ideological polemics.

2 The project »*Convivencia*: Iberian to Global Dynamics, 500–1750« is carried out by an interdisciplinary working group. It is being pursued by four Max Planck Institutes: The Max Planck Institute for European Legal History (Frankfurt), the Max Planck Institute for History of Science (Berlin), the Max Planck Institute for the History of Art (Florence) and the Max Planck Institute for Social Anthropology (Halle). David Nirenberg from Chicago is also involved.

3 To put it in very simple terms: *Fiqh* is a creation by Muslim jurists that recalls Roman and Common Law jurisprudence. This makes the enormous body of law we call *fiqh* a mixture of general principles and theories, legal fictions, etc. (without expecting a systematization that encompasses the entire Islamic normative system) on the one hand, and casuist refinement on the other. Ultimately, the Quran only contains very few explicit rules in the legal dimension. After the death of the Prophet, it did not take Muslims long to discover that the

application of Quranic prescriptions posed enormous problems. To begin with, there is the issue of silence.

The application of several prescriptions themselves is likewise problematic: non-explicit verses on this or that question, others that lack precision. In short, it was necessary to fill in *lacunae* and therefore either create new rules or fixate a theological-legal procedure permitting the deduction of legal rules. This process culminates in the famous theory of legal sources in Islamic law: the *sunna* (the tradition of the Prophet Muhammad) according to the Quran; *al-qiyās*, that is to say the analogies of the jurists, and finally *al-ijmā'*, which means the consensus of the most qualified (the '*ulamā*') of the Islamic *umma*.

The literature on legal sources is immense. See just by way of example: HALLAQ (1985, 1986); AL-WAHHĀB KHALLĀF (2008); ALDEEB ABUSAHLEH (2005) 55–201; BADR (1965). From an anthropological perspective and on the premises for source formation see: BLEUCHOT (2000). From

an epistemological perspective, including the critique of the colonial perception of Islamic sources, see the analysis by CHARNAY (2008) 9–29. See also the original study by BENKHEIRA (1997).

4 This type of juridical literature will be analyzed later in this article.

5 According to the Arab point of view, the Andalusian experience is written not only in the nostalgic vein of poetics and Andalusian music, be they Arabic or not; above all, it recounts what one calls »the noble times« (*al-zamanu al'nabil*), that is to say this episode that marked Arab history, identity and collective imagination. An Andalusian episode that allowed Arabic culture to give the best of itself, to blossom by accepting difference, hybridity and openness towards the Other, be they *dhimmī* or not – in other words, this capacity of *cum vivere* and of *Convivencia*.

I postulate the following: To attempt to understand the facets of *Convivencia* / *de-Convivencia* from an Arabo-Islamic perspective, one must first study *dhimmī* »in all its states«: the protected, tolerated, dominated or even persecuted *dhimmī*. The manner of re-centering the research on the legal status of *dhimmī* and the rules that frame *dhimma* via *Convivencia* (and vice versa), is fruitful on the methodological level in the sense that it allows the pitfalls of purely legal research founded solely on Islamic legal texts to be avoided. Further, it is clearly multidisciplinary and does justice to the living, human dimension, which is almost always obscured, of living together between Muslims and *dhimmī*.

From 711, the year of the Islamic conquest of the Iberian Peninsula, until 1492, the date of the fall of Granada and the victory of the Catholic kings, the three Abrahamic religions rubbed shoulders despite their animosity, bitterness and competitiveness. They were even able to create a unique civilizational and human experience that is marked by the capacity of translating itself into the language of the Other, into its culture, at times even into its religion and its societal projects. It was an era of interactions in which opportunities for exchange were abundant, from economics to architecture to science, poetry and intermarriage. It was marked by permission and prohibition, submission and transgression, fluid or rigid cultural and religious frontiers, proximity and distance – in short, by a complex network of situations for engaging with the Other through all human potential: emotions and their contradictions, law and its functions, religion in its essence and in its manifestations.

It should immediately be pointed out that *Convivencia*, with its multiple facets and its tendencies towards peaceful cohabitation as well as violent exclusion, was a remarkable period of interdependence essentially thanks to a new type of leadership that was previously unknown in Europe and para-

doxically emerged via conquest.<sup>6</sup> I advance the argument that Andalusian leadership paved the way for *Convivencia* through the legal framework established by the contract of *dhimma* (*‘aqd al-dhimma*). In other words: the first base of *Convivencia* was contractual, a judicial basis par excellence, even if this legal instrument was rooted in religious commands. Looking more closely, we see that Muslim leadership, by virtue of this legal arsenal of *dhimma*, was crucial for maintaining an environment of what I would like to call *active co-living* (a kind of quasi-citizenship) and *passive co-living* (a second-class citizen status), through devising its legal, economic and societal frameworks.

The second key aspect of Muslim leadership is the legal status of *dhimmī*, a doctrinal juristic construction based on the Quranic qualification of Christians and Jews as *ahl al-Kitāb* (People of the Book). Because of their monotheism, Muslims have the duty to protect them under certain conditions. More than a simple moral responsibility, protection of Christians and Jews<sup>7</sup> is a religious imperative. *Dhimmī* means the »protected«. Thus, it becomes clear that the Quranic perception heavily guided Muslim scholars in building an embryonic theory of *dhimma*. Yet a more complex picture emerges when looking at the first Islamic documents related to this protection. Available historical and legal texts mention very few original sources and are not always explicit or systematic. It seems that its roots reach back to Prophet Muhammad's era.

The final factor of *dhimma* in the Iberian Peninsula that I would like to touch upon is Muslims' ability at the time to treat the *dhimmī* both as an inferior being subjected to Islamic domination (in this regard, the Quranic interpretation played a major role), and as an extension of the ›Self‹ and an integral part of the *umma*. Missing this point would render one unable to understand why the *dhimmī* were considered an integral part of *dār al-Islam* and, in this sense of solidarity with Muslims,

6 This paradox, which affects the very premise of the birth of *Convivencia*, was pointed out in some studies about *Convivencia*. See especially: COLLINS (1983) 146 ff.; GLICK (1979) 165–193.

7 It is often forgotten that the interaction between Muslims and gypsies was particularly interesting, especially between the 15<sup>th</sup> and 17<sup>th</sup> cen-

turies. It was a type of cohabitation that attempted to face Christian domination and discrimination. Research on gypsies as a minority group during the period of medieval *Convivencia* deserves more attention and shall be explored in the future. During the workshop ›Convivencia Today‹, organized by the MPI for European Legal History in Frankfurt on

February 3, 2017, this issue was addressed and discussed. In any event, what is of interest for the purpose of the present article is the following question: Were gypsies considered *dhimmī* by Muslims? On gypsies in Europe see: BOGDAL (2014).



Fig. 3. Puente María Cristina, inauguración Capitalidad Europea

why they were subject to Islamic law from a perception of protection rather than submission. Lastly, the question still remains as to why Muslims were obligated to liberate *dhimmī* captured by the enemy and pay their ransom just as they would for a captured Muslim.

What can we learn from the inclusion/exclusion factor in the concept of *dhimma* at that time – and perhaps apply it to our time? This question is fundamental to the study of *Convivencia* – and it is also crucial for the history of law, be it European or Islamic. But above all, it is a question linked to the problem of Otherness. The Other, or more precisely the monotheistic Other in Islam, therefore becomes key to better understanding *dhimma* and the mechanisms of *Convivencia*, whether in the Iberian Peninsula or elsewhere. It is the monotheistic Other that can teach us about Islam and guide

us as we get to know it better. For Islam – in the plural – desperately needs to know itself. Its medieval Iberian experience, felt to this day as a narcissistic injury and repressed memory, is a historical and cultural chance that allows the door to reflection and scientific research of the Self and the Other to be re-opened.

In the context of post Arab-revolutions, intellectuals and religious figures, as well as ordinary Arab citizens, are hoping to at least retrieve, if not reconstruct their own *Convivencia*: *Taqāfat al-ta'āyūš*<sup>8</sup> (culture of living together). Many examples of this *ta'āyūš* can be mentioned. The Great Mosque of Testour, a typical Andalusian small town in northern Tunisia, represents a nice extension of the Andalusian *Convivencia* in Northern Africa after the expulsion of the *Moriscos* and the Jews<sup>9</sup>

8 Let me remark that the semantics are very revealing: the word *ta'āyūš*, which is a kind of direct translation of *Convivencia*, is fairly recent. Its usage is increasingly generalized with reference to *tasāmūh*, which means tolerance, a term that has been used for a long time, even by dictators in power, after the decolonization, in the guise of political propaganda. This *Convivencia* currently has an enormous theological and legal dimension

within Islam, even if its articulation is still quasi-embryonic and not always explicit. A discussed and dreamt-of *Arab Convivencia* expresses an intellectual effervescence that survived post-revolutionary disillusionment, wars, destruction and self-destruction.

9 Testour was founded by Jewish-Muslim Andalusians who fled to this country after the *Reconquista*. Apart from its Great Mosque constructed

following Spanish techniques, its clock that turns counter-clockwise, and its numerous Jewish and Muslim marabout, the inhabitants of Testour maintained a very particular Andalusian habitus: their own *Convivencia*. Their identity is Judeo-Muslim Andalusian before it is Tunisian. This is represented through gestures that assure the visitor of their welcomedness, such as inviting them to partake in their dishes, music, festivities,



For if the bloody wars in the Middle East following the first Iraq War only succeeded in destroying the social tissue including the different non-Islamic communities and minorities, post-revolutionary wars and ISIS are incessantly smashing any form of coexistence between Muslims and non-Muslims to pieces (Christians, Yazidis, Assyrians, Bahā'í, Kurds, etc.). Wahhābī Islam is unquestionably the prime culprit, as its ideology is

founded on the elimination – within Islam itself – of »bad Muslims« who do not adhere to its doctrine. Nevertheless, the complex regional and global geopolitical context<sup>10</sup> as well as the delusions of certain powers in the West who, in all directions, are playing dangerous games with Wahhabism and radical Islam,<sup>11</sup> are doing anything but smoothing out relationships and lending the Arab debate on *Convivencia* any dimensions that are different from



Fig. 4. The Great Mosque of Testour Fig. 5. Detail of the Great Mosque of Testour

smells and flavors of the Andalusia of yesteryear. This mosque was constructed in the early 17<sup>th</sup> century by Muhammed Tagharino, a Morisco with origins in Aragon who arrived in Tunisia with the second wave of Andalusian immigration. The first wave arrived in 1610 and built the first nucleus of the city along with its first quarter *Rḥibat al-Andalus*. It was followed by the quarter of Tagharino, built at the same time as the mosque, and the quarter of *Ḥara*, occupied by the Jewish community that accompanied the expelled Muslims in their painful fate. Aside from tiles and bricks fabricated locally by Andalusians, Tagharino used stones extracted from Roman ruins located in situ to construct the Great Mosque. This elegant and impressive mosque rises into the sky, with its octagonal minaret in the image of towers dominating ancient Spanish churches, with two stars of David – a testament to the diversity of the population of Testour – tile roofing, a sun-dial in the middle of the patio that indicates the hours of

prayer, and a *miḥrāb* topped by a triangular pediment borrowed from the art of Italian-Spanish Renaissance. This ensemble reunites to reinforce the original character of the building and its universal vocation.

10 The Islamic State Daesh does not only wage its wars with the Quran and in the name of Islam – it lives, propagates and even enters European ground thanks to a complex global network of mafia-like structures and ties of all kinds which also involve – it must be said – the West: The sale of petroleum to whomever will pay; the open sale of stolen art and history of an entire desecrated civilization, a millennia-old civilization that is not solely Islamic; the kidnapping or sale of child refugees to criminal pedophile or slavery rings on European soil, etc. ... the horror knows no limits.

11 See, for example, the very pertinent analysis by BEAU / BOURGET (2013). Le villain petit Qatar. Cet ami qui nous veut du mal, denouncing – in the case of France – those responsible within

French politics who, to escape from the financial crisis, demand aid for a country that fosters radical Islam; finances the satellite TV channel Al-Jazeera; propagates hatred and radicalization throughout the world; has »blown out« the members of the »Arab Spring« to avoid a greater revolution; and, worst of all, offers billions to France to purchase the football club Paris Saint-Germain, invest in the French real estate market and acquire capital in companies to finance, first and foremost, plans to rescue the *banlieues*. If the production of radicals and terrorists is part of the rescue plan, the mission has been quite successful! And with all this, France is not an isolated case in Europe. Saudi Arabia plays a similar role in the region and even on a global level. See in the same sense the excellent sociopolitical analysis by ADRAOUI (2013), with a nice introduction by Gilles Kepel.

those familiar in Europe.<sup>12</sup> Such dimensions are deeply tied first to the upheaval of Arab revolutions and then to the drama of the unspeakable terror and destruction caused by the Islamic State that dominates a landscape of broken dreams, particularly in Syria, Yemen and Libya. In post-revolutionary Arab and post-colonial societies alike, the question of Otherness – the European but also the non-Muslim Other in the Arabic World – is crucial.

This is how my proposal to integrate the question of Otherness both as an analytical tool and as a conceptual grid, which allows a better understanding of the theory of *dhimma*, is justified.

This article is structured as follows: In the first part, I will try to sharpen the reader's awareness of the methodological problems one encounters while researching *Convivencia* from a historiographical perspective. The second part then presents a brief summary of the current state of research on *dhimma*. Next, the accent will be placed on different aspects of the legal status of *dhimmī*, from the *ṣaḥīfat al-Medina* to sources regarding the practice of *dhimma*, including also the foundational texts on the payment of *ḡizya*. The analysis will make use of several reading lenses following disciplines pertinent to this research, while likewise cross-checking with juridical and historiographical

sources so as to obtain a more complete image of *dhimma*. Having thus sketched the legal status of *dhimmī*, I will construct my juristic and socio-historical research in the third part around the influence of this concept on the legal rules regarding *dhimmī* and decode *Convivencia* dynamics in al-Andalus in light of judicial cases and *fatāwā*. Finally, the figure of *dhimmī* as the monotheistic Other will be questioned, referring to the construction of Islamic identity and the current Islamic discourse on the Self and the Other particularly in Europe, where millions of Muslims consider themselves, in a way and often unconsciously, as being a kind of *dhimmī*.<sup>13</sup>

## 2 *Convivencia* and *dhimma*: Which elective affinities?

To attempt to answer this question, it suffices to ask why most studies on *Convivencia* – apart from a few exceptions – either focus on violence and massacres, thereby often concluding that the former was nothing more than a myth, or, conversely, exhibit a penchant for »romanticizing« the cohabitation between the three cultures in medieval Spain. Islam is therefore either »romanticized«

12 For a philosophical approach from an Arabo-Islamic perspective of living together, see for example: DHOUB (2011).

13 »The »Kulturbedeutung« of *Convivencia* goes beyond the obvious or even fashionable use of semantics. It expresses a profound need for change. And just like the history of the relations, by turns fruitful or hostile viz. violent, between Jews and Muslims evolved from the first links between Jewish tribes in Arabia and the Prophet Muhammed up to recent conflicts in the Middle East via the Golden Age of the civilizations of Córdoba and Bagdad, the history of the relations between Muslims and Europe, and by extension all of the West, necessarily passes the Andalusian period. A pivotal and foundational moment for European modernity follows the reconquest of Granada in 1492. The construction of – in turn – Christian and Judeo-Christian identity in Europe, of Latin American identity and of Islamic identity follows the fall of Granada in

1492. The religious and cultural conversion of the other »Other«, the conversion through sword and cross of the indigenous populace of the Americas and the transfer of an entire normative arsenal sprang from the Iberian experience. It was essentially determined after the forced conversion during the *Reconquista* with the distinction of the Iberian »Other«, Jewish and Muslim, who despite forced conversion, did not »succeed« in being accepted as a »good new« Christian or a »good« European citizen«. SAKRANI (2016) 15 f. Neither the *Sephardic Jews* and their descendants nor *los Moriscos* and their descendants nor *los Indios* and their descendants have recovered from this drama that is at play. Following the fall of Granada in 1492 and the progressive persecution of Muslims and Jews up to forced conversion and expulsion, part of the Andalusian Jewish population fled the Iberian Peninsula and settled in the Maghreb, whereas the remainder essentially dispersed throughout Europe and the Ottoman Empire.

As for *los Moriscos*, the consequences were much more complex. Those who remained or survived in Europe dispersed, »evaporated« even, as their traces have been lost. What has become of them? This is a question asked by more and more studies. See: SAKRANI (2014); VALENSI (2012); DAKHLIA / VINCENT (2011); DAKHLIA / KAISER (2013). The drama of World War II, the creation of the Israeli State and the waves of Sephardic Jews leaving Morocco, Algeria and Tunisia following the 1960s have not led to the same repercussions as the Andalusian tragedy of the 16<sup>th</sup> century. The recent Spanish law on the option of Spanish nationality on descendants of Sephardic Jews poses more than one question and does not cease to stoke the debate between approval and criticism. See: ARAGONESES in this Dossier: Uses of *Convivencia* and *Filosefardismo* in Spanish Legal Discourses, 200–219.



in an ahistorical perspective or minimized, obfuscated or even vilified.

Certainly, the conceptualization of *Convivencia* itself is subject to considerable difficulties of perception, first according to the disciplinary lens and then to methodology. Nevertheless, the fact remains that it represents the connection to Iberian Islam and more precisely to the »theory« of *dhimma* which merits more reflection and research. The present essay is conceived in this vein.



Fig. 6. Muslim and Christian knights embracing in greeting

It is unavoidable for us to ask a question that, while certainly provocative, is nonetheless legitimate: Is *Convivencia* actually an empty shell of a concept, something »romanticized« and susceptible to all sorts of projections of values or ideologies, an ahistorical and perhaps even dangerous concept? For the purpose of the present research, the most decisive task in approaching this question is casting off the chains imposed by the semantic and ideological battle surrounding *Convivencia*.

While conceptual reflection on its meaning is undoubtedly legitimate – even paramount – such polemics frequently omit the dimension of life within this unique historical experience, a period of remarkable interdependent »co-living«. Taking recourse to the legal status of *dhimmi* as a conceptual reading lens that goes along with – and at times even outpaces – *Convivencia* serves to re-center the debate and insist on those dimensions that are most practical for living together, even if these cannot escape dogmatic religious framing. That said, before moving on to this phase of reflection, it is useful to first recall the essential points of the conceptual and methodological debate surrounding *Convivencia*.

