

Inquiring of ‘Beelzebub’

Timothy and al-Jāḥiẓ on Christians in the ‘Abbāsīd Legal System

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Introduction¹

One of the vital issues facing members of Iraq’s pluralistic society during the ‘Abbāsīd period was how to navigate the overlapping legal systems of the various religious communities. The ‘Abbāsīds allowed non-Muslim protected peoples (*ahl al-dhimma*) a large degree of autonomy in handling cases within their communities, but the interface between Islamic and non-Islamic legal systems produced some troublesome problems that leaders and intellectuals on all sides had to address. Here we will compare the perspectives of two ninth-century writers: Timothy I, Catholicos (Patriarch) of the Church of the East (r. 780–823)² and ‘Amr b. Baḥr al-Jāḥiẓ (776–868/9), a popular Muslim author of the following generation.

There were a host of functional issues involved in the interchange between these judicial systems, such as jurisdiction, the location of the proceedings, the weight of outsiders’ testimony, and so on. Yet there was another level on which the situation was problematic for both Christians and Muslims: Timothy and al-Jāḥiẓ both wrote with grave concern about how their coreligionists dealt with outsiders on such legal matters. As we will show, the arguments they made went beyond conventional attempts to preserve existing power structures or prescribe procedural mechanisms. Each was fighting for the well-being of his respective community against what he viewed as potentially disastrous temptations and threats. This article focuses more on understanding these fears than on explicating the details of the judicial system; in particular, we attend to these writers’ hermeneutical motivations as they appealed to canonical texts. First,

¹ We are grateful to our colleagues Rocío Daga, Vevian Zaki, Peter Tarras, and Miriam Lindgren Hjälms

² For Prof. Sidney Griffith’s scholarship on Timothy, see *Jews and Muslims in Christian Syria and Arabic Texts of the Ninth Century*, *Jewish History*, 3 (1988), 65–94; From Patriarch Timothy I to Ḥunayn Ibn Ishāq: Philosophy and Christian Apology in Abbasid Times; Reason, Ethics and Public Policy, in Martin Tamcke (ed.), *Christians and Muslims in Dialogue in the Islamic Orient of the Middle Ages*, Beirut Texte Und Studien, Beirut: Orient-Institut, 2007, 75–98; The Syriac Letters of Patriarch Timothy I and the Birth of Christian Kalām in the Mu’tazilite Milieu of Baghdad and Baḥrah in Early Islamic Times, in Wout Jac van Bekkum, Jan Willem Drijvers, and Alexander Cornelis Klugkist (eds.), *Syriac Polemics: Studies in Honour of Gerrit Jan Reinink*, Orientalia Lovaniensia Analecta 170, Leuven: Peeters, 2007, 103–32; Patriarch Timothy I and an Aristotelian at the Caliph’s Court, in Erica C. D. Hunter (ed.), *The Christian Heritage of Iraq: Collected Papers from the Christianity of Iraq IV Seminar Days*, Gorgias Eastern Christian Studies 13, Piscataway, N.J.: Gorgias Press, 2009, 38–53.

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however, it will be helpful to outline some of the basic points of the system during this period.

The Multi-Court System

By the time the ‘Abbāsids came to power, Christian and Jewish communities had maintained their own legal systems for centuries. Under both Roman and Persian law, Christians and Jews could go to their own religious authorities for arbitration rather than appearing before a government magistrate.³

For Muslims, it was the caliph who held the ultimate judicial authority, not merely by virtue of his political power, but also by right of his spiritual leadership of the community. This authority was delegated to the *qādīs* or “judges,” whose role was primarily one of arbitrating between litigants.⁴ While judges during the Umayyad period were regionally appointed and were to some extent subject to the authority of local governors, the ‘Abbāsids started centralizing judicial appointments and created the office of the chief judge (*qādī al-quḍāt*), which was first occupied by Abū Yūsuf Ya‘qūb b. Ibrāhīm (731–798).⁵ In the first half of the ninth century, the chief judge Aḥmad b. Abī Du‘ād exhibited this centralized authority to the fullest when he acted as inquisitor for the caliph’s *miḥna* policy, dismissing and punishing judges who did not conform to the doctrine of the created Qur’ān.⁶

The *qādī* had a clear prerogative—even obligation—to judge between Muslim litigants, but in what situations would a Muslim *qādī* judge cases involving non-Muslims? Most Jewish, Christian, Zoroastrian, and sometimes other non-Muslim communities within the Islamically governed realm had the status of *ahl al-dhimma* (“protected people”), meaning they had a pact of protection (*dhimma*) that guaranteed

³ See Uriel I. Simonsohn, *A Common Justice: The Legal Allegiances of Christians and Jews under Early Islam*, Divinations: Rereading Late Ancient Religion, Philadelphia: University of Pennsylvania Press, 2011; Antoine Fattal, *Le statut légal des non-musulmans en pays d’Islam*, Recherches publiées sous sa direction de l’Institut de lettres orientales de Beyrouth 10, [Beyrouth]: Impr. catholique, 1958, 344–345.

⁴ Mathieu Tillier, Courts, in Emad El-Din Shahin (ed.), *The Oxford Encyclopedia of Islam and Politics*, New York: Oxford University Press, 2014, 227–232, esp. 227–229; Mathieu Tillier, Judicial Authority and Qādīs’ Autonomy under the ‘Abbāsids, *Al-Masāq*, 26 (2014), 119–131, esp. 124, 127. Parallel systems—the police force and the *mazālim* courts—existed for dealing with offenses concerning the state.

⁵ Tillier, Courts, 228, Tillier, Judicial Authority, 121–123; Muhammad Khalid Masud, Rudolph Peters, and David S. Powers, Qādīs and Their Courts: An Historical Survey, in Muhammad Khalid Masud, Rudolph Peters, and David S. Powers (eds.), *Dispensing Justice in Islam: Qadis And Their Judgements*, Studies in Islamic Law and Society 22, Leiden: Brill, 2006, 1–46, esp. 8–13; Brannon M. Wheeler, Abū Yūsuf, in Kate Fleet et al. (eds.), *Encyclopaedia of Islam, THREE*, Brill Online, 2016, http://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-3/abu-yusuf-COM_23440.

⁶ John P. Turner, Aḥmad B. Abī Du‘ād, in Kate Fleet et al. (eds.), *Encyclopaedia of Islam, THREE*, Brill Online, 2016, http://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-3/ahmad-b-abi-duad-SIM_0064. On the *miḥna* in general, see particularly the letter of Caliph al-Ma‘mūn to Ishāq b. Ibrāhīm in al-Ṭabarī, trans. C. E. Bosworth, *The History of Al-Ṭabarī*, vol. 32 (The Reunification of the ‘Abbāsīd Caliphate: The Caliphate of al-Ma‘mūn A.D. 812–833/A.H. 198–213), Albany, N.Y.: SUNY Press, 1987, 199–204.

their safety in exchange for paying a poll tax (*jizya*).⁷ This protection entailed the arbitration of at least some types of *dhimmī* cases. In fact, jurists discussed whether *qāḍīs* should hold court in their homes or in the mosque, some favoring the former because, among other reasons, the mosque was less accessible to *dhimmīs*.⁸

Jurisdiction was a complicated matter that might take into account the wishes and communal affiliation of the plaintiffs, the nature of the case, and the discretion and negotiation of judges. Moreover, one must remember that the jurists’ prescriptions reveal actual practice only indirectly, by showing points which were necessary or salient to address. In theory, at least, the *qāḍī* handled any cases involving at least one Muslim litigant⁹ or between *dhimmīs* of different confessions.¹⁰ *Dhimmī* authorities were generally allowed to judge affairs within their own community,¹¹ but al-Jāḥiẓ points out in his *Kitāb al-Ḥayawān* that they could not imprison anyone or administer corporal punishment.¹² Moreover, Islamic courts in principle had jurisdiction for trials of criminal offenses.¹³ Finally, *dhimmīs* could bring their case before a Muslim *qāḍī* if both parties were willing.