In his book *Royal Treasure: Muslim Communities Under the Crown of Aragon in the 14th Century*, John Boswell paints a vivid image of the great conceptual difficulty revealed by the term *Convivencia*: »The question of convivencia, the living together of the various Iberian religious and ethnic groups, is intensely complicated, and the task of a scholar trying to understand and describe this symbiosis is rather like that of a man attempting to reconstruct a broken and crumpled spider's web.«<sup>14</sup> Historian Olivia Remie Constable explicitly underlines the »dangerousness« of *Convivencia* – as a modern concept, to be precise. Due to its »simplicity« as a model, it can also be extremely complex and therefore dangerous, »since it can tempt us to read the Middle Ages through a murky – though often rosy – lens of biased historical memory and deterministic modern values.«<sup>15</sup> The difficulty is real and the complexity all but insurmountable, to the point that certain researchers increasingly insist on the uneasiness that alters *Convivencia* despite all efforts undertaken in works posterior to, and often critical of, Américo Castro. Instead of acting as an aid for conceptual framing, the term has become a real obstacle to Iberian Studies of the Medieval Period. This is what Maya Soifer, to name just one example, fiercely claims.<sup>16</sup> Her plea to better understand the Christian bases concerning the treatment of religious minorities in the Northern and Southern Pyrenees may be well-founded. She convincingly criticizes the lack of

14 BOSWELL (1977) 12.

15 REMIE CONSTABLE (2005), cited in: SZPIECH (2013) 135.

16 See SOIFER (2009), in particular the article »Beyond convivencia: critical

reflections on the historiography of interfaith relations in Christian Spain« 19–35.

attention accorded to the nuances of social and political powers that affected the relations between Christians, Muslims and Jews, and played out in the polarization implied by *Convivencia* between »tolerance« and »persecution«. Her argument concerning the Islamic element, however, is questionable. In essence, according to the author, *Convivencia* continues to hold some of its past influence due to researchers insisting on comprehension between religions as a »distinctly Ibero-Islamic phenomenon«. <sup>17</sup> She insinuates that »the evidence for Islamic influence on interfaith coexistence in Christian Spain is scarce«. <sup>18</sup> However, it is precisely this Arab-Islamic aspect of the issue of *Convivencia* that merits scientific study, minute analysis and correct understanding so that the historical normative legacy of Arab culture in the Iberian Peninsula can find a legitimate place in the human-

ities, especially from the perspective of European legal history. <sup>19</sup>

The conceptual battle surrounding the definition of *Convivencia* is not merely the consequence of methodological rifts and disputes. <sup>20</sup> It results as much from methodological conflicts within the humanities as it follows in the wake of the linguistic turn. <sup>21</sup> In any case, the issues of polemics are well removed from methodological questions. At issue is history as well as the rewriting, interpretation, invention and reinvention of history. At issue are the three monotheistic religions, Europe and the Other. Since Américo Castro, and even well before him, <sup>22</sup> *Convivencia* has incessantly been pulled every which way. It is the enigma to be unravelled, the historical reality that has been buried for a long time. It is the religious syncretism, the exaggerated social and cultural symbiosis, <sup>23</sup> it is

17 Abstract for the above-mentioned article: SOIFER (2009) 19.

18 Ibid.

19 See the basic article by DUVE (2012), also: DUVE (2014); (2018).

20 This essay is not concerned with cataloging these methodological problems, or with providing an in-depth critical analysis of these difficulties. Such efforts, for the most part, go beyond our present scope. The literature on this subject is abundant. See, by way of example: CHACÓN JIMÉNEZ (1982); GARCÍA-SABELL (1965); GUILLEN (1975); MANN et al. (eds.) (1992); see especially: GLICK (1992a, 1992b), also for more recent works: TOLAN (1999); CATLOS (2003); ARÍZAGA BOLUMBURU (2007); FUENTE PÉREZ (2010); CABEDO MAS/GIL MARTÍNEZ (2013).

21 For a reasonably complete summary of this question based on historiographic polemics through the lens of philology, see SZPIECH (2013) 136: »The overall argument I wish to proffer here (...) consists of three parts: first, that the comparatist method followed by Américo Castro and other literary historians of his generation (...) derived ultimately from an early Romantic concept of history, itself an expression of an earlier model proposed by Giambattista Vico, of the intimate connection between philology and philosophy; second, that the collapse of this

model has created a methodological rift between interpretative and empirical arguments both within and across Humanist disciplines such as philology and historiography; and third, that this division has produced a profound conflict of method between a predominant focus on hermeneutics in North America and on scientific philology in Spain«.

22 For a more precise analysis of the work and legacy of Américo Castro, one should return to his teacher: Ramón Menéndez Pidal so as to better understand the linguistic and conceptual premises of the word *Convivencia*. In effect, Castro starts by using the expression not in the proper sense of a linguistic variant, but rather to designate the social coexistence of Christians, Jews and Muslims in the Iberian Peninsula during the Middle Ages in: CASTRO (1956) 48. Castro explains: »Menéndez Pidal no puede »convivir« mi idea histórica porque él piensa, o siente, que »la vida de un pueblo es un continuo irrompible, dada la realidad de su ininterrumpida sucesión generativa«. Lo cual quiere decir que las palabras usadas por el maestro del hispanismo y las más poseen distinto significado, un »sentido« para él y otro para mí – una discrepancia correcta y respetable«. See also about the theory of Menéndez Pidal: GÓMEZ-MARTÍNEZ (1975) 61 ff. Subsequently, the term was

subjected to certain rectifications in later works. One might compare in this sense the first works by CASTRO (1948); CASTRO (1954). It is also important not to lose sight of the thoughts and works of certain contemporaries of Américo Castro, such as AUERBACH (1965). Moreover, the link to the philological concept of Giambattista Vico is explicitly mentioned in the introduction of this work by AUERBACH (1965) xvi. The Romantic vein of what is commonly referred to as »literary history« or »Romantic history« under which Américo Castro is systematically classed, particularly by his detractors, can be easily identified via these affiliations. See: PEÑA (1975) 72 ff.: »Filología como europeización«. To further polemicize around these tendencies is another matter which has no place here.

23 For these critiques, see in particularly the attack by SÁNCHEZ-ALBORNOZ (1956), also in the same sense: ASENSIO (1976) 26 ff. Cf. further for later works and their extended treatment of this conflict and its outgrowths – simply by way of example: GÓMEZ-MARTÍNEZ (1975); GLICK (2005), in particular 6–13. Further, on the notion of *Convivencia* in general and its origins, esp. AKASOY (2010); WOLF (2009); MARTÍNEZ MONTÁVEZ (1983–1984).

the myth of tolerance, the myth of the Spain of three cultures,<sup>24</sup> the »romanticization« of Islam,<sup>25</sup> the lyrical »nonsense«, the camouflaged violence under a fantastical myth and it is even apartheid.<sup>26</sup>

The thesis according to which *Convivencia* should rather be understood as a concept that in itself confirms the inherent paradox and does not exclude violence, deserves closer consideration. The writings of María Rosa Menocal are illuminating in this sense. In the author's opinion, the conceptual error »that has plagued all sides of the study of what some call medieval Spain, and others al-Andalus, and yet others Sefarad (and sometimes these are identical and sometimes they overlap in part and sometimes they are at opposite ends), is the assumption that these phenomena, reconquest and convivencia, are thoroughgoing and thus mutually exclusive«.<sup>27</sup> In *Communities of Violence*, David Nirenberg is clearer and more sophisticated in his formulation: »Convivencia was predicated upon violence; it was not its peaceful antithesis. Violence drew its meaning from coexistence, not in opposition to it. To call plague massacres (or Holy Week riots, miscegenation accusations, and

the like) »intolerant« is therefore fundamentally to misconstrue the terms in which coexistence was articulated in medieval Iberia«.<sup>28</sup> This claim is both questionable and fruitful for the hypothesis proposed by this study. When it comes to Arab-Islamic culture and its normative legacy during the Islamic presence in the Iberian Peninsula, it is domination that captures our attention and not violence as such. In other words, violence is certainly a social relation<sup>29</sup> and even linked to domination, but it nevertheless remains something different. Domination demands recognition of the Other, the dominated *ḍhimmī*. One might even say that the potential for violence is always present, as the meaning of domination is to frame violence. The issue becomes more interesting, however, if one more closely examines the mechanism of legitimacy from the point of view of the sociology of domination. In the Islamic case, any »theory« of *ḍhimmā* is abundant in theological and legal foundations that allow for the exploration of claims to legitimacy by the dominant (*Legitimationsanspruch*) and of faith in the legitimacy by the dominated (*Legitimationsglaube*).<sup>30</sup> Muslims be-

24 The topic of the three cultures is not new. Besides publications, multiple encounters had been organized. See, for example: Actas del II Congreso Internacional Encuentro de las Tres Culturas. 3-6 octubre 1983, Ayuntamiento de Toledo, 1985.

25 The »romanticization« of Islam or of Arab Studies linked to the Iberian Peninsula is a topic of research that deserves its own separate discussion. Suffice it to say here that the legacy or impact of the works of Américo Castro also extends to this branch. To quote one example: López García mapped out the impact of Castro on Arabic Studies on the Peninsula. That said, and at the risk of reducing the complexity of the evolution research in this field, it is clear that the critiques have been voiced by scholars of Spanish Arabic Studies influenced by a romanticism in the vein of the thought of Castro and his disciples. Arabic Studies scholar MARÍN (1992) associates this romanticism with what she calls the »exoticism« extirpated from Andalusian history »(...) en los orígenes del arabismo científico hay un firme deseo de desembarazar a la historia de al-Andalus del romanti-

cismo y el exotismo con que se veía tanto dentro como fuera de España. Este exotismo se ha ido renovando y transformando para adoptar hoy unas formas peculiares, pero no por nuevas menos falsas (como el mito de la España de las tres culturas)«. These critiques are further balanced by other works from a more critical and refreshing recent strand within Arabic Studies that have »reconsidered with a critical spirit some of the mythical aspects of the society of al-Andalus and analysed this historical past with scientific rigor, free of ideological passions and interferences«.

26 Among those who have adopted such an extreme position, we can cite by way of example: particularly Serafin Fanjul who arrives at the extreme conclusion that the Islamic »régime« in al-Andalus was »un régimen más parecido al apartheid sudafricano: experiencias muy próximas, de ahora mismo, en Líbano, Turquía o Yugoslavia nos alerten acerca de la realidad de esa imaginaria convivencia fraternal y amistosa de etnias, religiones y culturas (...). Ese panorama de exquisita tolerancia (la misma palabra

ya subsume que uno tolera a otro, o sea está por encima), cooperación y amistad jubilosa entre comunidades se quiebra apenas iniciamos la lectura de los textos originales y se va configurando ante nuestros ojos un sistema de aislamiento entre grupos, de contactos superficiales por necesidades utilitarias y de odios recíprocos y permanentes desde los tiempos más remotos (el mismo siglo VIII, el de la conquista islámica), es decir, un régimen más parecido al apartheid sudafricano, mutatis mutandis, que a la idílica inventada por Castro«, FANJUL (2004) 28 f.

27 MENOCAL et al. (2000) 14.

28 NIRENBERG (1996) 245.

29 The logic of Weber's »Herrschaftslehre« is systematically analyzed in: HANKE/MOMMSEN (2001).

30 This is one basic element of Max Weber's theory of domination. For Weber's reading of the relationship between Law and Religion see: SAKRANI (2011).

lieve in the legitimacy of their domination in the sense that Islam is the last and »true« religion. *Dhimmī*, on the other hand, accept the payment of *ḡizya* to be protected by Muslims.

Yet investigating the issue remains a frightening act: To attempt to understand the Andalusian, »European« Islam of the Middle Ages is to open Pandora's Box. Are we condemned to fall into an ahistorical transposition?<sup>31</sup> Are we entering into what certain researchers conceive as the sacrilege of the three cultures that never existed and will never exist?<sup>32</sup> My choice of moving this issue aside by concentrating on the legal and social status of *dhimmī* gives access both to Andalusian Islam and the Iberian *Convivencia* in a different manner.

My proposition is one that seeks to go beyond epistemological suspicions regarding terminology and concepts: It is neither philological nor historiographic. While avoiding any »normativization« of the concepts of *Convivencia* and *dhimma*, it, in a wide sense, refers to the normative in that it does not content itself with legal or theological texts, on the one hand, and attempts to decode non-juridical normativities, on the other. In other words: One has to adopt a realistic view, in the sense of *Wirklichkeitswissenschaften*, requiring theoretical-analytical reflection (rules on *dhimma*, on violence, domination, inter-religious interaction, etc.) and the ample use of empirical data, from legal texts to poetry.

The question of legal treatment of minority groups during the Middle Ages is eliciting ever greater interest from researchers and does not cease to stir heated and hostile debate among

historians and legal historians. Certain aspects of these minorities have remained completely absent for centuries or were even considered taboo as an object of research. The question of the legal status accorded to *dhimmī* in Islamic territory, as well as on European ground soil following the conquest of the Iberian Peninsula, is a prime example. The reasons are multiple and very complex.<sup>33</sup> Suffice it to say that the first book entirely dedicated to the *Legal Status of Dhimmī-s in the Islamic West* was published only in 2013 under the direction of Maribel Fierro and John Tolan. The start of this type of research does not go back very far either: it barely reaches back half a century to when Antoine Fattal published his book *Le statut légal des non-musulmans en pays d'Islam* (*The Legal Status of Non-Muslims in Islamic Countries*).<sup>34</sup> The most intriguing question, however, is another: Why have Arabo-Muslims shown no real interest in studying the status of *dhimmī* or conducted research on this aspect of Islamic law that affects several legal domains throughout the course of their recent history? Even in the *fiqh al-aqalliyāt* (minority jurisprudence) legal literature, which is fairly new and flourished after the 1990s in view of Islamic minorities in Europe and North America, the legal status of *dhimmī* is never mentioned, not even for comparative purposes. This is because from the advent of Islam to the fall of the Ottoman Empire, Muslims never conceived themselves as minorities outside of *dār al-Islam* and because the *dhimmī* is the Other, even if it is subconsciously an extension of the Self. We shall return to this point.

31 It is also in the name of the Romantic vision of Islam that MANZANO MORENO (2000) 37 expresses: »Si en lugar de defender la identidad de valores entre Islam y Cristianismo, proyectamos sobre el pasado las ideas de »tolerancia« y »convivencia« íntimamente ligadas al Islam peninsular y contrapuestos al secular cerrilismo hispano, no estamos haciendo más que una trasposición ahistórica e igualmente idealista de una serie de conceptos contemporáneos que tienen su justificación en una historia que nunca es descrita ni interpretada, sino simplemente plasmada«.

32 Cf. DURÁN VELASCO (2001). See also the interesting point of SEVILLA

(2014), especially the chapter: Juan Goytisolos Reivindicación del Conde don Julián [1970]: Das Maurische als das doppelte Andere des Spanischen, 193 ff.

33 The specific scope of this article does not allow to cover such reflections in depth.

34 FIERRO / TOLAN (2013); FATTAL (1958). The first studies thus began to be published centuries after the fall of Granada in 1492; after the expulsion and forced conversion of Jews and *los moriscos* and the discovery and conquest of Latin America in the same year as the fall of Granada; after European colonial empires arose all over the world including in the Ara-

bo-Islamic world, and finally after two world wars, the catastrophe of the Shoah and the start of the Israeli-Palestinian conflict following the creation of the state of Israel in the Middle East.

Moreover, looking at the wide range of studies dedicated to *Convivencia*, and more generally to Islamic law, one could say that many legal spheres have been widely explored: religious matters, commerce, social life, urbanism, funeral practices, irrigation and so on. But not *dhimma* separately. Certainly, *dhimmi* was present – even if its presence remained fragmented and functional according to the themes covered – in research carried out by Arabists, researchers in the humanities and in various disciplines in Europe and elsewhere. However, this observation is now augmented by a timid, but growing, presence of Arab researchers over the past few decades.<sup>35</sup> In 2013, the same year of the publication of *Legal Status of Dhimmi-s in the Islamic West*, Abdelwahhab Meddeb and Benjamin Stora published their *Histoire des relations entre juifs et musulmans des origines à nos jours*.<sup>36</sup> Even if this massive collective work is not entirely dedicated to the question of *dhimma*, several contributions address this issue from varying perspectives and cover multiple geographic spaces and historical periods.<sup>37</sup> The episode of the expulsion of Jews from Spain is also present, very closely linked to *dhimma*.<sup>38</sup>



Fig. 7. Ahmad al-Jazzar Pacha 1720–1804, governor of Saint John of Acre, condemning a criminal; on the left a Jew as an associate judge

It elicits both relations of hybridity and interpenetration in the Maghreb following the expulsion of Jews, Muslims and Conversos, which fits into the vein of Iberian *Convivencia*.<sup>39</sup>

It is further intriguing that the studies on Islamic legal history that deal with *dhimmi* can almost be counted on one's hand.<sup>40</sup> In fact, it is not

35 These are for the most part expatriates in Europe or Maghreb. In the Arab world, scholars are silent on the question of *dhimma*. Nevertheless, in the collective consciousness, the Israeli-Palestine conflict is experienced as a reverse *dhimma* in which he who formulated the rules of *dhimma* in the past now becomes the subject of a sort of *dhimma* status – that remains, of course, quite different.

36 MEDDEB/STORA (2013).

37 On the heritage of the Ottoman millet system in Israel, see: KARAYANNI (2013) 459: «Cette situation, dans laquelle les tribunaux religieux se voient accorder la juridiction en matière de loi de la famille sur les sujets locaux, constitue un héritage du système du *millet* ottoman. Israël, tout comme le mandat britannique en Palestine (1922–1948) auparavant, a conservé les caractéristiques fondamentales du système ottoman, selon lesquelles les sujets locaux sont renvoyés à leurs communautés religieuses respectives pour déterminer leur statut personnel et tout autre droit afferent». See also on the status

of Jews as *dhimmi* in Palestine in the 16<sup>th</sup> century: BEN NAEH (2013) 205. According to this study «Les juifs en Palestine», even if «les juifs préfèrent se rapprocher de leurs coreligionnaires, il n'existe pas de ghettoïsation ni de quartiers réservés aux juifs ou aux chrétiens. Les zones d'habitations juives, qui s'érigent spontanément, n'ont pas de frontières hermétiques. Les difficultés ou les conflits de voisinage éclatent généralement parce que les fidèles musulmans se plaignent de la trop grande proximité du quartier juif pendant les prières à la mosquée».

38 VEINSTEIN (2013) 185 argues that the Ottoman Empire constituted a refuge for the expelled Jews of Spain thanks to the status of *dhimma*: «Si les sultans ont bénéficié d'un apport juif dont ils percevaient l'utilité, voire la nécessité, sans se heurter aux obstacles juridiques et religieux hypothéquant leur présence en Chrétienté et si les terres musulmanes, notamment ottomanes, ont ainsi constitué un refuge pour les juifs, ce fut grâce au statut de *dhimmi*. Rejeté par certains régimes

radicaux au cours de l'histoire, il est toujours demeuré de règle dans l'Empire ottoman. Allant de pair avec le hanafisme, école juridique modérée dont les Turcs faisaient profession, il apparaît d'autre part comme une conséquence naturelle de la grande diversité religieuse existant dans l'empire, au point que les musulmans étaient minoritaires dans nombre de ses parties (en Europe orientale, notamment)».

39 Indeed, «les séfarades, capables de parler aussi bien l'espagnol que l'arabe ou le berbère, se trouvent en situation d'intermédiaires entre puissances chrétiennes et puissances musulmanes», SCHAUß (2013) 233.

40 These observations concerning research on the *dhimmi* themselves merit separate and in-depth study.



possible to draw up a general study on the question of *ahl al-dhimma* given the historical complexity of the periods it spans, the divergent politico-religious contexts and, above all, the treatment of *dhimmi* according to the very practice of *Convivencia*, which in turn varies from one geographic region to another and from one mode of domination to another.