Judging *dhimmī* cases raised certain juridical issues beyond those of Muslim cases. For one, Qur’ānic prescriptions gave rise to a category of punishments known as

⁷ Q 9:29 was considered to be the Qur’ānic basis for this arrangement. On the disputed origins of the *dhimmī* status, see most usefully Milka Levy-Rubin, *Non-Muslims in the Early Islamic Empire: From Surrender to Coexistence*, Cambridge Studies in Islamic Civilization, New York: Cambridge University Press, 2011 and Mark Cohen, What Was the Pact of ‘Umar? A Literary-Historical Study, *Jerusalem Studies in Arabic and Islam*, 23 (1999), 100–157. Muslim jurists debated who could be considered a *dhimmī*: al-Shāfi‘ī and the Andalusī jurist Ibn ‘Abd al-Barr did not consider Zoroastrians (*Majūs*) to be *ahl al-dhimma* even though they paid *jizya*, whereas the Ḥanafī jurists al-Shaybānī and Abū Yūsuf included not only Zoroastrians (whom they did not consider to be “Scripture People” [*ahl al-kitāb*]), but even pagans who had a peace treaty with the Muslims. See Christian Müller, Non-Muslims as Part of Islamic Law: Juridical Casuistry in a Fifth/Eleventh Century Law Manual, in Maribel Fierro and John Tolan (eds.), *The Legal Status of Dhimmī-s in the Islamic West (Second/Eighth-Ninth/Fifteenth Centuries)*, Religion and Law in Medieval Christian and Muslim Societies 1, Turnhout: Brepols, 2013, 21–64, <http://www.brepolsonline.net/doi/pdf/10.1484/M.RELMIN-EB.1.101811>, esp. 30–32; Abū Yūsuf, trans. A. Ben Shemesh, *Taxation in Islam*, vol. 3 (Abū Yūsuf’s *Kitāb al-kharāj*), Leiden: E. J. Brill, 1969, 82–84, 88–89; al-Shaybānī, trans. Majid Khadduri, *The Islamic Law of Nations: Shaybani’s Siyar*, Baltimore: Johns Hopkins University Press, 1966, 275.

⁸ Mathieu Tillier, Un espace judiciaire entre public et privé: Audiences de cadis à l’époque ‘abbāside, *Annales Islamologiques*, 38 (2004), 491–512, esp. 491–492, 494 n. 29; Masud et al., *Qāḍīs and their courts*, 21; Müller, Non-Muslims as Part of Islamic Law, 38–39; cf. Tillier, *Courts*, 227.

⁹ Perhaps Abū Yūsuf’s reasoning regarding who is qualified to arbitrate between Muslims and those they are fighting reflects somewhat the same logic as not allowing *dhimmīs* to judge Muslims in civilian cases: “A *Dhimmī* cannot be appointed as arbitrator because a non-believer cannot be a judge in matters between Muslims and their enemies” (trans. Ben Shemesh, *Taxation in Islam* 3, 64).

¹⁰ Fattal, *Le statut légal*, 351.

¹¹ Müller, Non-Muslims as Part of Islamic Law, 38.

¹² ‘Abd al-Salām Muḥammad Hārūn (ed.), *Al-Ḥayawān*, Egypt: Muṣṭafā al-Bābī al-Ḥalabī, 1938, vol. 4, 27. Fattal mentions that the types of punishments found in Christian law codes confirm this (*Le statut légal*, 350).

¹³ Fattal, *Le statut légal*, 351.

ḥudūd (singular, *ḥadd*).¹⁴ These were considered the “rights of God” and thus had to be administered for specified crimes even if a wronged party did not demand such punishment.¹⁵ But should these penalties apply to *dhimmīs* as well as to Muslims? Even though some jurists maintained they applied in principle, certain exceptions had to be made, such as for drinking wine, which was allowed for the *ahl al-dhimma* but not for Muslims.¹⁶ Sometimes *qāḍīs* could also refer *ḥadd* cases to *dhimmī* authorities.¹⁷ Al-Jāhiz’s treatment of the issue of slandering the prophet’s mother, explained below, is essentially an argument that such offenses should be dealt with as blasphemy and thus violation of the *dhimmī* pact rather than in the category of *ḥadd* punishments for false accusation.

Another issue was whether Islamic law required judges to accept cases that *dhimmī* disputants brought before them. The key theoretical consideration was how to interpret Q 5:42, which seems to make arbitration between *dhimmīs* optional and Q 5:49, which commands judging between them using God’s revelation. Abū Ḥanīfa, the eponymous founder of the Ḥanafī school of jurisprudence, reportedly held the view that Q 5:42 did not refer to the *ahl al-dhimma* anyway and was abrogated by Q 5:49, which obligated *qāḍīs* to arbitrate in *dhimmī* matters brought to them.¹⁸ The other founding jurists, al-Shāfi‘ī, Mālik, and Ibn Ḥanbal, considered arbitration to be voluntary.¹⁹ The Mālikī *qāḍī* Ibn ‘Abd al-Barr al-Namarī from 11th century al-Andalūs even mentions an opinion (not adopted by the school) that the judge should obtain the permission of the “bishops” (or *dhimmī* authorities) before pronouncing a judgement.²⁰ Was the question of arbitrating *dhimmī* cases merely a theoretical one? In fact, as we will see from the *Canons* of Timothy I below, there was a motivating factor driving *dhimmīs* outside of their own court systems. This was the possibility of “forum shopping”: *dhimmī* disputants who received, or expected to receive, an unfavorable ruling from their own leaders could take their case to a Muslim *qāḍī*.²¹ What the jurists’ discussions reveal, then, is that there was a practical side to the issue of whether or not to take *dhimmī* cases. A *qāḍī* who intervened in *dhimmī* affairs against the wishes of *dhimmī* authorities had the potential to seriously undermine the structures of that community and its relationship to the Muslim community. Legal reasoning that allowed a judge to negotiate with the leaders of other communities helped to preserve the delicate balance of interaction among groups.

¹⁴ See B. Carra de Vaux, J. Schacht, and A.-M. Goichon, Ḥadd, in P. Bearman et al. (eds.), *Encyclopaedia of Islam, Second Edition*, Brill Online, 2012, http://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-2/hadd-SIM_2586; Müller, Non-Muslims as Part of Islamic Law, 28.