To further complicate the picture, one should not forget that Arabic sources pose enormous problems. Essentially, apart from the historical sources that are silent on the status of *dhimmi* and the dynamics of living together with non-Muslims, the doctrinal nature of *fiqh* manuals does not allow for the contours of a complete »theory« of *ahl al-dhimma* to be delineated and systematized. Let us recall that this genre of legal literature – precisely because of its doctrinal and casuistic nature (which does not mean it is irrational) – is eminently historical. In other words, the researcher is tasked with placing this juridical source within its temporal, geographical and even socio-political context according to the respective author's school of law and his relationship to political power. The Islamic West further offers the researcher very unique types of sources. In addition to legal texts – including chronicles of the *qāḍī* (Islamic judges), *notaries* (the manuals of *'amal*),<sup>41</sup> *fatāwā* (legal consultations) and theological-religious treatises – non-legal texts are also explored and investigated. It will therefore take other Arabic texts in forms of literature, poetry and chronicles into account, while dealing in passing with genres specific to al-Andalus, such as *adab al-munāḍhara* (a polymic literary genre) particularly in religious matters.<sup>42</sup> Ibn Ḥazm, the Andalusian lawyer and poet from Córdoba (11<sup>th</sup> century), offers a very convincing illustration of this claim. In his famous book *al-Fiṣāl fil milali wal-ahwā'i wal-niḥāl* (a comparative study of Religions),<sup>43</sup> Ibn Ḥazm, the son of a former Minister and founder of the *dhābirī* school of law in al-Andalus, attacks Jews and Christians (and incidentally also tolerant and rationalist Muslims). But, despite all the insults and utterances, he in-

stinctively stops at a certain limit: the respect for Jews and Christians as holders of Scripture (*ahl al-kitāb*). His polemic *Risāla* (Epistle/Letter), in which he vehemently refutes the critique of the Jewish minister of Granada, Samuel Ibn Nagrila, regarding contradictions in the Quran, is testament to this.



Fig. 8. Monumento dedicado in 1963 a Ibn Hazm en la Puerta de Sevilla, Córdoba

### 3 On the legal status of *dhimmi*

Given the complexity of the adopted perspective and the immensity of sources to consult, it is not possible to include all historical sources as well as all numerous studies – from a variety of disciplines – concerning the *dhimma*. The legal status of *dhimmi* will be covered from several viewpoints that overlap, intersect or complement each other.

41 At issue is the judicial practice of notaries, which flourished in al-Andalus and the Maghreb.

42 Other genres became more widespread in North Africa following the *Reconquista*, such as the *rudūd* (the plural of *radd*), literally »the replies«

addressed to Christians – these are thus essentially anti-Christian texts that cannot be explored here. One should, of course, also not forget a whole gamut of texts of all genres (biographical, historical, theological, etc.) written by expelled *moriscos*, but

the frame of this essay does not allow the inclusion of such studies.

43 IBN ḤAZM AL-ANDALUSĪ (2007).



### 3.1 Dhimma: Between academic research and polemic usage

Even though the *dhimma* codified cohabitation and the role of non-Muslims on Islamic soil over several centuries, the process of its abolition during the 19<sup>th</sup> century (between 1839 and 1856) by the Ottoman Empire<sup>44</sup> as well as other independent Arab states has rendered this concept practically obsolete. It is in this sense that Juan Eduardo Campo designed the following definition in the *Encyclopedia of Islam*: »Dhimmis are non-Muslims who live within Islamdom and have a regulated and protected status. [...] In the modern period, this term has occasionally been resuscitated, but it is generally obsolete«.<sup>45</sup> Yet this definition also correctly mentions the resurrection of the concept. Essentially, retracing the history of the law of *dhimma* rules is very complex and increasingly furthers the subject of enormous historiographical and ideological battles. Much like *Convivencia*, one wonders why the legal status of *dhimmī* has become the object of stereotypes largely of Western creation. Two visions therefore oppose each other: That of a liberal legal status in the image of an Islam that is respectful of Christianity and Judaism – a tolerant and romanticized vision; and that of a backwards tyrannical and bloodthirsty Islam that only humiliates, mistreats and massacres the *dhimmī*. In addition, one should add the last variant of an anachronistic projection of certain ideas, such as tolerance, anti-Semitism,<sup>46</sup> multi-

culturalism, the place of Islam in the West, Islamic terror, etc., to medieval Islam<sup>47</sup> and by extension today's Islam, too.

In reality, the battle is even more vehement, multi-faceted, and, even worse, non-hesitant to functionalize objectivity and scientific research ethics in the service of religious, geopolitical or even security interests. An emblematic case is that of Bat Ye'or, a British Jewish author of Egyptian descent, who developed the concept of »*dhimmitude*« in the 1980s. In her works, it seems as if she took inspiration from the word created in 1982 by the Christian President of Lebanon, Béchir Jemeyel,<sup>48</sup> as her focus is on historical episodes during which Islamic norms regulating the status of *dhimmī* were more severe than in other periods or countries, if not outright hostile and violent. Her overtly polemic works that feed on religious and political cleavages and remain non-scientific quickly evoked both waves of criticism and partisan support.<sup>49</sup> Several researchers have reproached her particularly for lack of scientific rigor.<sup>50</sup> What is more, her no-less polemic concept of *Eurabia*<sup>51</sup> attempts to write a »post-Judeo-Christian« version of European history that »[renounced] the resistance to the dhimmitude«,<sup>52</sup> for it purports that this legal and religious status was only invented with the objective of discriminating against, or even eliminating, non-Muslims. However, one can nevertheless find an exception in certain regions within Central Europe.<sup>53</sup> The author's usage of the situation of the *dhimmī* on the Iberian Peninsula

44 Let us take the example of several countries in the Islamic West: Egypt realized this abolition a bit earlier after Mohammad Ali proceeded with separation from the Sublime Porte to found his own dynasty between 1804 and 1849. Tunisia did the same with the famous *'abd al-amān* of 1857 (the Fundamental Pact, though *amān* literally means security, peace, protection ...) even though the political context was drastically different from Europe or even Anatolia. In Morocco, the abolition of the statute of *dhimmī* occurred later, in 1912, to be precise, as the country was under the domination of the French protectorate.

45 CAMPO (2010) 194 f.

46 Many examples could be named, see by way of illustration: FERNÁNDEZ-MORERA (2017), especially chapter 4: The Myth of Umayyad Tolerance,

119–138 and chapter 7: The Christian Condition. From Dhimmis to Extinction, 205–233; BEN-SHMMAI (1988).

47 See, for example, FRUM (2002); YE'OR (1985; 2002) and compare with EMON (2012) 39 ff.

48 Béchir Jemeyel was assassinated on September 14, 1982. On his neologism of *dhimmitude*, see the famous interview by the *Nouvel Observateur* (June 19, 1982, 62) as well as how it was taken up by YE'OR (1983).

49 See, for example, FRUM (2002) and his reference to YE'OR (1985; 2002). This echo is largely related in EMON (2012) 39 ff., in the context of what he calls the »adherents of the myth of persecution«.

50 To name but a few works: HAMÈS (1980). The formulation by Johann HARI in *The Independent* is also inter-

esting (June 21, 2006, 25) according to which: »Amid all this panic, we must remember one simple fact – Muslims are not all the same«. See also: FENTON (2003); EMON (2012); IRWIN (2002).

51 See in particular the very pertinent critiques by COHEN (2011) 33 f.

52 YE'OR (2005) 10.

53 Ibid. 15.

is strangely selective, as it refers to a late period, namely the 12<sup>th</sup> century, i.e. during the Almohad reign. Yet everyone knows that this invasion from Morocco was guided by puritan and rigorist Muslims and occurred precisely to abolish the legal status of *dhimmī*. This way of argument nakedly reveals a paradigmatic way of using historical sources anachronistically. That said, the following question remains: Why did the Almohads decide to abolish the Islamic rules in force concerning the *dhimmī* in the 12<sup>th</sup> century?<sup>54</sup> It is a question worth posing, but before doing so, it is necessary to equip the reader with the necessary tools for comprehension, starting with the etymology of the word *dhimma*.

### 3.2 *Dhimma: Semantic origins and legal meaning*

In Arabic, the word *dhimma* refers to obligation and, more precisely, to legal patrimony. In effect, every human being is endowed from birth with a *dhimma*, that is to say a capacity for enjoyment and adulthood.<sup>55</sup> This category of Islamic law embraces the obligation of a debtor towards the creditor. The etymological origin underlines that the concept is highly normatively laden. The term *dhimma* also points to agreements, contracts or bonds of obligation in general. In French, incidentally, this capacity of translating the polyphony of meanings is maintained, as *dhimmī* is translated simultane-



Fig. 9. Audiencia del Sultan de Fez Abu Yusuf, Miniatura Siglo XIII; Cantiga De Santa Maria Nº181

<sup>54</sup> See, for example, CHERIF (2013).

<sup>55</sup> It is this meaning that is used in modern Arab codifications (contract law, civil liability, etc.).

ously as »protected« (protégé), »pact-maker« (pactisant), »ally« (allié) or »tributary« (tributaire).<sup>56</sup> If one attempts to connect these two ends of the etymological and legal definitions of *dhimma*, one can say that *al-dhimma* implies a legal patrimony and thus a legal personality or, more precisely, a state as a legal subject that enjoys rights but is also subjected to legal obligations. A *dhimmī* is therefore a monotheistic non-Muslim who is able to take place under the roof of Islamic law. To hold this status and benefit from such protection, *dhimmī* must also satisfy certain obligations (we will later see that this goes beyond the corpus of Islamic legal rules), pay *ḡizya* and possibly complete other duties. Muslims, on the other hand, are required to fulfill their duty of protection towards *dhimmī*. This detail needs to be highlighted, as it is extremely important in the sense that the legal regime to which the *dhimmī* is subjected leaves the door wide open for ethical engagement and Islamic morals whose strength is shoulder-to-shoulder – and at times even competes – with legal obligations. On this level, it is useful to point out that in Islamic law, as in other legal systems, moral obligations play an important role. In matters of contract, good faith and moral good will towards the other contracting party (apart from religion) are not only legal obligations, but above all sacred. This sacredness is, of course, founded in jurists' constructions; it also possesses both great theological strength and finds itself, as a cultural and sociological extension, within tribal codes and

pre-Islamic customs.<sup>57</sup> It is precisely by insisting on *fides* in the legal relationship that both creditor and debtor can be bound together. Chafik Chehata<sup>58</sup> thus defines *dhimma* in the *Encyclopédie de l'Islam* (1913–1942) as follows: »The notion of *dhimma* is not limited to contractual obligation, it is neither the bond of obligation nor the obligation itself, but the receptacle of the *fides* employed«. <sup>59</sup> Some scholars consider that the contract of *dhimma* recalls the notion of *fides* in Roman law.<sup>60</sup> The analysis presented in the second chapter of one of the foundational texts on *dhimma*, namely *ṣaḥīfat al-Medina*, demonstrates that another word, *jār*, which also points to protection and neighborhood in the sense of present-day Arabic, is intimately tied to *fides* throughout the history of *Convivencia*.

To start from the beginning: What exactly does the Quran say about *dhimma* and *dhimmī*?

### 3.3 *Dhimma and ḡizya: Quranic commandment or legal construct?*

The word *dhimma* only appears in a single sura (9) of the Quran: *al-tawba* (repentance or disavowal).<sup>61</sup> This is already a revealing clue indicating the absence of a more or less elaborate body of rules on *dhimma* in the sacred book of Muslims. The reference is not even made in a way explicitly referring to monotheistic non-Muslims, i. e. *ahl al-kitāb* (People of the Book). Honestly said, identifying how one must understand and contextualize

56 See in this regard: MICHEAU (2007).

57 About an anthropological lecture of the Quran and the local environment in the Arabian Peninsula, see: CHABBI (2016) 35–73.

58 Chafik Chehata is an eminent Egyptian jurist and a specialist in Muslim Law of Obligations according to the Hanafi school.

59 (own translation) »[L]a notion de *dimma* ne se restreint pas à l'obligation contractuelle, elle n'est ni le lien d'obligation ni l'obligation, mais le réceptacle de la *fides* engagée« 238.

60 In the oriental Roman Empire, »... les communautés juives et chrétiennes ou *dhimmī* payaient une capitation en échange d'une garantie de protection et de la préservation de leurs droits, conformément à leur propre législation appliquée par leurs tribunaux rabbiniques ou ecclésiastiques«.

COULSON (1995) 29. See also: RAJAK (1984).

61 *Al-tawba* contains 129 verses, it is *madaniya*, which means revealed in Medina, as opposed to *maqfiya* sura, meaning sura revealed in Mecca. This historical contextualization poses yet other immense theological and interpretational problems given that the orthodox version of the Quran (ordered by the 3<sup>rd</sup> Caliph of the Prophet 'Uṭhmān), which remains extant today, does not consider this criterion of differentiation. Sura are classified only in descending order according to their length! This question remains an extremely sensitive one for Islam to this day. Let us simply recall that – to only mention the contemporary period – the great Sufi theologian, Muhammad Taha from Sudan, was hanged in Khartoum in

January 1985 for political-religious reasons. His persecution (prohibition to teach, repeated imprisonment, etc.) was ultimately attacking his non-orthodox and innovative view of *shari'a*, *sunna* ... and Quranic revelation. According to him, the revelations of Mecca should be considered closer to foundational principles of Islam than those of Medina, that followed. Broadly speaking, the question still posed to this day is the following: if the Medina verses are more closely associated to their socio-political context of revelation, intrinsically tied to the specific environment of Arabia in that period, should one still continue to derive absolute religious and legal norms from them? By Mahmud Muhammad Taha, see, for example, TAHA (2002).

this sura which contains both verses regarding the conclusion of a »pact« of protection with *mu-chriqīn*, i.e. polytheists, on the one hand, and verses calling to fight them by sword, on the other,<sup>62</sup> has proved difficult for researchers.

The term *dhimma* does not appear in the first and seventh verse.<sup>63</sup> Instead, the Quran uses here the verb *‘āhada*, conjugated in the past tense (*‘āhadtum*),<sup>64</sup> which indicates the meaning of *‘ahd*, i.e. »pact« or »treaty«.<sup>65</sup> It is only in verses eight and ten that the word *dhimma* is explicitly used to designate the »concluded pact«<sup>66</sup> or »covenant of protection«.<sup>67</sup> Even more interestingly, and rarely mentioned in studies on *dhimma*, is the appearance of the word *muttaqīna* to describe Muslims of good faith and righteous actions,<sup>68</sup> and the expression *wa’in istajāraka fa-ajirhu*, meaning »and if any one of the polytheists seeks your protection, then grant him protection«.<sup>69</sup> These words refer to the first document known in those times that addressed the question of *ṣaḥīfat al-Medina* (Constitution of Medina). A historical and juridical contextualization of the sura *al-tawba*, as seen in its implications on the status of *dhimmi* which Muslim jurists later elaborated, are enormous.

The Arabic Peninsula went through profound upheaval during several centuries preceding the dawn of Islam. Economically prosperous and »cosmopolitan« cities had developed along the coast, assuring commercial links between the Mediterranean and the Orient. Jews and Christians played

leading roles. As for Mecca, the city constituted the religious and commercial center of indigenous tribes in the North. At the start of the 6<sup>th</sup> century, *Himyar* from the South took control of Central Arabia, while the rivalry between Byzantine and Persia grew more pronounced. A process of great upheaval of traditional social and economic structures was set off by growing inequality and tribal conflict. When the Prophet Muhammad began preaching a universalist and egalitarian message, what is called the *da‘wa muhammadia*, in Mecca, the merchants became worried and violently fought him until he was forced to flee with his few followers and take refuge in *Yathrib* (Medina). It is true that years later, Muhammed triumphantly returned to Mecca, but this did not take place without conflicts and wars. The opposition from dominant Arab tribes and Arabian Jews was fierce. This would not disappear, even with massive conversion to Islam and the majority of Bedouin clans adhering to Islam.<sup>70</sup> Setting aside the polemics among historians surrounding the role of the Prophet as founder of a state in Islam, the new religion was the harbinger of social protest and the expression of a new religious and cultural basis for the *umma*, in the sense of a religious community as well as political entity. It is precisely in this particular historical context that pacts with non-Muslims were concluded. These constitute the historical basis of *dhimma*.

Legal-religious consolidation would be achieved much later by theologians, on the one hand, and

62 »And when the sacred months have passed, then kill the polytheists wherever you find them and capture them and besiege them and sit in wait for them at every place of ambush. But if they should repent, establish prayer, and give zakah, let them [go] on their way. Indeed, Allah is Forgiving and Merciful.« (Quran, 9.4).

63 »[This is a declaration of] disassociation, from Allah and His Messenger, to those with whom you had made a treaty among the polytheists.« (Quran, 9.1). »How can there be for the polytheists a treaty in the sight of Allah and with His Messenger, except for those with whom you made a treaty at al-Masjid al-Haram? So as long as they are upright toward you, be upright toward them. Indeed, Allah loves the righteous [who fear Him]«. (Quran, 9.7).

64 Arabic sura: 9.1 & 9.7.

65 French translations rather refer to the word »pact«, whereas the English translation more often speaks of »treaty«.

66 French translations rather use »the concluded pact« or »the word given«. The latter version is of course very interesting, as it refers to good faith and righteousness, a fundamental dimension in the application of the legal status of *dhimmi*.

67 Quran, Arabic text: 9.8; 9.10 ... »How [can there be a treaty] while, if they gain dominance over you, they do not observe concerning you any pact of kinship or covenant of protection? They satisfy you with their mouths, but their hearts refuse [compliance], and most of them are defiantly disobedient«. (Quran, 9.8). »They do not observe toward a believer any pact of

kinship or covenant of protection. And it is they who are the transgressors.« (Quran, 9.10).

68 »How can there be for the polytheists a treaty in the sight of Allah and with His Messenger, except for those with whom you made a treaty at al-Masjid al-Haram? So as long as they are upright toward you, be upright toward them. Indeed, Allah loves the righteous [who fear Him]«. (Quran, 9.7).

69 »And if any one of the polytheists seeks your protection, then grant him protection so that he may hear the words of Allah. Then deliver him to his place of safety. That is because they are a people who do not know«. (Quran, 9.6).

70 DJAIT (2012) 79–199.

jurists, on the other. Generally speaking – and this is especially true for the Mālikī School – the discord between theologians' rigorist discourse and Muslim jurists' and judges' legal and pragmatic solutions on *dhimma* was resolved in favor of the latter.<sup>71</sup> It is now easier to understand why references to the Quran and, by extension, certain *ḥadīth* are decisive in this battle. The stakes are huge – from religious, military, economic, demographic and socio-cultural perspectives alike. The new identity of the entire *umma* depends on it. This battle never ceased throughout the history of *dhimma*, including in Medieval Spain. Its outcomes changed along with the centuries, shifting balances of power and domination, juristic trends, the *qādi* and their theological convictions as well as the balance of power between the political powers, on the one hand, and theologians, on the other.