¹⁵ See Fattal, *Le statut légal*, 119-126; Carra de Vaux, et al., Ḥadd; Müller, Non-Muslims as Part of Islamic Law, 28, 55; Masud et al., Qāḍīs and their courts, 24; al-Shaybānī, trans. in Khadduri, *Islamic Law of Nations*, 172.

¹⁶ Müller, Non-Muslims as Part of Islamic Law, 29, compare al-Shaybānī, trans. in Khadduri, *Islamic Law of Nations*, 172.

¹⁷ Fattal, *Le statut légal*, 120.

¹⁸ Fattal, *Le statut légal*, 355.

¹⁹ Fattal, *Le statut légal*, 353–355.

²⁰ Müller, Non-Muslims as Part of Islamic Law, 39.

²¹ See Mathieu Tillier, Introduction. Le pluralisme judiciaire en Islam, ses dynamiques et ses enjeux, in Mathieu Tillier (ed.), *Le pluralisme judiciaire dans l’Islam prémoderne*, Bulletin d’Etudes Orientales 63, Damascus: Presses de l’Ifpo, 2014, 23–40, esp. 37–38.

The situation described above provides context for the impassioned treatments by both Christian and Muslim ninth-century authors regarding cases that involved Christians but were judged in Islamic courts. Below, we will examine first the reasoning of Timothy and then that of al-Jāhīz as they each consider the implications of the multi-court system for their own community.

Catholicos Timothy I

In the year 804, Timothy I, Catholicos (Patriarch) of the Church of the East, called for a general synod to meet in the caliph’s capital in Baghdad. He had headed his church at that point for over twenty years, and it had been nearly that long since his last general synod, which, in the wake of his own accession, clarified the process of election and denounced simony. By 804, the internal church issues that had marked his rise to power had settled, and the time seemed ripe to address more pressing general issues. The canons published here treated a number of topics, including hierarchy, marriage, and which books should be read. Individually and as a whole they give extraordinary insight into the lives of Christians in the early ‘Abbāsīd period.²²

Addressing the jurisprudential needs of Church of the East Christians had import not just for dealing more effectively with internal affairs, but also for his community’s relationship to their Muslim rulers. In the introduction to the canons, he explains:

People sue and litigate not before the saints but before the wicked. It is as though they do not possess, as it were, laws and rulings that are appropriate for this world and for the conduct of mortal people. So in this they transgress both the apostolic and the divine law, which commands believers and everyone, even, that they should be judged not before the wicked, but rather before the saints—and that the ones who should judge are those by whom the angels together with the whole world will be judged.²³

Moreover, when he cites his two reasons for writing a book of law, he mentions first the requests that he do so by many believers far and near, naming specifically Jacob, metropolitan of Baṣra, and Ḥabbiba, metropolitan of Arsacia (Rey);²⁴ but second, that he wants to forestall Christians turning to Islamic courts:

The second reason was to take away the excuse of those who transgress the divine laws. Because of the lack of rulings, statutes, and laws, they are constantly running to the chambers of outsiders and to [their] courts as though there were no

²² The canons are published in Eduard Sachau (ed.), *Syrische Rechtsbücher*, vol. 2, Berlin: G. Reimer, 1908. For more on the background of the canons themselves and Timothy’s relation to them see Hans Putman, *L’église et l’islam sous Timothée I (780–823): Étude sur l’église nestorienne au temps des premiers ‘Abbasides avec nouvelle édition et traduction du Dialogue entre Timothée et al-Mahdi*, Beirut: Dar el-Machreq, 1975, 62–79.

²³ Ed. Sachau, *Rechtsbücher*, 56. Author’s translation.

²⁴ Ed. Sachau, *Rechtsbücher*, 56.

statutes or rulings useful for this world. As the divine book says, because there is no God in Israel, they go to inquire of Beelzebub, the god of Ekron.²⁵

Thus, one of his express purposes in writing these canons is to address Christians’ relationship to the multi-court system. He takes up the issue again in Canon 12, using similar language:

Is it right for a Christian man or woman (in arbitration of disputes), to seek the judgment of outsiders?

If they are Christians, how can they then go to non-Christian judges?! God speaks to them through the mouth of his prophet Elijah: “Is there no God in Israel, that you go to inquire of Beelzebub, the god of Ekron?” If they go to non-Christian judges, how can they be Christians?! Paul speaks to them, “You cannot partake of the table of the Lord and the table of another. You cannot drink the cup of our Lord and the cup of Beliar.” Therefore, when people dare to transgress the Apostolic Rule, then [they must do] penance and almsgiving and [stand in] sackcloth and ashes.²⁶

The novel aspect of the Canon in question here is not that it forbids going to outsiders for judgment. Uriel Simonsohn, in his book *A Common Justice*,²⁷ makes it quite clear that these sorts of ecclesiastical declarations are rather the norm than the exception, well before Islam had ever entered the picture. For instance, he quotes a canon issued at a Church of the East synod in 576 condemning those who would “defy ecclesiastical judgment by seeking refuge outside the church.”

A strong motive of such official exhortations was to secure the ecclesiastical community against outside influences,²⁸ and it had antecedents back to the beginnings of the faith. Paul issues just such an exhortation in 1 Corinthians 6. Therefore, it is not the theme of Timothy’s decree that is so much in question, but rather the language he uses, and particularly the scriptures he employs. To understand the import of his use of scripture, however, we must first come to understand the context in which he and his community lived their lives. To that end we will examine the development of the Church of the East’s relationship to the Muslim state from the Umayyad to the early ‘Abbāsid periods. This will lay the groundwork for looking at the language of the text itself.

The Church of the East’s Relationship to Umayyad and ‘Abbāsid Power

To begin with, we must recognize that the Middle East did not immediately become a Muslim imperium when the Muslim Arabs ascended to regency. Indeed there was a lengthy period of adaptation, mostly within the Umayyad caliphate of the first Islamic century, in which it could be argued that little changed. Simonsohn tells us regarding the Umayyad period:

²⁵ Ed. Sachau, *Rechtsbücher*, 56–58. Author’s translation.

²⁶ Ed. Sachau, *Rechtsbücher*, 68–69. Author’s translation.

²⁷ Simonsohn, *A Common Justice*, 47ff.

²⁸ Simonsohn, *A Common Justice*, 47ff.

Ecclesiastical leaders ... continued to assert their control over their clergy, churches, monasteries, and schools. These institutions appear to have remained for the most part intact....²⁹

In many ways, it served the Umayyads well not to push their faith too hard. Theirs was a regime in which a minority Arab population held dominion over an overwhelmingly non-Arab empire. In addition, the tax burden on Arabs was relatively light whereas that of their subject peoples, the *jizya*, was higher, though not significantly different from what they had experienced before Islam.³⁰ Their taxation system, adopted from the Persians, was one we today would describe as a *millet* system. Hierarchical leaders administered their own religious communities with some autonomy as a kind of country within a country, collecting their taxes for the greater state, and representing them before the ruler.³¹ This system enabled Christians to maintain their religious life nearly intact.