The Medina revelation of *al-tawba* refers to a very tense religious and politico-social context between the Prophet Muhammad, his new followers and Arab resisters, be they polytheist or Jewish. Also, in the same sura, the question of *ḡizya*, or tribute, is later evoked in verse 29.<sup>72</sup> In Quranic commentaries, it is ultimately not so much the payment by non-Muslims that stirs passions, but rather the manner described in the Quran. The Quranic formulation *wa hum ṣāḡirūn* (they are humbled) in *al-tawba* has been interpreted – also in light of other suras – to mean humiliation and not humility. In the Andalusian context, the commentary written in the 13<sup>th</sup> century by the famous al-Qurṭubī, known as one of the greatest and last sages of Córdoba, shall particularly attract our attention. In his famous commentary on the Quran, al-Qurṭubī presents 15 *Casus* (*mas'ala*) explaining the different lectures of the suras related to *ḡizya*.<sup>73</sup>

From this primary source of Islamic law, the Quran, at least three fundamental notions key to understanding the *dhimma* can be identified: First, a pact (or a treaty), which points to a legal tie of obligation; second, the protection of *dhimmī*; third, the payment of *ḡizya* (a sort of personal tax).

Nevertheless, the ambiguity that characterizes the status of *dhimmī* already poses a great problem of interpretation to Muslim jurists here: Why should one associate protection with humiliation? Theologians and jurists were not able to agree on a shared interpretation of the equivocal formula *ḥattā yu'tū al-ḡizyata 'an yadin wa hum ṣāḡirūna* (»until they give the *jizyah* willingly while they are humbled«). The problem was posed »willingly« – which is not a faithful translation of *'an yadin*, an ambiguous Arabic term that can mean, *inter alia*, »to give with one's hand« or »having the means«. The translation »humbled« is also based on an interpretive tendency that refers to »humility«, whereas the defenders of a rigorist and aggressive interpretation refer to »humiliation«.

Concentrating more on the Iberian context and the interpretation prevalent in al-Andalus and the entire Islamic West, let us return to the second source of Islamic law, the *ḥadīth*, and the question of what the earliest extant historical text (*ṣaḥīfat al-Medina*) says on *dhimma*. Traditionally, the first explicit text on the status of *dhimmī* is attributed to the Pact of 'Umar, the second successor to the Prophet (634–644). It appears that the pact was made between 'Umar Ibn al-khaṭṭāb and the Christians of Syria with explicit clauses on their status and the sanctions they would incur should they not respect the pact. Nevertheless, we are confronted with the problem of the authenticity of this document. The original version is doubtful, as the oldest one of which we dispose dates back to

71 See in this sense LEWIS (1998) 31: »This is undoubtedly the attitude advocated by jurists rather than that of theologians which brought it into reality. For the treatment of *dhimmī* like for many other domains, the Muslim authorities and administration did not always display the fierce zeal that the counselors and other religious censors expected of them.« (original: »Il ne fait pas de doute que c'est l'attitude prônée par les juristes plutôt que celle des théologiens qui l'emporta dans la réalité. Dans le

traitement des *dhimmī*, comme dans bien d'autres domaines, les autorités et l'administration musulmanes n'ont pas toujours montré le zèle farouche qu'attendaient d'elles leurs conseillers et autres censeurs religieux«).

72 »Fight those who do not believe in Allah or in the Last Day and who do not consider unlawful what Allah and His Messenger have made unlawful and who do not adopt the religion of truth from those who were given the Scripture – [fight] until they give the

*jizyah* willingly while they are humbled.« (Quran, 9.29).

73 After the Christian Conquest of Córdoba in 1236, al-Qurṭubī left al-Andalus and settled in Egypt where he died in 1272. About his Commentary, see: JENVRIN (2017), also CARMONA GONZÁLEZ (2013).



the 12<sup>th</sup> century. Even though many insist on attributing the text to ‘Umar, the majority of historians today agree that it is, in fact, a compilation of texts progressively elaborated and thereby authored by several sovereign Muslim Caliphs, including the fifth successor of the Prophet, ‘Umar Ibn ‘abd-al-‘Aziz (682–720). Many Muslim jurists of the Ḥanbalī school of law, such as Ibn Qayyim al-Jawziyya,<sup>74</sup> Taqiyy al-dīn Ibn Taymiyya<sup>75</sup> (between the end of the 13<sup>th</sup> and the beginning of the 14<sup>th</sup> centuries) and others, known for their rigidity towards the *dhimmī*, made use of this document. For the Andalusian context, the more useful historical document is rather the *ṣaḥīfat al-Medina*.

\* \* \*

*Digression:* A look at a foundational text: *ṣaḥīfat al-Medina*<sup>76</sup>

In order to understand the mechanisms and codes of *Convivencia*, it is necessary to return to

the origins of Islamic texts governing cohabitation between Muslims and non-Muslims: *ṣaḥīfat al-Medina*.

The oldest text we have access to is *ṣaḥīfat al-Medina* (The Charter of Medina), better known as the »constitution« of Medina. This is the Prophet Muhammad’s first legal document. It is astonishing that classical historians pass over this document without citing it, and »others do not accord it much importance, simply saying that the Prophet settled the problem of the price of blood (*ma‘āqil*) and nothing more«.<sup>77</sup> Its authenticity is indisputable today.<sup>78</sup> It is preserved in two versions, the most famous of which is the biography of the Prophet by Ibn Ishāq reworked by Ibn Hišhām.<sup>79</sup>

This corpus constitutes what is called the *sīra nabawiyya* (life and acts of the Prophet). However, these »biographies« of the Prophet are not biographies in the proper sense of the word, even if many works by orientalist use them in the same sense as *sīra*. This can be seen in the works of Rodinson, Horowitz<sup>80</sup> and Blachère.<sup>81</sup> Montgomery Watt



Fig. 10. The consultation of Quraysh? Jāmi‘al-Tawārikh, Rashid al-Din, Iran, 14th c.

74 IBN QAYYIM AL-JAWZIYYA (2002) II 303. See for example the reference in his book: Ahkām ahl-al-dhimma to ‘Umar who ordered to his companions to divorce because their wives were Christians or Jews.

75 IBN TAYMIYYA (1995) Mas‘ala fi al-Kanāis (On churches), in which he vehem-

ently attacked *ahl-al-dhimma*, particularly their churches and ordered their destruction.

76 SAKRANI (2016).

77 »[D]’autres ne lui accordent pas grande importance, disant simplement que le Prophète a réglé le problème des prix du sang (*ma‘āqil*)

sans plus», Djaïr (2012) 88 f. He adds: »Par ailleurs, il n’y a nulle allusion à cela dans le Qur’an, peut-être parce qu’il s’agit d’un acte politique et non pas religieux.«

78 The great historian of early Islam, Hichem Djait, paints a very clear picture of how this document was



similarly opines that: »this general outline [of Muhammad's life] is found in the early biographies, notably the Sirah or Life by Ibn Is'hāq (d. 768) as edited by Ibn Hišhām (d. 833) ...«<sup>82</sup>

Instead of seeing this only as a political document, a historical contextualization of this »constitution«, even if only a brief one, is absolutely necessary to understand both its religious dimension and its normative content. The time and geopolitical space in which the *ṣaḥīfa* was written constitute a historical moment *par excellence* for Islam: It was definitive in the sense of breaking with the past and »entering into a new existence«.<sup>83</sup> The debate surrounding the personality of Muhammad during the creation of *ṣaḥīfat al-Medina*, as a mediator (*ḥakam al-jābiliya*: mediator in the pre-Islamic period) and as a statesman, remains topical.<sup>84</sup>

This document describes a unified *umma*. According to historical sources, Muhammad initially hoped that Jews would acknowledge him as the ultimate prophet. Islam, as a religion, was intended to create an ecumenical community (*umma*) open to Jews and Christians. The famous Quranic verse »No constraint in religion« (II – v. 256) expresses not just the pragmatic pluralism of Islam at its origin, but also the Prophet's strong conciliatory attitude at the outset.<sup>85</sup>

One should recall here that after the »constitution« of Medina and subsequent to the death of the Prophet and the enlargement of the Empire, there were other texts on the subject of *ḍhimma* including the famous pact of 'Umar.<sup>86</sup>

The reading of the constitution is revealing and leads to the following claim of principle: Initially, the *umma* was inclusive and not exclusive of the *ahl al-kitāb*. But the big question thus remains: Were Jews included in the *Islamic umma* as part of it, or were they regarded as another different *umma* having its own religion?

Two clauses of the text offer two fundamental points regarding *ḍhimma*:

1. »The Jews of Banu 'Awf are an *umma* with the *Mu'minun*, the Jews having their religion (*din*) and the *Muslimun* having their religion (*din*) ...«

To almost all researchers,<sup>87</sup> this means that Jews not only formed a »community of believers« but were originally an integral – and not segregated – part of the »Muslim community« in the form of »*mu'minūn*«, albeit one having its own religion. This position, while held by the majority and generally validated by great historians, is worthy of being questioned and revisited in light of a reading of the Arabic text itself, as its translations are at times misleading or at least problematic. Ibn Is'hāq introduces the text of the *ṣaḥīfa*<sup>88</sup> by declar-

transmitted: »Seul Ibn Ishaq transmet l'intégralité du document, plus tard, partiellement Abu 'Ubayd b. Sallam et plus tard encore, tout aussi partiellement, Zanjawayh«, Djaïr (2012) 89. Cf. further: WATT (1961) 241.

79 IBN HIŠHĀM (without date); see also: BEN SALLĀM, *Kitāb al-Amwāl* (The book of goods) (without date) 466–470; Al-Wāqidi in his book *al-Maghāzi* (Expeditions) refers explicitly to the »constitution« of Medina, cited by Djaïr (2012).

80 HOROVITZ (1927).

81 BLACHÈRE (1952).

82 WATT (1961) 241. The *sīra* is a term that does not exist in ancient lexica and pertains to the acts and words of the prophet, a meaning that brings it closer to *sunna* and renders the two synonymous. *Sunna*, as we all know, the second source of Islamic law, is composed of *ḥadīth*, as tellings from the Prophet's life, to whom normative meaning is attributed by the Islamic jurists. Nevertheless, one

should not confuse *sīra* and *ḥadīth*, as the two differ in methodology and style. Critical historical studies of this type of sources – extremely important for the study of early Islam – are not very numerous. But a few recent works deal with the critical analysis of *sīra* texts. See for example the excellent study in Arabic by AMAMU (2012) esp. 15–79. Others are trying to emphasize the multiple facets of the human dimension of the Prophet and to thereby, indirectly, desacralize the *sīra* texts. To cite but one example: HUSSEIN (2005; 2007).

83 »entrée dans une nouvelle existence«, Djaïr (2012) 79.

84 The debate about this point is fascinating. See the position of Al-'Ali, Watt and others, which differs from that of H. Djaïr for example.

85 Let us recall that the Qurān only evokes force regarding conversion in the *sura al-tawba*, IX, 5, i. e. at the end of Year 9, referring to the pagans of Mecca. Let us further recall that the

wars of apostasy with Abu-Bakr took place in Year 11.

86 The controversial document known under the name »Pact of Umar«, which is very tough towards Christians, is exemplary in this sense. M. Cohen establishes the association between Christians and Jews by means of this controversial Pact, linking it particularly to the episode of Granada in 1066. This episode refers to the reconquest of al-Andalus by *Almohadi* puritans and their abolition of *ḍhimma* by targeting and massacring not only Jews and Christians, but also tolerant Muslims. COHEN (2013) 67 ff.

87 Particularly the works by Wellhausen; Serjeant; Donner; Friedmann ...

88 *Ṣaḥīfa* means literally: »sheet«.

ing: »the Messenger of God (...) a writing (*kitābun*) by which he established peace and an alliance with the Jews«. <sup>89</sup> This phrase gives the impression that it represents the essential part of *ṣaḥīfa*, which is, in reality, misleading. It must be recalled that the »constitution« of Medina <sup>90</sup> was not drafted all at once. Historians, including those who translated it, <sup>91</sup> are aware of the difficulty posed in dating this document. To briefly clarify, the *ṣaḥīfa* is divided into two major parts, one with articles 1–36 and the other with articles 37–47. <sup>92</sup> The first part (Year 1 of the Hegira / 7<sup>th</sup> century) is itself subdivided into one section concerning Muslim Arabs (articles 1–23) and another concerning the situation of Jews (articles 24–36). <sup>93</sup> In this first part, there is therefore, on the one hand, the *umma* of Muslim believers and, on the other, the *umma* of Jews which has its own religion but, for several reasons, <sup>94</sup> is considered an ally to Muslims. This is the source of the Arabic expression: *umma ma'a al-mu'minīn*. Here, the Arabic term *ma'a* (with) refers both to rapprochement and dissociation: to be with, together, but at the same time to be different. This historical and juridical reading of the »constitution« is reinforced and justified by the fact that the *ṣaḥīfa* was created to apply to all inhabitants of

*Yathrib* (Medina), whether Muslim Arabs, Jews <sup>95</sup> or polytheist Arabs (*Aws-Manāt*, in classical Arabic). This is basically to say that the »constitution« of Medina was created to apply within a pluri-religious Arab setting. This conclusion, however, leaves room for a major difficulty and problem, namely that of later legal and textual evolutions on the question of *dhimma*.

Incidentally, and following a long historical and legal evolution, the word *mu'minūn* today exclusively applies to Muslims and does not include Jews and Christians who, unlike *mu'minūn*, are nevertheless considered People of the Book, given that Islam is born in the same vein, even if it marks its own originality. This original meaning has been lost. <sup>96</sup> Moreover, its primary meaning was intrinsically tied to the »constitution« of Medina's economic and security dimensions. <sup>97</sup>

2. Understanding *Convivencia* from an Islamic perspective necessarily includes the question of theological reflection. One must therefore understand the religious dimension of *living together*. The essential concept to grasp this religious impact is limited by the notion of *dhimma*. Thus, the meaning of protection is central to all theory surrounding *dhimma*. The first part of the »constitution« of

89 Own translation from Arabic, see Djaïr (2012).

90 It would be problematic to make a link to modern constitutionalism. Its character remains disputed »*Gemeindeordnung*« has been the famous translation by Julius Wellhausen.

91 To cite, by way of example, the translation by Watt or that by Serjeant.

92 We are following the same division advocated by historians such as Djaïr (2012) 91; WATT (1959) 267–272; cf. on the interpretation of Watt: DENNY (1977) 44. This is also the position of Hamidullah, who opines along with Wellhausen, however, that the first part comprises 23 articles and the second articles 24 to 47 (this, incidentally, points to the problem of subdivision within the two parts of the document). See HAMIDULLAH (1941) 12 f. Other historians, in turn, adopt different divisions. Such is the case with SERJEANT (1978), who analyzes documents A through H with a different numbering.

93 The remaining subdivisions shall not be covered here.

94 Space precludes a detailed analysis of the highly complex tribal, religious, ethnic, economic, security, etc. context of this foundational period of Islam.

95 See also in this sense Djaïr (2012) 96, who, justifiably, opines that the Jews of Medina were considered by the »constitution« as a *Gemeinschaft* in the Weberian sense.

96 Contrary to strategies of traditionalizing Islam by way of sacralizing the »golden age«, this time a progressive original meaning has nearly completely been lost over time.

97 This follows clearly from the following provision: »The Jews are responsible for (paying) their *nafaqa*, and the *Muslimūn* are responsible for paying their *nafaqa*. There is support between them against anyone who goes to war with the people of this sheet«. The Jews shared the costs with the faithful when in war. Here, a remark needs to be made. A »*munfiq*« is someone who pays »*nafaqa*«, whereas a »*munāfiq*«, a similar sounding word, is a hypocrite. Later – including by some Muslim

jurists in al-Andalus – Jews and Christians were often stigmatized by the latter word and thereby discriminated as »*munāfiqūn*«, that is hypocrites.

To quote just one example: the famous al-Qurtubī with his book: *al-īlām bimā fi dīni al-naṣāra mina al-fasādi wal-awḥām wa iḍḥāri mahāsini al-islām*, in which he demonstrates what is »bad and refutable« in the religion of the »*al-naṣāra*« (the Christians), and which is »kind and adventurous« in Islam. The original meaning used in the »constitution« of Medina was to lose much of its *raison d'être*, but should nonetheless not be forgotten, as it is linked to the historical context of the text. The economic dimension of this »constitution« to impose taxes becomes very clear here, but in later texts on *dhimma*, the economic aspect, particularly in the *sīra* texts, disappears.

Medina contains the following key passage, which translates as follows: »The *ḏhimma* (security) of Allah is one (for life and property)«. The Prophet's policy was one of political pragmatism of security (*amān*) and the free exercise of religion in return for loyalty. This policy was first established in favor of Jews and later expanded to the other People of the Book. In this context, let us recall al-Rāzī, a 10<sup>th</sup> century Fatimi scholar, who largely wrote on the rapport between *mu'min* and *amān*. He explains: »Al-mu'min is one of the attributes of Allah. Its root is from *amān* (security), as if Allah gives his servants security (*āmana 'ibāda-hu*). (...) Allah is called mu'min and the servant / worshipper mu'min. (...) So that the mu'minun, part of them is in the security of the other part, and one part has given the other part security (*amān*)«. <sup>98</sup> Al-Rāzī then cites a very well-known *ḥadīth* by the Prophet, who, after having been asked: »Who is *mu'min*«? responds »those whose neighbor is sheltered from his vices«, for the fundament of *imān* (faith) is *al-amān* (security).

But what would be done when there was any kind of dispute or discord among the communities? The *ṣaḥīfa* states that it had to be brought before Allah and Muhammad (§23). This appeals to a charismatic type of conflict resolution. But what happened after the passing of the charismatic figure?<sup>99</sup>

\* \* \*

#### 4 Consolidation of the legal corpus on *ḏhimma* in Islamic law and specificities in al-Andalus

After the Prophet's death and the rapid enlargement of the empire, Muslims faced the major difficulty of consolidating Islamic power in the new, freshly conquered territories, bearing in mind the latent threat of non-Muslim residents or those from the neighboring enemies. How could the domination of Islamic administration be secured

when Muslims only constituted a minority in most conquered territories? How could the question of daily life, of living together with non-Muslims – aspects like their residence and quarters, places of worship, cemeteries, and encounters in public spaces with Muslims, such as at *bazaars* (public markets), hammams, and festivities, etc. – be regulated? And one further question remains given the scarcity of information we possess: Who actually is this non-Muslim who has the right to permanently reside in the land of Islam?

The history of *ḏhimma* has to take account of two Islams: one Islam frozen in the late texts, as well as the other that is moving and found in the *fatāwā* and chronicles.

The *ḏhimma* is fundamentally a subtle dialectic, uniting the minority with the majority, the dominated with the dominant, the monotheistic Other with the monotheistic Muslim. A subtle dialectic according to an oscillation between acceptance and rejection, hospitality and hostility, recognition and dominance – and sometimes repression.

In fact, the status of *ḏhimmi* was forged, in principle, at the socio-cultural level in a kind of pragmatic living together, a *Convivencia pragmatism* in everyday life, and all this at a moment when Islam was very powerful. The *ḏhimmi*-Other thus functioned and played its role according to the existing normative arsenal in a pragmatic way beginning in the 7<sup>th</sup> century.

Essentially theological texts – which fixed the status of *ḏhimmi* in hateful discourses through discriminatory norms – came later during the 12<sup>th</sup> century with Ibn Ḥanbal and his disciples Ibn Taymiyya, Ibn Qayyim al-Jawziya and many others. In between, however, Muslim jurists tried to reread and classify *ḏhimma* rules.

##### 4.1 The *ḏhimmi*: A non-Muslim of variable category yet ... monotheistic

Even though the only sura that speaks of *ḏhimma* does not mention *ahl al-kitāb* (People of the

<sup>98</sup> Cf. SERJEANT (1978) 13 f.

<sup>99</sup> This major question opens up a quasi-taboo research field on the human dimension of the Prophet, not solely with regard to *ḏhimma* and living together, but concerning the very theological essence of the Islamic state since its birth.

Book), there is no doubt that this name is reserved for Christians and Jews, according to the words of the Quran itself in several suras.<sup>100</sup> That said, the line of differentiation is not always this evident. One must simply mention the example of the second sura which, besides Jews and Christians (»*Naṣārā*« as stated in the Arabic text), also refers to »Sabeans«. »Indeed, those who believed and those who were Jews or Christians or Sabeans – those [among them] who believed in Allah and the Last Day and did righteousness – will have their reward with their Lord, and no fear will there be concerning them, nor will they«.<sup>101</sup>

It is nevertheless strange to note that if – according to the Quran – the category of *dhimma* is not exclusive to Jews and Christians, *sunna* often only retains the category of Zoroastrians (*Majūs*), with the reasoning that the Prophet Muhammad accepted Zoroastrians in the city of Hajar<sup>102</sup> as *dhimmī*. This explains why several sources of *ḥadīth* or *tafsīr* (explanation and interpretation of the Quran) admit that the payment of *ḡizya* by Jews and Christians is of Quranic origin, even going as far as calling it »of Prophetic origin« when it comes to Zoroastrians.<sup>103</sup> Naturally, one of the theological and legal questions that jurists asked themselves is how to know whether the Zoroastrians, Sabeans, Samaritans<sup>104</sup> and other polytheists are also People of the Book like Jews and Christians. The legal consequences are considerable, both in terms of public<sup>105</sup> and personal law. Several sources<sup>106</sup> relate the position of jurists who were almost unanimously of the opinion that Zoroastrians were to be considered People of the Book, albeit

with one distinction: It is prohibited to eat their animals and marry their women.<sup>107</sup>

It is difficult to paint a clear picture identifying the position of each legal school with regard to their individual references to *sunna* in matters of *dhimma*, particularly as a legal gray area causes discomfort. If neither Zoroastrians nor polytheists are People of the Book, how can the status of *dhimmī* then be extended to them? The reference to the unidentified *ḥadīth* »that it be with them [the Zoroastrians] like with the People of the Book« allows the conclusion to be drawn that Zoroastrians, and even less so polytheists, are not People of the Book despite the fact that the Prophet opened the door for dealing with them just as one would deal with People of the Book.

Arab historiography nevertheless permits us to trace back to the 7<sup>th</sup> century, even though the oldest extant texts only date back to the 9<sup>th</sup> century and often constitute a construction or projection that hinders a precise understanding of authentic events that already happened two centuries prior. With this in mind, we at least know that it was the Prophet who initiated this legal practice and that peace treaties were concluded for several years,<sup>108</sup> notably with the Jews of *Khaybar* and *Wādī al-qurā* as well as with the Christians of *Naḡrān*, *Ayla* and *Baḡrayn*.<sup>109</sup> The essence of these accords consisted in two reciprocal obligations: Muslims committed to guaranteeing the »Other's« residence as well as securing its people and goods. In exchange, the *dhimmī* committed to paying a capitation in coin or in kind (part of a harvest, animals, etc.).<sup>110</sup>

100 This is the case for the third sura of *ālī'umrān*: »They are not [all] the same; among the People of the Scripture is a community standing [in obedience], reciting the verses of Allah during periods of the night and prostrating [in prayer]. They believe in Allah and the Last Day, and they enjoin what is right and forbid what is wrong and hasten to good deeds. And those are among the righteous. And whatever good they do – never will it be removed from them. And Allah is knowing of the righteous« (vers. 113–115). See also: Quran, 3, 64–199; Quran, 29, 46; Quran, 5, 125; etc.

101 Quran, 2, 62.

102 Hajar is on the Eastern coast of Arabia.

103 This is the case, for example, for: *Fatḥ al-bārī fī sharḥ saḥīḥ al-bukḥārī*, Chapter of *ḡizya* (3).

104 One of the emblematic works in the history of Islamic law is that by ṣhāfi'ite Abu al-Ḥassan Ali al-Māwardī (died in 1058), *Al-aḥkām al-sulṭāniyya* (French version 1982) 302.

105 Ibid. See notable chapters: Chap. IV: Investiture de l'émirat de la guerre sainte, 71–108; Chap. XIII: De la capitation (*djizya*) et de l'impôt foncier, 299–331; Chap. XX: Du maintien du bon ordre ou *Ḥisba*, 513–553.

106 To cite only one source with great authority: Al-Ṣhahraṣṭānī (Abu al-

Fatḥ Muhammad), *Al-milal wa 'nniḥal*, (French version 1992). See: T. II, *abl al-kitāb*, 227 ff.; *man labu ṣhubbat kitāb* (he who is of the kind of *kitāb*), 256 ff.

107 The polemics still remain concerning the animals they chased, as certain people opined that it was *halāl* for Muslims, but not for others, *ibid*.

108 Probably between 625 and 632.

109 Unfortunately, these texts are no longer extant.

110 One work is incontrovertible in the history of Islamic conquests and that is that by al-Balāḍurī, *Futūḥ al-buldān* (French version 1987) 83–106.

The extension of the legal status of *dhimmi* to other religions varied from author to author. The position of al-Māwardī is fairly restrictive but striking. In a chapter dedicated to capitation (*ḡizya*) and *kharāj* (property tax), he opines that »the followers of the revealed books are Jews and Christians, who respectively have as books as sacred, the Torah and the Gospel. From the point of view of capitation, the *Majūs* are treated like the two preceding peoples [...] Capitation also applies to Sabeans and Samaritans when their beliefs are fundamentally identical to those of Jews and Christians«.<sup>111</sup>

In effect, it appears that the Caliph ‘Umar did not immediately tax *ḡizya* on Zoroastrians until ‘Abd al-Raḥmān Ibn ‘Awf, a companion of the Prophet, demanded that he make the *Majūs* of Hajar pay capitation because they possessed a type of revelatory book. The intriguing Arabic formulation *shubhat Kitāb* was the *conditio sine qua non* that permitted the extension of a practice concerning monotheist *dhimmi* to others who did not meet this definition. It is in this manner that they were treated like *kitābī*, an Arabic term meaning »those who possess a book«.<sup>112</sup> *Shubhat Kitāb* literally translates to »a text assimilating a book« – in the sense of a sacred book. Legally speaking, the primary meaning of the word *shubha* is »suspicion« or »doubt«, which is ambiguous and elicits mistrust or prudence.

The semantic shift becomes even more interesting once one focuses more closely on legal debates. By consequence, the very essence of *dhimma* and the modalities of its application become more complicated. Nevertheless, without getting lost in interminable battles over the origin of this shift and its foundation in the Prophet’s *sīra*, suffice it to underline an important theological paradox – which shall reappear, incidentally, in the *tafsīr* of

Quranic verses related to the payment of *ḡizya* and therefore touch upon the practical codes of living together. Certain historians and transmitters of *ḥadīth* recall the Muhammadi *sunna* and the tradition of the first successors, according to which the Prophet received *ḡizya* from *Majūs* in Baḥrayn, ‘Umar of the *Majūs* of Persia, and ‘Uthmān<sup>113</sup> of the Berbers in the Maghreb.<sup>114</sup> Islamic historiography is in agreement on the freedom of belief from which not only Christians and Jews benefit, but also Zoroastrians, Sabeans, Mages, Berbers, Brahman and Buddhists.<sup>115</sup> One need merely recall that Hindus were able to live in an Islamic state for centuries in Muslim India.<sup>116</sup>

In turn, however, one must also note that the scope of this tolerance was always complex, as it depended on numerous factors, notably that of the nature of the territory, for example, whether it is *dār al-Islām* and thus subjected to Islamic authority, administration and law or *dār al-Ḥarb*, i. e. the lands of war under enemy control. This is also connected to the fight against polytheists.<sup>117</sup>

It follows that the heart of *dhimma* and its connection to living together resides not only in the payment of *ḡizya*, or in being considered *kitābī*, but in having scripture (*ṣuḥuf*) and a path (*sharī’a*). Why was *dhimma* intrinsically linked to a book, a *ṣaḥīfa*,<sup>118</sup> or even a »kind of« book, and to a path, a *sharī’a*? Is this a key to better understanding the mechanism of *Convivencia* and what primarily made it possible within certain conquered territories, in the present case on the Iberian Peninsula? The answer is unequivocal: yes.

Thanks to these distinctions, the legal status of *dhimmi* becomes more accessible, more readable, even if ambiguities and paradoxes persist. A *dhimmi* is not a simple *kitābī*, but a resident in Islamic territory, protected by the state and Islamic law according to a treaty, that indefinitely renewed,

111 Own translation from the French version »Les adeptes de livres révélés sont les juifs et les chrétiens, qui ont respectivement pour livres sacrés la Tōra et l’Évangile. Au point de vue de la capitation, les Madjoūs sont traités comme les deux peuples précédents [...] La capitation frappe aussi les Çabéens et les Samaritains quand leur croyance est fondamentalement identique à celle des juifs et des chrétiens«, AL-MĀWARDĪ (French version 1982), 302.

112 See in this sense: ABŪ YŪSUF, *Kitāb al-Kharāj*, 38; AL-ŠAHRASTĀNĪ, 179.

113 ‘Uthmān Ibn ‘affān is the third successor to the Prophet as well as the precursor to the compilation and writing of the Quran according to a single orthodox version, the one which we know today.

114 MĀLIK IBN ANAS, *Al-Muwatta’*, II Chap. 24: *ḡizyat abl al-kitāb wal majūs*, 203.

115 See, for example, for contemporary Islamic jurists: Hamidullah, *Le Pro-*

phète de l’Islam, sa vie, son œuvre, I 497–498, which in turns refers to medieval sources, such as al-Mabsūt de Al-Šarakhsī and *al-Kharāj* of Abū Yūsuf.

116 See, for example: DALMIA / FARUQI (2014); SOOD (2016).

117 AL-MĀWARDĪ (French version 1982) 71 ff.

118 Singular of *ṣuḥuf*.

apart from certain specific stipulations in the peace treaty. A *ḍhimmi* has obligations as well as rights and becomes a subject of Islamic law unto itself – he is not completely a Muslim subject, but different to a non-Muslim, a tolerated non-monotheist or a *musta'min*, a mere foreigner passing through Muslim territory. He is truly another, the Other to the Muslim *par excellence*.

In fact, the case study of *Majūs* is by no means arbitrary. It is very much connected to the issue of the semantic shift and its legal consequences on the status of *ḍhimmi*. Effectively, non-Christian pagans of the Iberian Peninsula were called *Majūs*, without being considered *ḍhimmi*. They likewise did not have access to the status of *los Mozárabe*<sup>119</sup> nor to that of *Muwallad*.<sup>120</sup> Are we faced with a case of *no ḍhimmi land* in Spain under Islamic domination?<sup>121</sup> In other words, did *Convivencia* play a moderating role that permitted cultural hybridity even in case of religious and social borders with non-monotheists who did not benefit from the status of *ḍhimmi*? One thing is certain: the religious issue always remains present even if its face changes. It is also intimately tied to the question of otherness and Arab-Islamic identity. In this sense, the experience of al-Andalus is emblematic for the entirety of Arab historiography.

#### 4.2 Rights and obligations of *ḍhimmi*

The legal history of *ḍhimma* can be seen in the same light as that of Islamic law: Difficult to grasp, it escapes general legal systematization and by consequence objects to multiple forms of reading.

Confronted with a theological-legal void (several Quranic verses at best), points of unanimity for jurists concentrated on the payment of *ḡizya* and the obligation of protection imposed on Muslims. For all other matters, jurists attempted to compile provisions governing the obligations and rights of *ḍhimmi* by taking inspiration from the Prophet's *sīra*, the practices of his successors and, above all, from peace treaties concluded along with conquests and the enlargement of the Islamic empire. The core of this legal effort was realized between the 8<sup>th</sup> and 10<sup>th</sup> centuries. Next to the Ḥanbalī school mentioned below – and whose »anti-*ḍhimma*« doctrine shall not be covered here, apart from the jurist of Andalusian origin al-Turtūshī<sup>122</sup> – the majority of legal manuals on *ahkām ahl al-ḍhimma* (legal rules governing the people of the *ḍhimma*) belonged either to the Ḥanafī or Šhāfi'ī schools.<sup>123</sup> The Mālikī school, which was most widespread in the Islamic West, including in al-Andalus, appears to have been the least productive in terms of manuals, but the most fecund at the level of legal consultations (*fatāwā*) and notary treaties.

In the history of Islamic law, it is with al-Šhāfi'ī, the founder of the Šhāfi'ī school, that a true effort of legal systematization operated in his work *al-Umm* (the mother). However, al-Šhāfi'ī discusses *ḍhimma* following the book on *jibād* and concentrates on *ḡizya* within the meaning of the treaties of *sulḥ*.<sup>124</sup> As an aside, in the majority of legal manuals of this period, *ḍhimmi* are called *ahl al-ḡizya* (people of capitation),<sup>125</sup> as this constituted the heart of their obligation, on the one hand, and dissociating them from polytheists,<sup>126</sup> *muḥāribūn*

119 In Arabic *musta'rib*. It is the Christian who lives in territories under Muslim domination, who often speaks and writes Arabic, but who maintains his Christian religion.

120 *Muwallad* refers to both a Christian converted to Islam living among Muslims and the son born of a mixed Christian-Muslim family who is of Muslim religion.

121 This situation recalls other current events in certain Arabic countries. It should be noted that during the 1980s, in the middle of the war between Iraq and Iran, the term *Majūs* resurfaced for propaganda purposes. In this way, Iranians were excluded from Islam because they were deemed *Majūs*, implicitly affirming

that their practice of religion is insincere and serves to hide pre-Islamic beliefs, therefore justifying the war on behalf of Arab nationalism, for religious motivation. See, for example, AL-MARASHI (2003). The current great tension between a Sunni bloc headed by Saudi Arabia and a Shiite bloc headed by Iran is very revealing. Further, the Israel-Palestine conflict is implicated in one way or another, but that as well carries a long history of *ḍhimma*.

122 Incidentally considered Mālikī in legal literature.

123 One should note that the ḥanīfites and the šhāfi'ites have left us with interesting legal literature on *al-amwāl* (money) in general, tax policy,

etc. This allows us to better identify the economic and fiscal dimension of *ḍhimma*. To cite but a few names: Abu Yūsuf, Al-Šhāfi'ī, Al-Māwardī, Al-Sarakhsī, and so forth.

124 See AL-ŠHĀFI'Ī (2001) Chap. V, 684 ff.

125 Ibid.

126 One must know that this distinction is very important for *ḍhimma*. The fierce opposition to the polytheists (*mushrikūn*) of Mecca, particularly by Quraysh, the tributary of the Prophet, to the latter is historic. The Quran (30; v. 2–6) recounts the episode of the offensive of the Byzantine against the Persians in the 7<sup>th</sup> century. The Meccans wished for the victory of the Persians, polytheists like them, while the Muslims wished for that of the



or *ḥarbiyyūn*,<sup>127</sup> who are not bound to Muslims by a peace treaty, on the other.<sup>128</sup>

Also, in terms of the history of law, we can compare between two blocks during this period of consolidation (between the 8<sup>th</sup> and 10<sup>th</sup> centuries): The Islamic East and West. The Abbasid state (from 750 to 1258)<sup>129</sup> in Iraq at its apogee developed a vision of an ensemble of legal rules permitting the better management of the great Empire including that of *dhimmī*. Jurists played a decisive role in ordering, ranking and systemizing a body of law in the service of the powerful Abbasid state. It is fascinating, for example, to see that al-Šhāfiʿī developed, in favor of his students and the state, a typified model of how to draft a treaty of *sulḥ* in the shape of a notarized form. This form should serve as legal basis to enact provisions applicable to *dhimmī*.<sup>130</sup> From the viewpoint of public and fiscal law, the most well-known case is that of al-Māwardī and his famous *al-Aḥkām al-sultāniyya* and *al-Hāwī*. Similarly, Abu Yūsuf and his work *Kitāb al-Kḥarāj* (treaty of property tax), drafted at the request of Caliph Hārūn al-Rashīd, contains fiscal rules regarding *dhimma*. These latter two works directly served the Abbaside state.

In the West, the history of al-Andalus progressively grew geographically and culturally detached from the Abbasid East. One should not forget that Abdel-Raḥman al-Dākhil, the founder of the Emirate of Córdoba, was of Umayyad descent and miraculously survived the massacre of his entire family before moving the center of the Caliphate of Damas to Baghdad. Córdoba was thus constructed bit by bit on the foundation of distancing and competition with the Abbasid state, with ethnical and cultural tissues (Berbers, Visigoths, Slavs ...) different from the Arabic Peninsula and its surroundings. What are the implications, therefore, for the question of *dhimma*? This is certainly a colossal question, but the routes to an answer can only be advanced via an analysis of the refer-

ence works in force, particularly in the Islamic East, as well as of the *fatāwā* of the Maghreb and al-Andalus.

One can broadly summarize the obligations of the *dhimmī* in terms of the contract of *dhimma* into three fundamental obligations: payment of *ḡizya*, abstention from fighting Muslims or collaborating with the enemy, and, finally, respect of the precepts of Islamic law. All jurists and all complicated tendencies are unanimous on these points. Divergences appear, however, according to the schools of law and the political and religious context regarding those obligations considered »more secondary«, concerning in particular the exercise of religious practices, cohabitation with Muslims and the management of daily life. Yet one difficulty remains, and here, too, the positions are far from unanimous: Should one distinguish between the contract of *dhimma* and the treaty of capitulation?<sup>131</sup> Is it necessary to stipulate everything in the contract of *dhimma* and draw up a catalog of rights and obligations of *dhimmī*? Furthermore, what should become of the obligations that were not fixated in this contract – could a *dhimmī* escape these? What types of sanctions should apply?

The study of several sources permits us to draw at least a few conclusions.<sup>132</sup> There are certain prohibitions which *dhimmī* had to respect even though they were not mentioned in the contract of *dhimmī* or even if jurists diverged on the legal document to which these should be tied (contract or treaty). The common factor between these obligations is to protect the Muslim religion, i. e. its supremacy, and keep Muslim women inaccessible to *dhimmī*.

Ultimately, this was a matter of protecting three types of borders: religious, territorial and feminine.

Al-Māwardī draws up a concrete list of six prohibitions and insisted on the *ḥarām* (illicit) character of these acts.<sup>133</sup> According to these, *dhimmī* may not »[...] attack or denature the Book

Byzantine, as they were People of the Book. See, for example, *Majmūʿ al-fatāwā*, XXXII, 188–189.

127 *Muḥārib*, or *ḥarbī*, literally means warrior. The expression describes all those who constituted the enemy in the sense of being in a state of real or potential war with Muslims.

128 AL-ŠHĀFIʿĪ, (2001), esp. Chap. V, 478 ff.

129 The Abbasids are a Muslim Arab dynasty, descending from Ibn ʿabd al-Muttalib, an uncle of the Prophet Muhammad. It is he who brought an end to the reign of the Umayyad dynasty by bringing home a decisive and bloody victory over Marwān II at the battle of grang Zab in Iraq in January 750.