Because the Umayyads relied on *dhimmī* taxes, they were reluctant to let *dhimmī* numbers dwindle, and in Umayyad society only an Arab was permitted to be a Muslim.³² There were ways around this, most often through adoption into an Arab patron’s clan as a *mawlā* (plural *mawālī*).³³ But even after this process was complete, discrimination continued in favor of the Arabs; thus, these *mawālī* played a key role in ushering in the ‘Abbāsīd era, which rose to power, in part, on the platform of Islam being open for everyone, Arab or not, without discrimination. This streamlining of the conversion

²⁹ Uriel Simonsohn, The Christians whose Force is Hard: Non-Ecclesiastical Judicial Authorities in the Early Islamic Period, *Journal of the Economic and Social History of the Orient*, 53 (2010), 579–620, esp. 584.

³⁰ For more on taxation in the Umayyad period and its origins see Abd al-Aziz Duri, *Early Islamic Institutions: Administration and Taxation from the Caliphate to the Umayyads and Abbasids*, London: I.B. Tauris, 2011, 107ff.

³¹ On the use of “millets” in the Sassanid Period, see William Wigram, *An Introduction to the History of the Assyrian Church, or, The Church of the Sassanid Persian Empire, 100–640 A.D.*, Piscataway, N.J.: Gorgias Press, 2004, 227ff. See also Samuel H. Moffett, *A History of Christianity in Asia*, 2nd ed. rev. and corrected, American Society of Missiology Series 36, Maryknoll, N.Y.: Orbis Books, 1998, 221–222. The Ottoman system had its idiosyncrasies that do not necessarily apply to the earlier system under the Sassanids and early Islam. See Ventsislav Karvaltchev and Pavel Pavlov, How Just was the Ottoman Millet System, *Journal of European Baptist Studies*, 11 (2011), 21–30; cf. Marcel Stüssi, *Models of Religious Freedom: Switzerland, the United States, and Syria by Analytical, Methodological, and Eclectic Representation*, Zurich: Lit Verlag, 2012, 340ff.; and C. E. Bosworth, The Concept of Dhimma in Early Islam, in Benjamin Braude and Bernard Lewis (eds.), *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society*, vol. 1, New York: Homes and Meier, 1982, 37–51.

³² For more on this see Philip K. Hitti, *History of Syria, including Lebanon and Palestine*, Piscataway, N.J.: Gorgias Press, 2002, 404; cf. Laurence E. Browne, *The Eclipse of Christianity in Asia, from the Time of Muhammad till the Fourteenth Century*, New York: Fertig, 1967, 37; Ira M. Lapidus, *A History of Islamic Societies*, 2nd ed., Cambridge: Cambridge University Press, 1988, 200ff.; Patricia Crone, *God’s Rule: Government and Islam*, New York: Columbia University Press, 2004, 84ff.; Hugh Kennedy, *The Armies of the Caliphs: Military and Society in the Early Islamic State*, New York: Routledge, 2001, 32; Jan Retsö, *The Arabs in Antiquity: Their History from the Assyrians to the Umayyads*, Abingdon, UK: RoutledgeCurzon, 2013, 57.

³³ On this process in Umayyad society see Lapidus, *Islamic Societies*, 200ff.

process and the shift of the political center to their ecclesiastical heartland in Iraq thrust the Church of the East directly into imperial politics.³⁴

Initially the Church of the East fared well. Though, as Timothy himself points out, they “never had a Christian king,”³⁵ they had developed a solid working relationship with the Sassanian throne, to the extent that the Shah was integrally involved in appointing a Catholicos.³⁶ Because the ‘Abbāsids drew heavily on the Persians’ political model, they also relied greatly on Church of the East administrators to aid in running the country. The church shifted its patriarchal see to the new ‘Abbāsīd capital in recognition of the new role they hoped to pursue in society.³⁷ At this point and for some time hereafter, Christians were at least a plural majority in Iraq.³⁸

Thus, Timothy’s Catholicate of more than forty years early in ‘Abbāsīd times gave him extraordinary influence among his parishioners. It was in the midst of his reign that the Church of the East reached its greatest geographical extent³⁹—Timothy was appointing bishops for China, southern India, and Yemen. The Church of the East had people in the palace and the caliph’s court,⁴⁰ not to mention Timothy’s own debate with

³⁴ On the Church in this period see Guy Le Strange (ed.), *Baghdad During the Abbasid Caliphate: From Contemporary Arabic and Persian Sources*, Clarendon Press, 1900, 203ff.

³⁵ Timothy I, “Letter to Mar Sergius” quoted in Thomas Richard Hurst, *The Syriac Letters of Timothy I (727–823): A Study in Christian-Muslim Controversy (Apologetics, Philosophy, Theology)*, Ph.D., The Catholic University of America, 1986, 242.

³⁶ For more on the history of the interaction between the Church of the East and the state in Iraq, see J. M. Fiey, *Jalons pour une histoire de l’Église en Iraq*, Corpus Scriptorum Christianorum Orientalium 310, Louvain: Secrétariat du Corpus SCO, 1970, 113ff. See also Wilhelm Baum and Dietmar W. Winkler, *The Church of the East: A Concise History*, trans. Miranda G. Henry, London: RoutledgeCurzon, 2010, 29ff. For the Islamic era, see M. G. Morony, *Iraq after the Muslim Conquest*, Piscataway, N.J.: Gorgias Press, 2005, 340ff.

³⁷ Morony, *Iraq*, 341.

³⁸ There are differing points of view concerning the rate at which Islam became the dominant religion in the Middle East. Bulliet is perhaps most conservative and argues for a 50% conversion rate around 975 (Richard W. Bulliet, *Conversion to Islam in the Medieval Period: An Essay in Quantitative History*, Cambridge, Mass.: Harvard University Press, 1979, 80–91). Bulliet’s model argues for a conversion curve, giving a gradual slide into Islam, due to attraction, increased opportunity, etc. Michael Morony and Hugh Kennedy seem to concur with this point of view. See Michael G. Morony, *The Age of Conversions: A Reassessment*, in Michael Gervers and Ramzi Jibran Bikhazi (eds.), *Conversion and Continuity: Indigenous Christian Communities in Islamic Lands, Eighth to Eighteenth Centuries*, Toronto: Pontifical Institute of Mediaeval Studies, 1990, 135–150; and Hugh Kennedy, *The Great Arab Conquests: How the Spread of Islam Changed the World We Live in*, Philadelphia: Da Capo, 2007, 376. For a much later date see Philip Jenkins, *The Lost History of Christianity: The Thousand-Year Golden Age of the Church in the Middle East, Africa, and Asia—and How It Died*, New York: HarperOne, 2008, 112–113, in which Jenkins argues for a “punctuated equilibrium,” meaning that there was a very gradual general growth of the Muslim population marked by periods of accelerated growth brought on by changes in society.

³⁹ Jenkins makes an excellent case for this in *Lost History*, 10ff. For contemporary sources on the situation see Alphonse Mingana (ed.), *The Early Spread of Christianity in Central Asia and the Far East: A New Document*, New York: Longmans, Green, 1925, 12.