130 *Al-Umm*, 471 ff.

131 Several jurists established this distinction. See, for example, al-Māwardī, *al-Hāwī*, XIV, pp. 317 ets. See further: LÉVY RUBIN (2011).

132 See in the same sense and from the perspective of residency requirements of *dhimmī*: OULDDALI (2017).

133 Al-Māwardī uses the expression: *ma muniʿu minbu liṭaḥrimihī*, *al-Hāwī*, XIV, 318.

of God; the second [act] is that they may not mention the Prophet by accusing Him of lies or by discrediting Him; the third: they may not speak of the Muslim religion as to denigrate or contest it; the fourth: they are prohibited from turning a Muslim from his faith or harming his person or his goods; the fifth is to have illicit sexual relations [*zinā*] with a woman or take her as a wife; and the sixth: it is forbidden for them to come to the aid of enemies, accommodate any of their spies or transmit information on Muslims [...].<sup>134</sup>

The importance of this categorization of illicit acts is the sanction to which a *dhimmī* is subjected who does not respect them. This is a difficult question – and again, jurists are far from unanimous here. One thing is certain: given the capital importance of paying the *ḡizya*, submission to the authority of the Muslim state and the duty of loyalty; a *dhimmī* had to be severely punished in case of violating these obligations and those that follow therefrom (the above list). In theory, he would lose his status as *dhimmī* and upon committing one of these acts and be immediately punishable by death, as they were qualified as a crime in Islamic law. Yet this qualification is only valid according to certain jurists, and not for all. Al-Māwardī himself confirmed that the jurists did not share the same opinion regarding the nature of the infraction and, by consequence, the penalty the *dhimmī* risks. Suffice it to recall the distinction between a *dhimmī* who refuses to pay the *ḡizya* in the guise of rebellion and rejection of Islamic authority, and one who did not pay for lack of means. Ḥanafites and Mālikites agree that the latter should not be punished and that it is sufficient to consider the unpaid amount a debt, without depriving the debtor of his status as *dhimmī*. The Šāfi'ites hold an even more liberal position. Al-Ghazālī only accepts the loss of status as *dhimmī* if the person in question adopts an explicit posture of war against Muslims.<sup>135</sup> Other Šāfi'ites – including al-Māwardī<sup>136</sup> – attempted to avoid applying

the death penalty if a *dhimmī* commits one of these illicit acts through removal from Islamic territory. This is an original solution which also appears in the policy of extradition practiced today by Western democracies.

So much for the essential, the rest is a subject of debate and left to the discretionary power for the *qādī*<sup>137</sup> in case of failure to respect by a *dhimmī*. Certain jurists have drafted lists for these as well, though these are far from exhaustive. The same applies to the issue of places of worship: Do *dhimmī* have the right to construct or renovate churches<sup>138</sup> and display their rites and religious processions in public places? To drink wine or eat pork in public? Are they obligated to follow a dress code bearing a distinctive religious sign (a *zunnār*,<sup>139</sup> for example)? What about their cemeteries, funerary practices and customs in public spaces? There is no consensus on this and solutions vary from the most liberal to the most restrictive, if not humiliating. Essentially, the literature on *dhimma* mentions also overtly discriminatory and humiliating measures. This applies to the prohibition of mounting a horse, ceding passage to a Muslim, first greeting Muslims, raising one's voice in their presence, etc.

As Arab historiography and legal history confirm, the treatment of *dhimmī* was variable during the ages, following the political power in place and the prevailing religious tendencies. In al-Andalus, the *Almohad* abolished the status of *dhimmī* pure and simple, an extreme measure that sought to reduce or even eliminate any chance of peaceably living together or of *Convivencia*. During the Abbasid period, the Caliph al-Mutawakkil was known for his rigid and discriminatory policies towards *dhimmī* during the 9<sup>th</sup> century of Islam.<sup>140</sup>

In summary, the legal bases on *dhimma* have certainly framed legal provisions applying to the rights and obligations of *dhimmī*, as well as to the sanctions they would face in case of violating this treaty. Nevertheless, there is never a legal code or

134 Own translation from Arabic, Al-Māwardī, *al-Ḥāwī*, 318.

135 Al-GHAZĀLĪ, *al-Wasit*, VII, 85

136 Al-MĀWARDĪ, *al-Ḥāwī*, XIV, 320; also, Al-GHAZĀLĪ, *ibid.*, 86.

137 In Islamic criminal law, there are two types of punishment: *ḥudūd* and *ta'zīr*. Only the second is subject to the discretionary power of the judge.

*Ḥudūd*, for their part, constitute grave acts (homicide, apostasy, adultery, etc.) and their punishment is generally inspired by the Quran, be it explicitly or not.

138 About the situation in al-Andalus see, for example, BOUCHIBA (2017) and about the inter-faith borders: AILLET (2013).

139 The *Zunnār* is a special belt worn by *dhimmī* in certain regions during certain periods.

140 Sources relate, for example, that the houses of *dhimmī* were marked by little figurines affixed to their doors. FATTAL (1958) 102 f.

bilateral contract that applies everywhere. It is also certain that apart from minimum obligations, the relations between *dhimmī* and Muslims depended more on an Islamic law that was living, fluid and variable following the rhythm of social life and the dynamism of living together. It depended on the rhythm as well on the scale of validity in Islamic law, as well as the ambiguity that remains – whether desired or not – a characteristic of this legal culture.<sup>141</sup>

#### 4.3 Convivencia *dynamic in al-Andalus: Re-reading the fatāwā* of Mi'yār al-Wanšharisī

The medieval *fatāwā* in the Islamic West are precious sources for the study of the vital side of living together between *dhimmī* and Muslims in al-Andalus. They allow a better understanding of legal validity graduation and Mālikī legal tradition in the Islamic West. The *Muwatta'* of imām Mālik Ibn Anas, founder of the Mālikī school of law dominant in al-Andalus and the Maghreb, is a major legal work in the entire history of Islamic law. This body of legal work was largely commented and reinterpreted by the *qādī* and jurists from al-Andalus and Northern Africa. In this process, it has taken on a different dimension in what is called the *al-gharb al-islāmī* as compared to the *mašreq* (the Middle East).

When Mālik died around 795, Mālikism barely counted a few followers, the absolute majority of whom were of North African or Egyptian origin. The father of Mālikism in the Maghreb and al-Andalus theoretically was Ibn al-Furāt, with his compilation on the sayings of Mālik: *al-Assadiyya*, which he taught in Tunisia upon his return. Let us note in passing that Ibn al-Furāt first studied Ḥanafism before learning Mālikism with Ibn al-Qāsim. The famous Sahnūn, a follower of both Ibn al-Furāt and Ibn al-Qāsim, then developed a version of Mālikism that was closer to Ibn al-Qāsim. Together with him (Ibn al-Qāsim), he addressed a letter to Ibn al-Furāt demanding that the latter modify his *Assadiyya* (due to the Ḥanafī influ-

ence?).<sup>142</sup> Ibn al-Furāt refused. Sahnūn therefore compiled what is now considered the bible of Mālikism in the Maghreb and al-Andalus: *al-Muwawwana al-kubrā*. This major work is considered an accentuation of Mālikī rigorism. However, the history of Mālikism in the Islamic West is not so simplistic. An extremely interesting school of law – which has since disappeared – played a major role in the region, particularly in North Africa and al-Andalus. This is the school of imām al-Awzā'ī, a transmitter of *ḥadīth* by the Prophet and founder of a school of law that bore his name in Syria, later spreading to the Maghreb and Muslim Spain. Despite the presence of several legal doctrines in al-Andalus – shi'ite, khārijite or mu'tazilite – it is the Mālikī doctrine that ultimately imposed itself after a long battle and competition with that of al-Awzā'ī.<sup>143</sup> Historians and chroniclers differ on the historical process of this juridical battle. Nevertheless, one thing is certain: it is under the impulse of the Caliph Hišhām I, and notably that of the famous *qādī* Yahyā Ibn Yahyā al-Laythī, that Spanish Mālikism began taking shape. The latter turned adjudication into his warhorse by nominating only Mālikī *qādī* and eliminating the adepts of al-Awzā'ī.<sup>144</sup> For legal historians, one question remains: can one claim an influence, and be it but implicit, of the school of al-Awzā'ī on Spanish Mālikism? The scope of this paper does not permit venturing into this research, yet one thing is certain: Spanish Mālikism was traditionalist in nature and very jurisprudential. Nevertheless, out of this rigorist paradox, a jurisprudential suppleness breathed a new soul into Spanish and Maghrebīn Mālikism: Even though Spanish Mālikism transmitted the saying of the imām Mālik more than the *ḥadīth* of the Prophet and even if it suffered from a quasi-absence of theoretical reflection, it found in the *masā'il* (typified cases), the *fatāwā* (juridical consultations), the *nawāzil* (actually experienced cases), notary acts, etc. a fluid matter that permitted it to become supple and temper the rigor of this school in light of the interpretation of two major works: *al-Muwatta'* by

141 BAUER (2011).

142 This difficult question has not yet found a satisfying answer from historians of Islamic law.

143 On the »veneration of Malik« and the »physiognomy of Malikism« in al-Andalus see: TURKI (1982); and con-

cerning the specificities of the judicial structure in al-Andalus, the excellent historical-comparative study by TYAN (1960).

144 On the »judicial struggle« between these two schools of law in al-Andalus see: *Al-Mi'yār*, VI, 356–357.

Mālik and *al-Mudawana* by Sahnūn. Andalusian and Maghrebin *qādī* were able to develop a colossal body of *fatāwā* thanks to these specificities, but also thanks to the flexibility of the validity gradient.

The validity scale in itself is of a pluralist nature. One of the main specific properties of Islamic validity culture is that of the logic of validity itself. In effect, what is legally valid or non-valid in Islam is not subjected to a binary code like in Occidental legal logics (legal / illegal; valid / null, etc.). The logic of Islamic legal validity is richer because it is more gradual. This explains the existence of an entire palette of legal classification: An act can thus be considered mandatory (*wājib*), recommendable (*mandūb*), legally neutral or indifferent (*mubāḥ*), reprehensible (*makrūh*), or, finally, forbidden (*maḥḍhur*). Similarly, the legal sanction attached to the act also varies according to its classification.

The qualification of *makrūh* is a key to understand the Islamic legal culture of al-Andalus. I would even say more: the attentive study of the 13 volumes of the famous book *al-Mi'yār* proves that this category of Islamic validity secured the

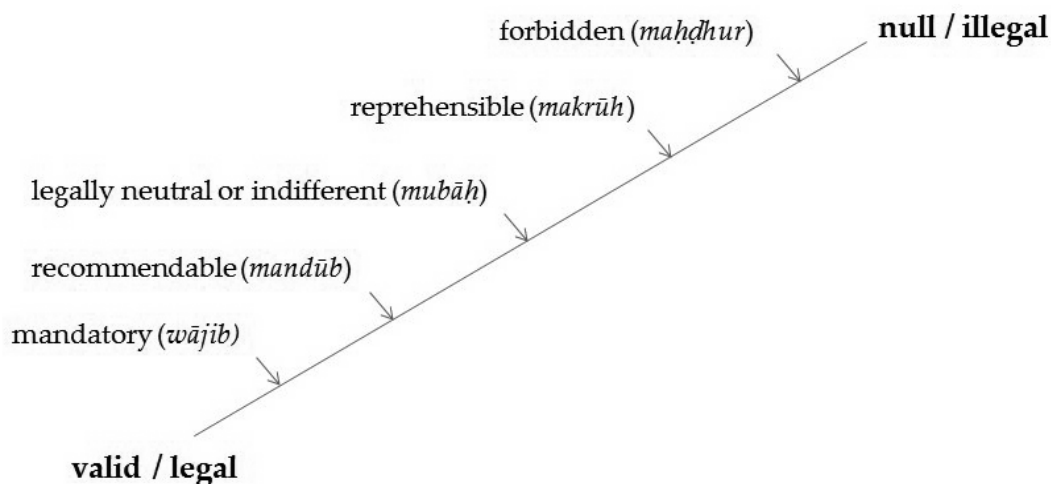
Muslim judge due to the equally theological and juristic elasticity, a space for important manoeuvring by which the 'curser' of *Convivencia*, or what we can call *dé-Convivencia*, is fixed. One can have, according to the cases, a little bit, very much, a little, or no *Convivencia* at all.

But what is meant by a *fatwā*?

A *fatwā* is juristic advice given by a specialist in Islamic law on a particular question asked by an individual or a judge.<sup>145</sup> In medieval times, only judges or the *muftī*, the savants of theology and of Islamic jurisprudence, were qualified for giving the *fatāwā*. This said, a *fatwā* has no *force de droit*, to reference Pierre Bourdieu,<sup>146</sup> meaning that they have no binding effect. In the history of Islamic law, *qādī* and *faqīh* have always delivered different, if not contradicting *fatāwā*. With this in mind, two further preliminary remarks have to be made:

Firstly, the hundreds of *fatāwā* composing this *compendium* testify not only to the plurality at the heart of Islamic law and its schools, but also, most interesting, to the plurality of legal cultures in al-Andalus. Secondly, the very disparate *fatāwā*, sometimes even contradictory with regard to the rites of living together, do not give us an entirely complete

## Islamic legal validity



145 There, we are confronted with a major difficulty: who is able, and who has the right to establish a *fatwā*? As there is no clergy in Sunni Islam, there is no unanimous rule about the

person capable of pronouncing a *fatwā*. Many Muslims today complain, and for good reasons, that too many consider themselves as qualified in order to make it in the Arab

world as in Europe: what is called *fiqhu al-aqalliyāt*: minority jurisprudence. This relates, by the way, very closely to *Convivencia today*.

146 BOURDIEU (1986).

version of the real *Convivencias* in al-Andalus. The plurality and the contradictions of the textual content of this jurisprudence also imply a plurality of practices in reality.

Why the choice for this juristic and historical source of the late 15<sup>th</sup> century? The compendium, published for the first time in 1897,<sup>147</sup> is entitled *Al-Mi'yāru al-mu'ribu wal-jāmi'u al-muḡhribu 'an fatāwā ahli Ifrīqiyya wal-Andalus wal-Maḡhrib*. A long title that is impossible to translate. *Al-Mi'yār* signifies the criterion, standard, and, above all, norm. It also means to compare, to draw an analogy with something. The analogy is very important in the theory of Islamic sources; it is the fourth source of Islamic law.<sup>148</sup> *Fatāwā ahli* means *fatāwā* of the people of Tunisia (*Ifriqiyya*), al-Andalus and Morocco. The compendium's author is Ibn Yahyā al-Wanṣharīsī.<sup>149</sup>

Why is *al-Mi'yār* such a crucial document for the study of *Convivencia* in al-Andalus?

*Al-Mi'yār* is the most important *fatwā* book in the whole Occidental Muslim world. It is true that works like *Mukhtasar* by Ibn al-Ḥājjib, *Nawāzil* by al-Burzulī, *Furūq* by al-Qarāfi, *Muwāfaqāt* by al-Šhātībī, and so forth are of fundamental value for the history of Islamic law because they also constitute the Islamic sources of the civil codifications in Morocco and Tunisia, which are still valid today. But the ›quasi photographic‹ value of many *fatāwā* in *al-Mi'yār* makes of it a rare juristic work. This means we are hence in the continuity of the juristic heritage of al-Andalus. Furthermore, it represents the advantage to refer to a number of manuscripts and writings of Andalusian judges, whose work partly no longer exists. Finally, *al-Mi'yār* is specific as a source to study *Convivencia* insofar as it is not simply a book of juristic value. It is also rare in its historical and sociological value.<sup>150</sup> It captures, in fact, unique information about living traditions practiced in al-Andalus and the Maghreb with regard to rituals in culinary traditions, clothing, festivities, social relations in times of war and

peace, etc. Roughly said, it seems to be an ideal source for exploring the ritual side of *Convivencia* in al-Andalus, taking juristic and historical points of view. Four domains will be studied in light of those *fatāwā*.

#### 4.3.1 Connubium

Ibn Ḥazm, who passed away in Córdoba in 1063 and was one of the authors in the double domain of theology and the science of love as well as author of the Ring of the Dove, wrote: »For a Muslim, it is enough if he abstains from things prohibited by Allah (...). But to find beautiful what is beautiful, to let oneself be won over by love, is a natural thing which is neither ordained nor prohibited by the Law«.<sup>151</sup> Thereby, the celebration of the body and of pleasure is neither a masculine nor religious exclusivity. A rule which suffers, however, from one exception: a Muslim has the right to marry a Christian or Jewish wife, while the Muslim woman does not possess the same right. According to a consultation in the second volume of *al-Mi'yār*,<sup>152</sup> addressed to the *fuqabā* of Córdoba, it seems as if the attraction between Christian men and Muslim women had become a preoccupation for certain believers in Islam. One story that is told is about two beloved persons, a Christian man and a Muslim woman, who did not hide their relation to the point that they appeared in public side by side. Several testimonies confirm this. The story ends badly because the lady is persecuted by her brother. She flees and disappears, whereas the *fatwā* insists on evidence: in such delicate affairs, testimonies are not sufficient, especially if they are unprecise. The question is whether the two were just walking side by side or whether the Christian persistently tried to seduce her. If there is no evidence presented to the judge, he must not be imprisoned.<sup>153</sup>

This taboo persists until today. All Arab countries interdict the marriage of a Muslim woman

147 The publication came after a long »siesta« of 400 years. On the historical importance of *al-Mi'yār* see: LAGARDÈRE (1995).

148 After the *Quran* as the first, the *sunna* as the second, and *l'ijmā'*, or the consensus, as third.

149 His name is Abu 'abbās Ahmad Ibn Yahyā al-Wanṣharīsī. He was born in Algeria in 1430 (834 h) and exercised

his function of judge for several years. But in the vein of political persecutions, he was obliged to exile himself to Fès in Morocco. There, he continued acting as a judge and passed several years by writing, actually for a quarter of a century from (890 h) until his death in 1508 (914 h).

150 On this importance see: LAGARDÈRE (1995) 7–18.

151 See the French translation: De l'amour et des amants, Ibid.

152 *Al-Mi'yār*, II, Chap. *Nawāzil al-dima wal hudud wa-tta'zirat*, 345–347.

153 *Al-Mi'yār*, ibid., 345 »*Idhā thabata 'alā kāfirin iḡbrā'a al-muslimāti bi'l-fasādi 'uqiba bi'l-dharbi al-mubraḡi wa-sijni al-tawili*«.

with a non-Muslim man. Tunisia is the most advanced in matters of personal status (family law), though ambiguities also persist here. No juristic text prohibits this union, but the Tunisian jurisdiction has been divided on the issue since 1969: a conservative tendency prohibits it, while a more liberal one attributes this right to Muslim women. Even in Lebanon, a multi-confessional country *par excellence*, these unions do exist but remain complex on a juristic level.

To conclude, *connubium* is possible on the basis of respect for the will of living together as a couple, but only for men, whereas this right of transgression demands that the woman in the mixed couple must undergo a ritualistic conversion to Islam as a precondition for the legitimate union.