⁴⁰ For the extent of East Syrian influence at this point see J. M. Fiey, *Pour un Oriens Christianus Novus: Répertoire des diocèses syriaques orientaux et occidentaux*, Beirut Textes et Études 49, Beirut: Franz Steiner Verlag, 1993. See also from J. M. Fiey, *Chrétiens de Syrie et de Mésopotamie aux deux premiers siècles de l’Islam*, *Islamochristiana*, 14 (1988), 71–106; and J. M. Fiey, *Chrétiens syriaques sous les*

the caliph.⁴¹ The caliph also directly commissioned Timothy to translate a philosophical text from the Greek, marking him as one of many of his churchmen engaged in the Baghdad translation movement that gave birth to the Islamic philosophical age and in turn helped to spark the renaissance in Europe.⁴²

But these benefits came at a cost. Throughout the history of the East Syrian Church, even in the midst of the darkest persecutions,⁴³ the Church had only ever known growth, and had had no reason to question the inevitability of the world’s acceptance of their king of kings—an expectation that did not significantly dim even through the trial of the Islamic conquest. Their experience with Islam in the initial century of that faith served to bolster this point of view. But while the shift of political gravity to their sphere of influence was of significant benefit to the Church, the open conversion policy was a signal of things to come.

The Church of the East had hoped for the Sasanians’ conversion to Christianity, but had not feared its own people converting to Zoroastrianism, which was an ethnic religion.⁴⁴ Under the Umayyads, the high social cost of conversion to Islam had a meager payoff. But under the ‘Abbāsids, economic and political status could be conferred on anyone who would say the *shahada* a few times. This process of social conversion took time to catch on, but it had begun, as the West Syrian Chronicle of Zuqnin remembers when it speaks of groups both large and small converting voluntarily.⁴⁵

The social advantage converts gained exacerbated the challenge. A convert in the Umayyad period had abandoned his family to earn a spot in a society that scorned him. A convert in the ‘Abbāsīd period had joined a greater *umma*, becoming an elite in a society yet dominated by *dhimmīs*, whose protected status also ensured their powerlessness. This

Abbasides, surtout à Bagdad (749–1258), Corpus Scriptorum Christianorum Orientalium 420, Louvain: Secrétariat du Corpus SCO, 1980.

⁴¹ For a solid critical edition of the text with German translation see Martin Heimgartner (ed.), *Timotheos I., Ostsyrischer Patriarch: Disputation mit dem Kalifen Al-Mahdi*, Corpus Scriptorum Christianorum Orientalium 631–632, Louvain: Peeters, 2011. For the classic, if flawed, English translation see Alphonse Mingana (trans.), Timothy’s Apology for Christianity, *The Journal of the John Rylands Library*, 12 (n.d.), 1928.

⁴² For more on the translation movement, see Dimitri Gutas, *Greek Thought, Arabic Culture: The Graeco-Arabic Translation Movement in Baghdad and Early ‘Abbasid Society (2nd-4th/8th-10th Centuries)*, New York: Routledge, 1998. For a view on it a little more sympathetic to the Christian role see Sidney H. Griffith, *The Church in the Shadow of the Mosque: Christians and Muslims in the World of Islam*, Princeton, N.J.: Princeton University Press, 2008.

⁴³ Under the Sassanid Shah, Shapur II (r. 309–379), there was a severe persecution of Christianity among those of the Persian Church. Proportionally it exceeded any persecution in pre-Constantinian Rome. For details on the situation of the Christians at the time see Sebastian P. Brock, Christians in the Sasanian Empire: A Case of Divided Loyalties, *Studies in Church History*, 18 (1982), 1–19.

⁴⁴ Zoroastrianism was as closed to non-Persians as Judaism to non-Jews. This is not to say that conversion was impossible, just fairly difficult. It took considerable ambition, drive, or conviction to convert in such circumstances. For more on this see Wigram, *Assyrian Church*, 34; and Addai Scher (ed.), *Histoire Nestorienne (Chronique de Séert)*, vol. 2.1, *Patrologia Orientalis* 7, Paris: Firmin-Didot, 1911, 154.

⁴⁵ Amir Harrak (trans.), *The Chronicle of Zuqnīn. A.D. 488–775: Translated from Syriac with Notes and Introduction (Parts III and IV)*, *Mediaeval Sources in Translation* 36, Toronto: Pontifical Institute of Mediaeval Studies, 1999, 322–224. Thanks to Ashoor Yousif for correcting the statement previously here.

was not immediately apparent after the dust of dynastic transition had settled, but the changing of the guard had given control of the nascent Muslim faith to those who had chosen to emphasize what up to that point had been conveniently overlooked—that their scriptures, while still favoring the Arabs, had a universal quality.⁴⁶ It was within the context of this process of transition, both in society but also in Islam, that Canon 12 and entire collection of canons fit best. In a way it represents the Church’s response to this subtle shift in culture.

When Timothy wrote this canon, his community’s relation with their rulers was never far from his mind. The Church of the East had always walked a fine balance between serving a potentially hostile state and remaining offset from it. Even as Timothy advocated for East Syrian scholars to translate philosophy and East Syrian doctors to reside in proximity to the Caliph,⁴⁷ he sought to cordon off his flock from exposure to anything that would tempt them towards the political expediency of a conversion. He was familiar with what a draw that might be. When he ascended to the patriarchal throne, a metropolitan rival took defeat hard and apostatized to become a governor of Baṣra. In fact, in the midst of his election, Timothy himself had had to rely on the caliph’s influence to secure his claim to the title of Catholicos.⁴⁸

It was perhaps with that fresh in his mind that he developed a guarded attitude towards the state in which he and his people lived, but in which they as yet only rarely had to have meaningful interaction with Muslims.⁴⁹ The millet system that the ‘Abbāsids inherited created a de facto state of segregation between religious communities in the *Dār al-Islām*. Most Christians lived in their own villages or sections of the cities. They might have a Muslim from whom they bought something at the market on a regular basis, but who discusses the finer points of religion while buying vegetables? All told, most daily interactions with non-Christians would never lend to conversion. The primary exception might be in dealing with the government. But as the head of his millet, the Catholicos *was* the government at least for most of his flock, and the clergy his functionaries. He was in charge of the collection of taxes as well as other basic functions of government.

But the courts offered a different service. If a priest promised to be unsympathetic in a lawsuit, one might have incentive to seek arbitration elsewhere. Couple the appeal of a more favorable legal ruling with the scorn of one’s peers, either from one’s offense itself or from the stigma of seeking external arbitration, and whatever ties might be felt towards one’s own religious community pale in comparison to the obvious legal advantages of being a part of the community deciding one’s case.

⁴⁶ Exclusivism and Universalism skirt a balance in Islamic thought. For more on these see Malise Ruthven, Introduction, and Leonard Lewisohn, The Esoteric Christianity of Islam, in Lloyd Ridgeon (ed.), *Islamic Interpretations of Christianity*, New York: St. Martin’s Press, 2000, xi–xx and 127–159, respectively.