#### 4.3.2 Commensality

In the second volume of *al-Mi'yār*, a long chapter is devoted to *Navāzil al-ssaydi wal-dhabāih wal-ašhriba wal-dhabāyā* (the matters of chase, slaughtering and animal sacrifices). A question that was asked to judge Ibn'Arabi refers to the Christian slaughtering and then the cooking of a chicken: »Is there a right to eat the chicken together with him or to accept it when he offers it as a gift?« (Clearly, there was a custom to mutually offer plates to be taken). He answers: »yes, one has the right to eat because this chicken is his nourishment«. Then, he adds the remarkable sentence: »what they (Christians) think to be *ḥalāl* within their religion is also *ḥalāl* for us, except when it is explicitly forbidden by Allah«. <sup>154</sup>



Fig. 11. Jewish ritual slaughter of animals, 15th century

This response has visibly provoked a big debate between the judge and his disciples. The theological and juristic argumentation continues: Ibn'Arabi reminds in the fifth verse of sure *al-Māida* (The table): »The food of the People of the Book is permitted to you, and your food is permitted to them«. And then he adds: »God has permitted us their *ḥalāl* food according to their proper *sharia* and according to their rituals, and it is not necessary that their rituals be conform to ours with regard to the slaughter of the animal. (...) we will eat as the judge said, because it is the nourishment of their rabbis and their priests«. <sup>155</sup>

In other words, their normative validity is transmissible to us. From this Andalusian argumentation, it follows a kind of respect for the normativity of the *Monotheistic-dhimmī* as a phenomenon of recognition and of respect for the corresponding religious authority, may it be Christian or Hebraic. This ritual-related basis of *Convivencia* therefore goes beyond the pure logic of domination, which we find as factual basis in the context of *Convivencia*. The *dhimmī* as the Other becomes a part of oneself precisely because it is different, but also because it is a monotheistic. This becomes even more fascinating when the limitations or the normative interdictions of the Other play the same regulating role of conflict in another validity culture. As an example, another *fatwā* stipulates that animals slaughtered by Jews, but non-*ḥalāl* for them because of a sickness or something else, cannot then try to be sold on the market to Muslims – such a practice has to be forbidden.

One could say that a self-obligation of the Other's normativity is made normatively coercive, as if the ritually impure could spring to the other community. The recognition of *dhimmī* as different but at the same time as a part of the Self is profoundly problematic. Since his acceptance, rejection and even punishment depend on religious and cultural »curser«, which accept and reject the Other in its difference. The two examples of *connubium* and *commensality* demonstrate this. *Grosso modo*, *fatāwā* are abundant and rich in detail concerning rituals referring to nurture, especially to questions of slaughtering. But what we can identify by way of a close reading of those texts,

154 *Al-Mi'yār*, II, 9.

155 *Ibid.*





Fig. 12. Muslims and Christians celebrating together, as they used to, for example, in the Alhambra on Christmas and New Year's Eve, Biblia de Alba, 1422–1433, Palacio de Liria, Madrid

and especially their sometimes rather judicially complex argumentation, is that among the different streams of judicial schools represented the Andalusian one is often the most »tolerant«. This is testified by a *fatwā* related to the chase, practiced by the People of the Book. The qadi Ibn Uqāb affirms in his response the existence of a jurisprudential polemic. The majority tends to interdict eating an animal that was chased by a Christian or a Jew. At the same time, many: »Cheikhs like Allakhmī, Al-bājī, [from Tunisia], Ibn Rushd and Ibn'Arabi [from al-Andalus], have chosen the position of Ibn Wabb and Ašbhab, by way of qualifying *mubāḥ* (permitted) the chase of the *kitābī*, [hence the Christian or the Jew]«. <sup>156</sup>

#### 4.3.3 *Communitas*

It is reported in the 11<sup>th</sup> volume of *al-Mi'yār* of a new phenomenon that became a new tradition among Muslims, namely of celebrating the New Year, called Yanair, as if it were a Muslim festivity: »... they offer each other home cooked food, presents and souvenirs to consolidate their relationships (*al-tuḥafī wa-turafī almaṭhubati liwajhi al-silati*). Men and women do not work the next day

to manifest their glorification and veneration for this day. Is this a *bid'atun muḥarramatun*, an innovation which is forbidden for the Muslims? Or is it an act that is *makruh* which is not directly *ḥarām*? It is mentioned that certain *ḥadīṭh* interdict the celebration of Christian festivities for the Muslim community. The judge, named Muhammad al-Temīlī responds: »I have carefully read your consultation (...). All you describe is *muḥaramun* (*ḥarām*) according to the doctors of science«. <sup>157</sup> But we also find the following surprise: Yahyā Al-Laythī reports that he has demanded another judge, Ibn Kenana, to provide his advice on the question: »I have told him about the situation in our country (*wa-akhbartuhu ḥālānā fī baladīnā*), and he has condemned it«. <sup>158</sup>

In the same sense, some *fatāwā*, dispersed in different volumes of *al-Mi'yār*, concern the question of festivities and Christian's influence on Muslims. Thereby, a special *fatwā* is one of the very rare to be addressed to ladies. The short excerpt starts with the threatening Arabic phrase: *Wa-ḥyākunna*. »Be careful to glorify Saturdays and Sundays, and to take Christian holidays off. You have to work every day including Friday until the call to prayer (...)«. <sup>159</sup>

156 *Al-Mi'yār*, II, 18–19.

157 *Al-Mi'yār*, XI, 150–151.

158 *Al-Mi'yār*, XI, 152.

159 Still in the XI<sup>th</sup> volume, 152.



Fig. 13. School of Alfonso X, later half of the 13th century, Muslim and Christian Musicians

Is it necessary here to remember that the studies on *Convivencia* very often neglect the situation of women. However, for all reports of neighborhood, festivities, and culinary traditions, child-raising women are the main actors. The *ḥammām* (*Baños Arabes*), for example, is not a confessional space in Islam. »The existence of public bath houses in the cities of medieval Spain might be seen as one of the most potent markers of an urban culture shared between Muslims, Christians, and Jews. All three religious groups patronized the public bath houses for reasons of hygiene, health, and sociability«. <sup>160</sup>

It is also mainly due to women that certain rituals celebrating the anniversary of the Prophet of Islam, Muhammad, seem to be influenced by the celebrations in Christianity. Several *fatāwā* relate these facts and insist on the parallelism of Christian influence. In a *fatāwā*, Ibn'Abbad considers the new rituals as follows: »to illuminate candles, wear new and beautiful cloth, decorate homes, do everything that is doing joy to ears and eyes are all *mubāḥ*«. <sup>161</sup> This therefore has to be regarded as a Muslim celebration *par excellence*.



Fig. 14. An Arab and a Spanish woman playing chess, Alfonso X, libro de los juegos, 13th century

In an other *fatāwā*, <sup>162</sup> *Ibn Rushd* from his side – one of the most tolerant and innovative ones – does not consider candles as *bid'a* (innovation). In the madrasas, celebrating the anniversary of the Prophet by way of illuminating candles and singing is not *ḥarām*. <sup>163</sup> These examples confirm that rituals express the critical question of the collective identity of a group. Therefore, any exaggerated resemblance is feared to imply a loss in identity and the demarcation of identity lines. But is trade subject to the same logic?

#### 4.3.4 *Commercium*

One example from *al-Mi'yār* is related to purity (*tahāra*), a central theme in Islam. It concerns the usage of paper fabricated by Christians, not only because of the use of materials, but also because of a cross that has been embedded in the paper. *Al-Mi'yār* speaks of *kāridh*, a Berber term for paper different from classical Arabic (*Waraq*).

The *fatāwā* that treats the question of the paper is one of the longest – to the point that it constitutes an entire part of a book, and once again, the Andalusian School is the most tolerant. In al-Andalus, and also the Maghreb, paper produced by Christians was allowed to be used for all kind of purposes, also for the transcription of the Quran – even when the cross had been embedded in the

<sup>160</sup> Cleanliness and *Convivencia*: Jewish Bathing Culture in Medieval Spain: REMIE CONSTABLE (2014) 257.

<sup>161</sup> *Al-Mi'yār*, XI, 278.

<sup>162</sup> Ibid.

<sup>163</sup> Note for historical reasons that in post-revolutionary Tunisia, the Islamists and the Salafists in 2011 and 2012

campaigned in a brutal way to prohibit all manifestation of festive character during *mawlid*, that is the anniversary of Muhammad, by accusing those who persist on this ritual to be *kāfir*. On Christmas 2015, the birthdays of Jesus and Muhammad coincided on the same day, a rather

rare event. A big societal debate was spurred because of celebrating the birth of Christ and the birth of the Prophet of Islam at the same time. This shows how much this debate reaches into our current experiences.

paper in a nearly invisible way (*waqad shā'a fi bādhibi al-amsāri wal-aqtāri katbu al-qur'āni fi al-waraqī al-rūmī*).<sup>164</sup>

The reasoning by way of analogy appears in numerous *fatāwā* on different issues and leads to the conclusion that the clothes of Christians are *ḥalāl* in the sense that they can be bought. In another *fatwā*, the argumentation by Ibn Rushd is remarkable: Clothes that had been worn by a Christian are not impure because the Muslim has the right to wear it and even to use it to pray. The only delicate thing is the color: wearing black clothes that do remind of priests are not appreciated. Finally, the cheese of Christians is also *ḥalāl* even if elements of pork had been used in the production process. In contrast, it is clearly prohibited to use the cheese fabricated by the *Majūs*, the non-monotheists as analyzed before.

The reasons why paper production and cheese may be problematic is clear because of the use of impure materials – pigment is produced by the skin of animals who may have been slaughtered in an incorrect way, an impregnated cross is a strong symbol of the Other's belief, the production of food that is, on a secondary level, linked to impure animals or an impure killing procedure might constitute, in a magic world view (of the *umma*), an effect of contagion. But this is, as the examples show, apparently, not the case. Insofar, a premodern market structure is hence restricted by ritual premises, but it is not the physical transfer of the impure. This is in contrast to some modern *fatāwā* or literature designated to Muslims living in Europe that declare Nutella, pretzels and cake not to be *ḥalāl* whenever an incorrect material is used. But for the Andalusian argumentation, the logic of making the distinction between the pure and the impure counts more than the physical, naturalistic infection, thereby opening the exchange and universalization of commodities between the cultures!

Al-Andalus was far from being the only exception. An other interesting example is testimony of this. *Al-Turtūshī* is one of the most quoted authors in the *ḍhimmi* debate on al-Andalus. His position is not representative but can be explained by some

specific elements of his biography. He was born in Tortosa in the northern part of al-Andalus in 1059, at the time of heavy tension and conflict between various *Tāifa kingdoms* and the Christian natives. He left Spain as a young man to go east and become a disciple of ṣhāfi'ī and ḥanbalī scholars, and then to Alexandria in Egypt, where he settled down for the rest of his life. In his writings, he is impregnated by purist and harsh interpretations of ḥanbalī jurists, but perceived as if he were mālikī. In his famous book *Sirāju al-mulūk* (*The lamp of Kings*),<sup>165</sup> he establishes a code of behavior for the relationship towards *ḍhimmi*. This is in contrast to the rather sociological description of society in al-Andalus by al-Wanṣharīsī. This code determines, for example, that there is no right to establish new houses of cult or renovate the old ones; sometimes it even orders their destruction. He establishes very hard lines of distinction, but renounces to the respective religious groups of Jews and Christians to wear signs of religious identity. And, in general, not to mingle at all in public places, music events, festivities ...

His *fatwā* prohibiting cheese made by Christians created a controversy among Egyptians scholars.<sup>166</sup> For obvious economic reasons this *fatwā* was not very well liked by the authorities because they lost the economic gains of taxes on cheese imported – also – from Europe! For that reason the minister al-Afḍhal, and the *qādī*, Ibn Hadīd, ordered he be sent to to *Cairo* and isolated him from public discourse and teaching during several months.

#### 4.4 The *ḍhimmi*: an almost perfect citizen in al-Andalus?

Apart from the monotheistic affiliation, the particularity of the legal status of *ḍhimmi* is strongly related to the territory. The proof is that it is either treated similar / equated to a Muslim or the beneficiary of a privileged status whenever implicated in relations with an enemy (*ḥarbī*) or a passing visitor (*musta'min*). This latter remark follows an extremely interesting principle without which one cannot understand the logic of *ḍhimma* and, *a fortiori*, that of Andalusian *Convivencia*. The

164 *Al-Mi'yār*, I, 90.

165 *Al-Turtūshī*, *Sirāju al-mulūk* (1994).  
See especially volume XXI: *Fi aḥkāmī ahl-al-ḍhimma*, 542 ff.

166 *Sirāju al-mulūk*, I, 33 ff.; 542 ff.



principle is that of becoming an integral part of Islamic territory, thus of *dār al-Islām*, which very strongly charges the legal status of *ḍhimmi* symbolically, theologically and socially. It has been a common expression among philosophers, jurists, poets, etc. of diverging descent from Jewish, Christian and Islamic origins to speak of themselves as: »عندنا في الأندلس« (at our home in al-Andalus), an expression that was widely used by the Arab Jewish philosopher Maimonides, for example.<sup>167</sup>

The famous *al-Mabsūt* by 9<sup>th</sup> century Persian jurist Šhams al-dīn al-Sarakhsī contains a revealing passage: »Because according to the contract of *ḍhimma*, he [the *ḍhimmi*] has become one of the inhabitants of our house [*dārīnā*],<sup>168</sup> which here means our territory], that is to say that he resides in a house / land that belongs to him [*dāra nafsihi*] without being actually propertied.«<sup>169</sup> If not only Muslims, but also Jews and Christians of al-Andalus – well before the compilation of *al-Mabsūt* – used the expression »at our home in al-Andalus«, this is because there was more than the territorial connection. The connection is that of belonging which creates solidarity between the members of the community even if they do not belong to the same religion.

Throughout the entire course of Andalusian history, but particularly during precise historical moments between the 8<sup>th</sup> and 11<sup>th</sup> centuries, the *ḍhimmi* ceased to be identified as a »discriminated« *ḍhimmi*. It was rather considered a participant in a shared goal or program: The contacts and cooperation between Muslim, Christian and Jewish scholars are the prime example. Within certain professions like medicine, for example, Jews, Muslims and Christians were bound together by what historian Mottahedeh calls »loyalty of class«, which cast religious hierarchy between Muslims and *ḍhimmi* to the background and necessarily encouraged not only tolerance, but also multiple *Convivencias*.

Further, the degree of this integration of the *ḍhimmi* in the spirit of solidarity reached its stron-



Fig. 15. Alfonso X dialoga con médicos árabes, »La Medicina en Al-Andalus«

gest level after *ḍhimmi* became subjects of Islamic law.<sup>170</sup> Legal literature offers up fascinating examples. Essentially, the passing foreigner or visitor (*musta'min*) conserved their status as enemy (*ḥarbī*). Therefore, even if tolerated on the territory of *dār al-Islām* in a temporary manner thanks to a bill of passage (which shares similarities with a modern limited visa), he did not benefit from the presumption of good faith accorded to *ḍhimmi*. In tax matters, for example, the same al-Sarakhsī<sup>171</sup> recounts that if a tax surveyor learns during a trip that goods transported by a *ḍhimmi* are personnel belongings and not merchandise destined for sale (which is subject to a tax called *ʿuṣhr*), he must, based on the principle of good faith, believe his assurances in the same way as he would believe a Muslim. By contrast, necessary verification procedures are required in the case of a *ḥarbī*.

Let us recall what has already been mentioned above: the very meaning of the word *ḍhimma* refers to *fides*. The status of *ḍhimma* is a territorial and civil right *par excellence*, which also offers *ḍhimmi*

167 See the interesting book of ANIDJAR (2002), esp. 57–101.

168 »*lʿannahu biʿaḍi al-ḍhimmati šāra min abli dārīnā ...*«.

169 Own translation. AL-SARAKHSĪ (1994) X, 81.

170 See the article by MÜLLER (2013).

171 AL-SARAKHSĪ, II, 200.

recognition as citizens beyond religious status that approaches, in certain cases, the position of a »co-resident« Muslim more than that of a »co-religionary« not recognized as *dhimmī*.<sup>172</sup> The rules regarding a unilateral promise of recompense<sup>173</sup> are one example. In their works, Muslim jurists at no point distinguished between a Muslim beneficiary and a *dhimmī*. »One Thousand and One Nights« in the story of *Seyf el-Mulūd* tells of a strange legal mix between a sale and a promise of recompense.<sup>174</sup>

Both Mālikī and Ḥanafī scholars agreed on the rule according to which a treasure<sup>175</sup> found in *dār al-Islām* becomes the property of the person who found it after paying the fifth to *beyt al-māl* (the public treasury). It is thus for the followers of Abu Ḥanīfa, the scholar Abu-al Ḥassan al-Šhaybānī<sup>176</sup> in his book *kitāb al-siyar al-kabīr*.<sup>177</sup> Two centuries later, his follower, al-Sarakḥsī, is more explicit and consistent in his argument on *dhimmī*, according to which not even the imam can deprive him of this right: »... he pays the fifth of what he found and the rest belongs to him, with or without the permission of the imam as he is effectively one of the inhabitants of our house / territory [*min ahli dārinā*] and our law [*ḥukmunā*] applies to him, he is in the position of a Muslim«.<sup>178</sup>

All of this speaks for an almost perfect legal status of citizenship. Almost, because like with *Convivencia*, there is another side, too. There is ranking and even discrimination. One should not forget that Islamic collectivity comprises groups, religions and ethnicities. For certain rights, Muslims took first place, that of the dominant, even if the *dhimmī* remained closer to the Muslim than a *musta'min* or even worse an *ḥarbī*. Concerning

testimony before a judge, for example, the Ḥanafites operated a curious legal hierarchy where the Muslim is to be found at the peak, followed by the *dhimmī* and finally the *musta'min*. None could testify on behalf of or against a Muslim, but the Ḥanafites accepted exceptions.<sup>179</sup>

It is the position of the Mālikites, however, which is truly original. Its originality is tied precisely to the paradox which hovers around the legal status of *dhimmī*, and on the normative body that Muslim jurists have striven to construct. The Mālikite position is the most rigid on testimony by *dhimmī*.<sup>180</sup> Even the Ḥanbalite rigorists are more flexible, as they accept testimony when it comes to testaments, for example, whenever a Muslim expresses his testamentary will, is far from home, and there are no Muslim witnesses present.<sup>181</sup> The legal argument of the Mālikī scholars is strangely tied to religious superiority, but also to a strictly legal logic concerning the honorableness of the witness. For if in certain cases, the testimony of a Muslim is not admissible (lack of legal capacity, sinful Muslim, etc.), how can one accept that of a *dhimmī* if it is not superior to the testimony of a fringe of Muslims whose testimony is inadmissible? It is impossible to determine precisely with what rigor the Mālikī *qādī* applied this general position. However, we do thankfully have recourse to the *fatāwā*. An Andalusian *fatwā* recounted by Ibn Ruchd (*al-jadd*)<sup>182</sup> in his book *al-bayān wal-taḥṣīl*,<sup>183</sup> for example, informs us of the attitude of Andalusian jurists towards a question about testimony. When asked the question »Can a Muslim judge accept the petition by two Christians arguing over a good and requesting two witnesses from their community?«,

172 For example, a Christian or a Jew who does not, however, benefit from a contract of *dhimma* and did not belong to *dār al-Islām*.