⁴⁷ Griffith, *Church in the Shadow of the Mosque*, 45ff. See also Hurst, *Letters of Timothy*, 42ff.; and Putman, *L’église et l’islam*, 92ff.

⁴⁸ Joseph of Merv had sought the intervention of Caliph al-Mahdī to see himself raised to the Catholicate. Al-Mahdī ruled against him and in favor of Timothy. See Putman, *L’église et l’islam*, 16ff.; Hurst, *Letters of Timothy*, 14ff.

⁴⁹ For more on interactions between religious confessions in ‘Abbāsīd times see Fiey, *Chrétiens syriaques*, 125. See also Morony, *Iraq*, 334ff.

Timothy explicitly discusses at least one of the incentives that was likely to draw his parishioners to Islamic courts—the prospect of legal retribution, or *qiṣāṣ* (see below). Canon 13 presents the scenario of a Christian who has been injured by another Christian and then goes to the “authority” (*šūlṭānā*) seeking vengeance. After presumably winning his lawsuit, he “injures the one who injured him.” Should such a person be “prohibited (*netkle*) from the Church?” the questioner asks. Timothy’s response reveals his concern to teach his flock Scriptural principles about a potentially prevalent temptation. He shows that such a person has transgressed the Scriptural commands to turn the other cheek and leave vengeance to God, such that “he has honored and preferred the judgment of outsiders and of humans [to that of God].”⁵⁰ For Timothy, the Christian principles regarding forgiveness were apparently non-negotiable; moreover, by refusing to allow his parishioners to seek retribution, he was attempting to safeguard his community from the potentially destructive force of revenge.

Another reason Christians might turn to Islamic courts was to resolve claims for which Muslims were witnesses. By allowing God-fearing Muslims as witnesses in cases that came before Christian clergy, Timothy removes this potential inducement.⁵¹ On the whole, the Catholicos shows himself quite attuned not just to the fact that Christians were going to Muslim judges, but also to the problems that led them to do so.

As for the dangers these situations posed for his community, there were several legal factors that might urge Christian disputants toward conversion.⁵² First, the testimony of *dhimmīs*, when admitted at all, generally carried less weight in Islamic courts than that of Muslims.⁵³ Second, conversion could sometimes lighten the punishment of a *dhimmī*. Since a *dhimmī*’s testimony could not condemn a Muslim, the jurists allowed *dhimmīs* convicted by the testimony of other *dhimmīs* to escape *ḥadd* penalties by becoming Muslim.⁵⁴ In fact, Fattal calls conversion “a classic way of cheating the law,” and provides several examples from Bar Hebraeus of Christians who converted to Islam after being caught in or accused of sexual sins.⁵⁵ Third, Muslim and Christian marriage and inheritance laws could provide incentives either for or against

⁵⁰ Ed. Sachau, *Rechtsbücher*, 66–67. Author’s translation.

⁵¹ Canon 76, ed. in Sachau, *Rechtsbücher*, 106–108. The motivation for this canon was suggested by Simonsohn, *A Common Justice*, 163.

⁵² In regard to the widespread concern over apostasy in the first few centuries after the Islamic conquest, Simonsohn points out the centrality of questions about apostasy in the legal source material of the three major groups, Muslim, Jewish, and Christian (Uriel Simonsohn, Conversion, Apostasy, and Penance: The Shifting Identities of Muslim Converts in the Early Islamic Period, in Arietta Papaconstantinou, Neil McLynn, and Daniel L. Schwartz [eds.], *Conversion in Late Antiquity: Christianity, Islam, and Beyond. Papers from the Andrew W. Mellon Foundation Sawyer Seminar, University of Oxford, 2009–2010*, Aldershot: Ashgate, 2015, 197–215, 201). For the disparity between Muslims and *dhimmīs* in Muslim law see Raj Bhala, *Understanding Islamic Law: Sharī‘a*, Understanding Series, Danvers, Mass.: LexisNexis, 2011, 1309ff.

⁵³ See, in general, Masud et al., Qāḍīs and their courts, 26 and the specific example of Ibn ‘Abd al-Barr in Müller, Non-Muslims as Part of Islamic Law, 27, 56, 60.

⁵⁴ Fattal, *Le statut légal*, 119, who notes, however, that conversion did not spare a *dhimmī* from the law of retaliation (*qiṣāṣ*), except in the case of the Shi‘ites, who imposed blood money (*diyya*) instead (114).

⁵⁵ Fattal, *Le statut légal*, 119–120.

conversion, which perhaps has something to do with the extent of Timothy’s focus on these issues in the *Canons*.⁵⁶

Canon 12

In light of all of this, we can now look at the text of Canon 12 itself, in which Timothy prohibits seeking judgment from outsiders. Simonsohn says this particular passage shows a degree of moderation on the part of the East Syrians compared to their West Syrian cousins.⁵⁷ It might rather be political acumen that is more readily demonstrated here. Indeed, once the referents are clear, the language of these scripture passages seems considerably harsher than anything the West Syrians would dare to write.

Whereas the Miaphysites might declare those in contravention to their decrees anathema, the East Syrian canon simply calls them non-Christian, outsiders (*barāye*),⁵⁸ like those they seek judgment from. But when it moves to describing the outsiders using scripture, it proceeds to audaciously label them as demons or at least under demonic influence, but in such a manner that any true outsider would have difficulty nailing it down. Herein we can see both the political brilliance and the scriptural capability of Timothy. He quotes Elijah’s rebuke of Ahaziah’s messengers (2 Kings 1:3), equating these outsiders with none other than Beelzebub, who is a demonic lord in Syriac tradition, if not Satan himself.⁵⁹ Then, as if to drive the point home, he confirms this identity by conflating two Pauline scriptures: 1 Corinthians 10:21, on partaking from the table and cup of the Lord and demons, and 2 Corinthians 6:15, a passage with a similar theme that is the only place the New Testament employs the name *Beliar*, Lord of the underworld.⁶⁰ By merging these two passages, Timothy is able to name his opponents, using Biblical names that would not be immediately familiar to the ruling Muslim regime, the outsiders whom he is describing in this canon.

The *coup de main*, though, is the name *Beliar* itself. It is remarkable because, while it only occurs once in the Greek NT, it does not occur at all in the Peshitta NT. The primary Syriac text here uses the term *Sāṭānā* (Satan), a term that would have been recognizable to any Arabic speaker, as the Arabic term for a devil is *Shayṭān*. In other words, Timothy carefully manipulated the text in order to obfuscate his meaning to the outsiders he was speaking of, his Arab rulers.⁶¹ By identifying those outsiders from whom judgment might be sought as the demonic lords *Beliar* and *Beelzebub*, Timothy

⁵⁶ In addition to the *Canons* themselves, see the various issues along these lines mentioned by Ibn ‘Abd al-Barr in Müller, *Non-Muslims as Part of Islamic Law*. Generally speaking, one could not inherit from someone of another religion.

⁵⁷ Simonsohn, *A Common Justice*, 162.

⁵⁸ Sachau, *Rechtsbücher*, 66–67 (§12).

⁵⁹ J. L. McLaughlin, Beelzebub, in D. N. Freedman, A. C. Myers, and A. B. Beck (eds.), *Eerdmans Dictionary of the Bible*, Grand Rapids, Mich.: W. B. Eerdmans, 2000.

⁶⁰ A. J. Maclean, Belial, Beliar, in James Hastings (ed.), *Dictionary of the Apostolic Church*, Edinburgh: T. & T. Clark, 1906–1918, <http://www.studydrive.org/dictionaries/hdn/view.cgi?n=289>.

⁶¹ In addition, Timothy’s use of the term *Beliar* indicates that both he and the clergy to whom he was writing knew either the Greek text or the Harklensian, which follows the Greek. For more on Timothy’s use of scripture and variant texts see Hurst, *Letters of Timothy*, 87ff.

was able to warn his flock in the strongest possible language, without ever raising the ire of his political superiors, a move that ensured the continued support—or at least indifference—of those superiors, which was necessary for his church to thrive and continue.

Al-Jāhiz

But how did those “outsiders” themselves see the situation to which Timothy was referring? Timothy wrote this canon around the time that a considerably younger man, the Muslim writer Abū ‘Uthmān ‘Amr b. Baḥr al-Jāhiz, was entering a career that would mark him as one of the most celebrated authors of Arabic prose. Among al-Jāhiz’s numerous “epistles” (*rasā’il*) is one known as the “Refutation of Christians” (*Al-Radd ‘alā al-Naṣārā*).⁶² This work was likely connected with Caliph al-Mutawakkil’s implementation of social restrictions on *dhimmīs* starting around the year 850.⁶³ In the “Refutation,” the author takes up both theological and social issues regarding Christians, but his arguments seem directed more to galvanizing his fellow Muslims to end their lenience toward Christians in high social positions than to persuading Christians themselves of their errors. One of his examples is the mishandling of Christian cases by Islamic judges, which provides a counter-perspective to Timothy’s earlier statements:

Many of [the Christians’] well-to-do refuse to hand over the poll-tax (*jizya*), and, despite their wealth, scorn paying it. They insult anyone who insults them and strike those who strike them. And why would they not do this and more, when our judges, or at least the unsophisticated ones,⁶⁴ consider the blood of the

⁶² For a historical and rhetorical analysis, see Nathan P. Gibson, *Closest in Friendship? Al-Jāhiz’ Profile of Christians in Abbasid Society* in “The Refutation of Christians” (*Al-Radd ‘alā al-Naṣārā*), Ph.D., The Catholic University of America, 2015, <http://search.proquest.com/docview/1691345901>. Significant portions of the text are preserved with al-Jāhiz’s other epistles in an anthology called *Mukhtārāt* ascribed to ‘Ubayd Allāh b. Ḥassān, whom Charles Pellat identifies as Abū al-Qāsim ‘Ubayd Allāh b. ‘Alī b. ‘Abd Allāh al-Raqqī (981–1058) (Nouvel essai d’inventaire de l’œuvre Ġāhizienne, *Arabica*, 31 [1984], 117–64, esp. 119; Ḥasan Sandūbī, *Adab al-Jāhiz*, Cairo: Al-Maktabat al-Tijāriyya al-Kubrā, 1931, 132). This is extant in four late manuscripts: British Library Suppl. 1129 [=Or. 3138] (dated 1877), ff. 129v.-155v.; Cairo, Azhar 6836 (dated 1895); Cairo, Dār al-kutub al-miṣriyya 19 *adab* Taymūr (dated 1897), pp. 202–236; Istanbul, Emanet Hazinesi 1358 (no date). For now, the most reliable edition is ‘Abd al-Salām Muḥammad Hārūn (ed.), *Min kitābihi fī al-radd ‘alā al-Naṣārā*, in *Rasā’il al-Jāhiz*, vol. 2, Cairo: Maktabat al-Khābakhī, 1979, 302–351; but note the forthcoming edition and English translation in James E. Montgomery, *Epistles I: Theology*, Library of Arabic Literature, New York: New York University Press. Other translations include I. S. Allouche, *Un traité de polémique christiano-musulmane au ix^e siècle*, *Hespéris*, 26 (1939), 123–155 (French); J. Finkel (trans.), *A Risāla of Al-Jāhiz*, *Journal of the American Oriental Society*, 47 (1927), 311–334 (English, partial, reprinted with helpful notes in N. A. Newman (ed.), *The Early Christian-Muslim Dialogue: A Collection of Documents from the First Three Islamic Centuries, 632–900 A.D., Translations with Commentary*, Hatfield, Pa.: Interdisciplinary Biblical Research Institute, 1993, 685–717); and Jim Colville (trans.), *Contra Christianorum*, in *Sobriety and Mirth: A Selection of the Shorter Writings of Al-Jahiz*, London: Kegan Paul, 2002, 70–93 (English, mostly complete, but fairly free).

⁶³ Gibson, *Closest in Friendship?*, 35–49.

⁶⁴ Literally, “the masses of them,” where “masses” (*amma*) is the word al-Jāhiz typically uses to disdainfully refer to those who hold uneducated opinions. Alternatively, “their masses” could instead refer to the masses of Christians, meaning that Muslim judges are in agreement with the [uneducated] Christian masses on this point.

patriarch or metropolitan or bishop to be equivalent to the blood of Ja‘far or ‘Alī or al-‘Abbās or Ḥamza? They think that a Christian who slanders the mother of the prophet (PBUH), [claiming she is in] a state of perdition, should only get discretionary punishment (*ta‘zīr*)⁶⁵ and discipline (*ta‘dīb*). Then they justify saying this by the fact that the mother of the prophet (PBUH) was not a Muslim. May God exalted be praised! How incredible this statement is, and how obviously jumbled!

[All this, when] by the verdict of the prophet (PBUH), they do not sit equal to us, and, by what he said, “If they insult you, then strike them; and if they strike you, then kill them.” But when they slander the mother of the prophet (PBUH) with [the charge of] indecency, his own community thinks this warrants only discretionary punishment and correction! They claim that their inventing lies against the prophet does not violate the covenant or dissolve the pact. But the prophet (PBUH) has commanded them to give us the tax willingly [see Q 9:29], while we are doing them a favor by receiving it from them and making a pact to protect them (*li-dhimmatihim*) rather than shedding their blood. And for them God decreed humiliation and poverty [see Q 2:61–62, 3:110–112].

Even an ignorant person does not have to be informed that the only reason the rightly-guided imams and the preeminent ancestors did not stipulate that, along with receiving the poll-tax (*jizya*) and making a pact of protection (*al-dhimma*), lies must not be invented against the prophet (PBUH) or his mother is that they saw this as so grave and felt so strongly about it that they did not need to eternalize it in books, spell it out as a condition, or establish it by testimonies. On the contrary, if they had done so, it would have been a sign that they were weak and an incentive [for opposition], and people would have supposed that they needed [to write down] this and other [stipulations] of this sort.

The things people stipulate in contracts and specify in covenants, however, are ones about which there may be uncertainty, regarding which error may arise, or which a judge might not [otherwise] know, which a witness might forget but the adversary maintain. But there is no reason to stipulate or bother to record things that are clearly evident and so obvious as to not be in doubt.