173 This refers to the unilateral declaration of will which Muslim jurists have abandoned. In this regard, Islamic law is, incidentally, close to German rather than to French law which does not know this type of obligation. See: SAKRANI (2009) 143–148.

174 »I will give you ten a hundred pieces of gold as its price [the found story], and ten as a gratuity...« LANE (1859) III, 346.

175 It is the same for a gold mine or precious metal. Jurists utilize the word *rikāz* to describe this type of treasure.

176 Born in Wasīt in Iraq; died at the start of the 9<sup>th</sup> century, probably in 805.

177 I am grateful to my colleague Max Deardorff who drew my attention to the fact that this sounds like Castilian royal norms concerning Indios! This raises the further question of the Islamic influence on Castilian royal norms in Latin America. See on several aspects of the influence of Islamic law in Royal Castile and the colonized territories in South America the article by MAX DEARDORFF »Republics, their Customs, and the Law of the King: *Convivencia* and Self-Determination in the Crown of Castile and its American Territories, 1400–1700« in this Dossier, 162–199.

178 Own translation. The expression: *fā-kāna bimanzilati al-muslim* can also be translated as »as if it was a Muslim«. See: AL-SARAKḤSĪ (1997) V, 304.

179 See, for example, *Al-Mabsūt*, 139; AL-KĀSĀNĪ (2003), IX, 58–59.

180 See in the same sense and for more examples the interesting study by OULDDALI (2013).

181 See one of the great Mālikite jurists from the Maghreb, the Tunisian Saḥnūn in his famous *al-Mudawana*, IV, 19 ff.

182 *Jadd* means grandfather in Arabic.

183 IBN RUCHD AL-JADD (1988) X, 22.

the jurists replied in the negative. However, this example is very tricky, as it is not clear if the issue is strictly legal or if it is also tied to a desire to preserve social and identitary borders thanks to the autonomy of the judicial institution in each community. Muslims were well aware: to protect religious and jurisdictional autonomy is the best guarantee for the three monotheist communities to each preserve their social and identitary tissue. Tolerance, therefore, but also a legal and social mechanism to avoid crossing the prohibitions imposed by Islamic law and maintain the necessary distance to other communities.

Does this mean that the testimony of a *ḍhimmi* was never accepted in al-Andalus given that the position of the Mālikī school was more restrictive than that of the other schools? Studies of *fatāwā* in al-Andalus and Northern Africa have demonstrated the contrary. Thanks to pragmatic criteria according to which Mālikī scholars and *qādī* invented or changed legal rules, this rigid principle was indeed circumvented. This is the concept of *maslaḥa* (social or public interest). Essentially, the strength of this school resided in its ability to adapt to new, concrete situations that arose during everyday life and be closer to the needs of the people or institutions. *Maslaḥa* is linked to *ḥāja* (need) and above all utility (*manfaʿa*)<sup>184</sup> imposed by new circumstances. It played the role of a cursor that allowed the adaption, changing or even abolition of legal rules. This is what Mālikī and Ḥanafī jurists referred to according to the famous *qāʿida sharʿiyya* (*sharaique rule*):<sup>185</sup> »*lā yunkaru taḡayyur al-aḥwāl bi taḡayyur al-azmān*: the change/evolution of situations must follow the changes of the ages«; or »*al-ḍarūriyyat tubīḥu al-maḥḍūrāt*: the necessity makes the illicite (*maḥḍūr*) licite (*Necessitas non habet legem*)«; or »*al-ḥājatu tunazzalu manzilata al-ḍarū-rati āmmatan aw khāssatan*: the public or private need is considered as a necessity«.<sup>186</sup>

A typical application of this practice in al-Andalus was undoubtedly the authorization of *ḍhimmi*

doctors, be they Jewish or Christian, to testify in matters relating to their competences. Apart from *maslaḥa* as the reason for implementing this tempered rule, Mālikites distinguished on the strictly legal level between testimony itself and the voice of an expert, in this case a doctor. This permitted the extension of this possibility to other experts mentioned by al-Burzulī, an eminent and influential jurist in the entire Islamic West in the early 15<sup>th</sup> century.<sup>187</sup> Al-Burzulī established a list of these experts. Besides doctors, he added veterinarians (*el-baytarī*), surgeons (*el jarrāḥ*), those who possess the faculty to recognize wine drinkers through their breath,<sup>188</sup> etc. The flexibility of certain Mālikī judges even reached substantive rules. For instance, despite the normal rule of two, certain judges contented themselves with the testimony of one single expert,<sup>189</sup> something which did, however, attract criticism from opposing camps. The legal battle is still ongoing today, and it is difficult to precisely determine which position is predominant over another. Ibn Ḥazm, the famous 11<sup>th</sup> century Andalusian jurist and thinker, was known for his zealous taste for polemics, including the famous one given in opposition to the Jewish minister from Granada, Ibn Nagrila. This founder of the *ḍharīte*<sup>190</sup> school of law in al-Andalus, which has since disappeared, was fiercely opposed to the Mālikite liberalism regarding *ḍhimmi* witnesses. Refuting the argument of *maslaḥa*, Ibn Ḥazm took another path towards legal reasoning by clinging to the literality of the Quran. Neither the Quran nor the *sunna* of the Prophet, he insisted, have left us with an explicit rule or a tradition on the validity of *ḍhimmi* testimony. Precisely because of his harsh positions, Ibn Ḥazm is an interesting Andalusian thinker. His writings are also a good testimony of his perception of *ḍhimma*. Known for his violent temper and for being easily offended, the abovementioned Ibn Ḥazm starts his famous *Risāla* (letter) to Ibn Nagrila by questioning the attitude of the king of

184 This is the good or the benefit which affects a person or a grouping.

185 See the list of those rules in: Baz, *Charḥ al-Mejella* (The explanation of the Ottoman *Medjella*) (without date) 17–23 and ALDEEB ABU-SAHLEH (2006) 195–200.

186 One of the famous general rules concerning the spirit of interpreting Islamic law. One of the first civil codi-

fications in 1876, the Ottoman *Mejella* of Ḥanafite inspiration, dedicates an entire chapter to these rules. Most Arab codifications during or after colonization, have taken up all or part of these rules. See: SAKRANI (2009).

187 A native of Kairouan in Tunisia and particularly the author of his famous compendium of *fatāwā* in seven volumes.

188 AL-BURZULĪ (2002) III, 277.

189 Ibid.

190 In Arabic, *al-ḍhābir* means that which is apparent. This school of law particularly clings to the apparent Quranic text and refutes any interpretation founded on a reason other than »the« Quran itself.



Granada, whom he likens to »many princes [who] prepare their loss and offer themselves up to their enemy«. The enemy in this case, as we have readily understood, is none other but *dhimmi* Ibn Nagrila to whom the administration of Muslim affairs has been entrusted, a fact that speaks for itself. He replies to the legal and theological arguments of Ibn Nagrila and, before calling for the strict application of *dhimma*, formulates a very revealing wish: »I firmly hope and have the solid hope that God will treat those harshly who get close to the Jews, who live in their entourage, make close and familiar friends with them and do not exercise their rigor against them«. <sup>191</sup> Those people disobey the Quran – he points to suras 5–51; 3–118; 60–1; 5–57; 5–82; 2–61. In other words, Ibn Ḥazm confirms that the »bad Muslims« who »do not respect« the prescriptions of the Quran have merily lived in *Convivencia* with the *dhimmi* and must be reprimanded for it, according to his restrictive view. In this Andalusian society, what I shall call »a normative order of *Convivencia*«, some kind of »communicative ethics of *Convivencia*« – which cannot be defined solely by the texts on the *dhimma* – was therefore quite real, though its legitimacy was disputed by some.

In the end, one should not forget the lively, pragmatic and conjectural character of living together. A kind of *modus vivendi* of *dhimma* rules and thus of *Convivencias*. The whole palette of flexibility is opened: playing with rules <sup>192</sup> is then open.

## 5 Concluding Chapter: The monotheistic Other of *Convivencia* and the construction of Islamic Identity

In al-Andalus, one should first insist on the fact that there was no kind of religious or cultural liberalism based on an idea of an individual right to religious freedom. Conferring the *dhimmi* status to all People of the Book was not about respecting

religious freedom nor projecting it into a strictly private sphere and sharing public space with other collectivities. There was no Habermasian discourse about a »Strukturwandel der Öffentlichkeit« <sup>193</sup> or corresponding ideas in the vein of Richard Sennett. <sup>194</sup> And there was no tolerance debate based on the principle of equality that appeared later in the 18<sup>th</sup> century. <sup>195</sup>

However, the Andalusian experience delivered an exceptional historical opportunity, giving birth to a rich phenomenon of human interaction.

This process has neither been stable nor homogenous in time and space. The very history of medieval Spain proves this. *Convivencia* was not the same in Córdoba, the first Andalusian capital as in Sevilla and Granada, nor was *Convivencia* the same in Toledo under Christian rules with Alphonso VI or Alphonso X.

Though our current state of knowledge suffers from gaps and insufficiencies, this does not hinder us from tracing a sufficiently rigorous sketch starting with the conquest by Tāriq Ibn Ziyād and the installation of the Arabs on Iberic soil. In the absence of a massive colonizing policy, Muslims imposed the signature of the treaty of peace (*mu'āhadāt sulh*) which implies the implementation of the status of *dhimmi*. <sup>196</sup> Let us recall that Jews, who were cruelly suppressed under the rule of the Visigoths, received the Arabs as their liberators. <sup>197</sup> What happened in al-Andalus went even further, because the Muslims had reinforced the pact »by way of mixed unions (marriage, etc.) and the ordinance of autonomous territories permitting the emergence of the Mozarabic phenomenon«. <sup>198</sup>

May we conceive the status of *dhimmi* only as a normative situation created by the treaty of peace? As a contractual obligation or as contractual hospitality? Perhaps all of this at once?

Hospitality is a strong component of Arabic culture since pre-Islamic times. It also plays a significant role in favoring interaction, exchange and, at times, even the sharing of *joie de vivre* with *dhimmi*. However, hospitality also has a different

191 ARNALDEZ (1973) 47.

192 Inspired by the title of LATOUR (2004). To play and fabricate law becomes possible as Ḥanafī jurists excelled in their theory of *hiyal*, that is legal ruses to get around the rigidity of Islamic rules.

193 HABERMAS (1962).

194 SENNETT (2012).

195 The theater piece written by Lessing inspired by Spain of *last res culturas*.

196 The *dhimma*, originally unknown by Christianity, had found even an echo in the beginning of the 14<sup>th</sup> century during the Council of Vienna, adopting in 1311 the idea of the great

*mudéjar* Ramón Llull with regard to the pacific predication of the unbelievers.

197 See in this sense and just by way of example: GAMPEL (1992) 14 f.

198 MÁRQUEZ VILLANUEVA (2010) 13.

meaning that is fundamental for the study of the figure of *dhimmi* in the Andalusian context.<sup>199</sup> The figure, the face, how to reflect on oneself and how to perceive the Other are major issues that have been facing the Islamic culture for many centuries. There is something like a *phobia* in Islam: the self-portrait. How come?

To say »me« or »I« in a reflecting mirror and embody that narcissistic search by reproducing one's proper face<sup>200</sup> on a canvas<sup>201</sup> is unthinkable in Islam. One is avoiding the view of one's own face, perhaps out of fear of finding in it the face of some categories of others: especially in the domestic sphere,<sup>202</sup> those others, who remain under



Fig. 16. The Desperate Man, SelfPortrait, 1843–1845, Gustave Courbet

199 The etymology of »hospitality« goes back to the Latin word *hospes* (who receives the other), and beyond to the verb *hostire* (treating »from equal to equal«). But the latter meaning is also at the origin of *hostis* (the enemy). Thereby, two opposing modalities towards otherness emerge with hospitality being both encounter and adversity of the other. This is the structural ambivalence of hospitality.

200 The most elementary observation will show that Islam is not iconoclastic by nature and that the representation of

the human being did not always undergo the kind of rejection we know today. The demarcation line lies merely in between the Arab element, rigidly and literally interpreted, and the non-Arab, allowing since the 11<sup>th</sup> century even the illustration of the Quran and the fables of *Kalila wa Dimna* translated by Ibn al-Muqaffa' (720–756), or of *Maqāmāt al-Ḥarīrī* (1054–1122), or the miniatures and Indo-Arabian portraits, including representations of the Prophet.

201 The self-portrait was born in Italy at the end of the 15<sup>th</sup> century, and more surely, in the course of the 16<sup>th</sup> century.

202 In the same sense: CHEBEL (2002).



Fig. 17. Iranian Miniature of the sacrifice of Ismael, son of Abraham, Illustration of Qesas al-anbiyâ, Qazvin, Iran, end of 16th century



Fig. 18. Sacrifice scene of Isaac, son of Abraham by Caravaggio, 1598

severe surveillance, domination and sometimes punishment. It is about the slave, the castrated (*al-khasiy*); the young; the free thinkers of innovation (*zindiq*); and above all the female.<sup>203</sup> The latter constitute the internal and intimate otherness *par excellence*. Women represent a border not to be crossed by the *dhimmî*, because to him or to her it is forbidden to marry, to practice *connubium*. Nevertheless, the figure of *dhimmî* has played a decisive role in the relationship of the Islamic *ego* to *alter ego*, because among all those figures of otherness, or better against those categories, the *dhimmî* is part of the inner and exterior frontier of the Islamic Self. It resides with him at the interior of the same territory. But beyond the explicit economic aspect of this cohabitation (*ġizya*), there has been another role, that of the *alter ego* in order to erect an ultimate frontier, beyond which one is not allowed to adventure. The *dhimmî* creates hence *the forbidden territory*; it represents »an arc between the law and its transgression or between a subject endowed

with full rights and another one of lesser or no rights«.<sup>204</sup>

Under this angle of otherness and the relationship of one's Self to the Other, the study of *dhimmî* through the lenses of otherness becomes even more fascinating and more fruitful for the sake of understanding the dynamism of *Convivencia*.

If the *dhimmî* becomes a resident in Islamic territory, enjoying civic rights and therefore becoming a »resident citizen« of sorts, this is because his loyalty to the *umma* becomes sacred. It protects him and in return obligates him through his loyalty. In the period of conquests and counter-conquests, the loyalty of the *dhimmî* which notably consists of not cooperating with the enemy or exposing the Islamic state to danger is not a simple question of strategy, but also one profoundly tied to the concept of »citizenship« in the medieval Islamic meaning.

The status of *dhimma* is no simple body of legal rules governing simple cohabitation with Chris-

203 Ibid. An orthodox and misogynist Islamic tradition that remains largely dominant today casts the vilified and blamed woman to the rang of minors. In the end, she can only be »equal to herself«. »It must be said: A culture

has barely left the state of hordes when, not mastering its projections, it cannot imagine a man and a woman together unless the encounter is of the devil!« (own translation). REDISSI (2011) 142. See further: LAKHDHAR

(2007) on the construction of the theological and legal construct of the Muslim woman by an orthodox interpretation of Islam.

204 CHEBEL (2002) 139.

tians and Jews. It is the frontier that protects and threatens, the living together that allows to share or dominate, and the cursor that determines the religious limits that may not be crossed and the identity particularities of the last monotheistic religion, the true one. And since to trace the contours of one's own identity, it is necessary to define oneself through that which one is not, *dhimma* in Islam has played precisely this role: to define that which Muslims are not. A Jew or a Christian is a monotheist, has a *kitāb* and a *shari'a*, and therefore serves to define Islamic »sameness«, to mirror this Abrahamic descentance. Incidentally, the rivalry with Jews surrounding this descentance is more than revealing when considering the sacrifice scene (sacrifice of Isaac for Jews and of Ismā'īl for Muslims).

At the same time, however, to mirror oneself through Christians and Jews also brings out all the differences, the competition, the distancing and the narcissism which every identity needs in order to construct itself.

From the point of view of constructing one's identity through the *imaginary*, the *dhimma*, was very useful in Islam, because the Muslim Self has been constructed from the beginning through opposition to and interaction with Jews and Christians. The three frontiers of the *umma*<sup>205</sup> were thus preserved: the territory of dār al-Islām, the supremacy of the last monotheistic religion and the ban of access to Muslim women.



Fig. 1. Mezquita-Iglesia del Salvador, Toledo © Raja Sakrani 2018

Fig. 2. Iglesia de San Roman, Toledo © Raja Sakrani 2018

Fig. 3. Puente Maria Cristina, inauguración Capitalidad Europea © San Sebastián 2016

Fig. 4. The Great Mosque of Testour © Agnieszka Wolska / Wikimedia Commons

Fig. 5. Detail of the Great Mosque of Testour © Takouti Hayfa / Wikimedia Commons

Fig. 6. Muslim and Christian knights embracing in greeting © Wikimedia commons, PD-Art (PD-Old)

Fig. 7. Ahmad al-Jazzar Pacha 1720–1804, governor of Saint John of Acre, condemning a criminal; on the left a Jew as an associate judge © Bibliothèque nationale de France

Fig. 8. Monumento dedicado in 1963 a Ibn Hazm en la Puerta de Sevilla, Córdoba © artencordoba

Fig. 9. Audiencia del Sultan de Fez Abu Yusuf, Miniatura Siglo XIII; Cantiga De Santa Maria Nº 181 © Patrimonio Nacional, T I 1 240R-1

Fig. 10. The consultation of Quraysh? Jāmi' al-Tawārikh, Rashīd al-Dīn, Iran, 14th c. © Edinburgh University Library

Fig. 11. Jewish ritual slaughter of animals, 15th century © Wikimedia commons, PD-ART (PD-old-100)

Fig. 12. Muslims and Christians celebrating together, as they used to, for example, in the Alhambra on Christmas and New Year's Eve, Biblia de Alba, 1422–1433, Palacio de Liria, Madrid © facsimile edition of the Alba Bible, [www.facsimile-editions.com](http://www.facsimile-editions.com)

Fig. 13. School of Alfonso X, later half of the 13th century, Muslim and Christian Musicians © Ganesh / Wikimedia Commons

Fig. 14. An Arab and a Spanish woman playing chess, Alfonso X, libro de los juegos, 13th century © Patrimonio Nacional, T I 1 226V-1

Fig. 15. Alfonso X dialoga con médicos árabes, »La Medicina en Al-Andalus« © Patrimonio Nacional, T I 1 226V-1

Fig. 16. The Desperate Man, Self-Portrait, 1843–1845, Gustave Courbet © Wikimedia Commons, PD-Art (PD-old-100)

Fig. 17. Iranian Miniature of the sacrifice of Ismael, son of Abraham, Illustration of Qesas al-anbiyā, Qazvin, Iran, end of 16th century © Wikimedia commons, PD-Art (PD-old-100)

Fig. 18. Sacrifice scene of Isaac, son of Abraham by Caravaggio, 1598 © Wikimedia Commons, PD-Art (PD-old-100)

205 It remains to insist on the fact that the *umma* in Islam is the homeland, *la mère patrie*, but without reference to a particular territory. By the way, one of

the meanings of *umm*, is mother. Hence, if the *umma* is securing, warm-hearted and amniotic, she can also be tyrannical and cruel towards

the excluded Other and as well to the individual Muslim who is liberal and critical.



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