Whenever they did need to stipulate something in writing, or there was something that might conceivably be clarified in a covenant, they did so, such as with [the *dhimmīs*] humiliation and inferior status, paying the poll-tax (*jizya*), sharing churches, not aiding one Muslim faction against another, and others like these. But to tell someone who is the lowest of the low and the smallest of the small—who asks and begs of you to accept his ransom, whom you are doing a favor by taking his payment of the poll-tax (*jizya*) and sparing his blood—to tell him, “You are required by the covenant not to fabricate lies against the mother of the Messenger of the Lord of the Worlds, the Seal of the Prophets, the Lord

⁶⁵ Rather than the prescribed *ḥadd* punishment.

(*sayyid*) of the First and Last,” is something inconceivable for [even] ordinary people to do, let alone for the illustrious and elite, the leaders of all humanity, those who bring daybreak to the dark night and mark the right path, especially when you take into account [their] Arab pride, magnificent authority, imperial victory, the glory of Islam, [its] manifest proof, and the assurance of [its] triumph.⁶⁶

It is in these vehement tones that al-Jāḥiẓ treats examples of two types of cases that might be brought before an Islamic judge: (1) Christians retaliating Muslim offenses and (2) Christians slandering the prophet’s mother. His discussion of these situations relates integrally to ongoing conversations among jurists; but, as we will show, his opinion of how to handle them is markedly different from most of the jurists’ prescriptions.

Since cases in which a Muslim was either the plaintiff or the defendant necessarily had to be brought before an Islamic judge, al-Jāḥiẓ is not referring to the same circumstances in which Timothy forbids Christians from voluntarily going to outsiders for arbitration. Rather, both of the situations he mentions fell solidly under Islamic jurisdiction, and there is no indication that Christian hierarchs tried to prevent their parishioners from appearing in Islamic courts for such cases. Timothy’s text, moreover, belongs to a legal genre whereas the “Refutation” is a social and religious polemic. Yet al-Jāḥiẓ’s appeal to a canonical text (hadith) and his impassioned reasoning that extends beyond juristic principles to grasp the implications for his community bring this passage into the same dimension as Timothy’s imploring canon.

Christians Retaliating Muslim Offenses

Al-Jāḥiẓ’s reference to retaliation appears to be directly connected to two concepts in Islamic jurisprudence that became the subject of technical discussion: *qiṣāṣ* (equality in punishment) and *diyya* (blood money). The principle of *qiṣāṣ* was that of equal retribution for bodily injury, up to and including a “life for a life.” *Diyya* was the more merciful version of *qiṣāṣ*, in which the relatives of a slain person agreed to receive payment of blood money instead of taking the perpetrator’s life as retribution. The amount of the *diyya* depended on the gender, status, and religion of the victim. This led to the some juristic traditions stating their own hierarchies of victims, listing monetary values for Muslim men, women, children, slaves, and for various categories of *dhimmi*s.⁶⁷

Since the very idea of *dhimma* was one of “protection,” it was the responsibility of judges to mete out justice on behalf of any of the *ahl al-dhimma* who came to harm.

⁶⁶ Ed. Harūn, *Rasā’il al-Jāḥiẓ*, 317.10–320.7. Author’s translation.

⁶⁷ Fattal, *Le statut légal*, 117–118; Müller, *Non-Muslims as Part of Islamic Law*, 55, 58; David M. Freidenreich, *Christians in Early and Classical Sunnī Law*, in David Thomas and Barbara Roggema (eds.), *Christian-Muslim Relations: A Bibliographical History: Volume 1 (600–900)*, *History of Christian-Muslim Relations* 11, Leiden: Brill, 2009, 99–114, esp. 106.

Jurists stressed this fact repeatedly, even supporting it with prophetic hadiths.⁶⁸ In murder cases, the operative questions regarding *dhimmī* plaintiffs were the following: (1) Could the families of *dhimmī* victims demand the life of a Muslim murderer as *qiṣāṣ*, or was retribution in these cases limited to payment of *diyya*? (2) What was the amount of the *diyya* for a slain *dhimmī*?

Complicating the issue was the fact that by the second century of Islam, there were contradictory hadiths about the matter. On the one hand, Muḥammad himself was reported to have upheld his “duty” toward the People of the Book under his protection by ordering the execution of a Muslim man who had killed one of them.⁶⁹ Ibn Mas‘ūd, one of the Companions of the Prophet, allegedly declared, “If anyone has a treaty or protection, his *dīya* is the same as that of a Muslim.”⁷⁰ On the other hand, in a hadith recorded by al-Ṣan‘ānī (d. 744), Ibn Ḥanbal (d. 855), and al-Tirmidhī (d. 892), Muḥammad supposedly said after bringing Mecca under his control,

The Muslims are united against the others, their lives are equal ... , a believer is not to be killed for (the killing of) an unbeliever, and the blood-money of an unbeliever is half that of a Muslim⁷¹

Not surprisingly, the conflicting traditions, taken together with pragmatic concerns, led to considerable controversy among legal scholars.

Friedmann has thoroughly described the issues involved and the various positions the different *madhāhib*, or legal schools, took.⁷² Here it is sufficient to point out two things from his study. First, the idea of an equal *diyya* for Muslims and *dhimmīs* was strongest in the early period, and came under increasing attack as the discussion developed.⁷³ Second, by the time the dust settled, it was just the Ḥanafī school that held that a Muslim could be killed in *qiṣāṣ* for a *dhimmī*, and that the blood price, if accepted instead, was the same as that for a Muslim victim.⁷⁴

The position of the proto-Ḥanafīs is clear: *dhimmīs* are entitled to retaliation (*qiṣāṣ*) against Muslims.⁷⁵ Abū Yūsuf Ya‘qūb b. Ibrāhīm (d. 798),⁷⁶ chief *qāḍī* under the caliph Hārūn al-Rashīd and one of the jurists to whom the Ḥanafī school looked as a founder, nearly caused a public outcry once when he ruled in favor of *qiṣāṣ* for a *dhimmī*

⁶⁸ See, for example, Abū Yūsuf’s injunction to the caliph, which includes a prophetic hadith and one from ‘Umar b. al-Khaṭṭāb (trans. Ben Shemesh, *Taxation in Islam* 3, 85–86; compare 39, 47).

⁶⁹ Reported by, among others, Yaḥyā b. Ādam (trans. A. Ben Shemesh, *Taxation in Islam*, Rev. 2nd ed, vol. 1 [Yaḥyā ben Ādam’s *Kitāb al-kharāj*], Leiden: E. J. Brill, 1967, 61 [no. 238]); see other references in Yohanan Friedmann, *Tolerance and Coercion in Islam: Interfaith Relations in the Muslim Tradition*, Cambridge Studies in Islamic Civilization, New York: Cambridge University Press, 2003, 40 n. 147.

⁷⁰ Reported by Yaḥyā b. Ādam, trans. Ben Shemesh, *Taxation in Islam* 1, 61 (no. 239).

⁷¹ Friedmann, *Tolerance and Coercion*, 40; see n. 146 for references.

⁷² Friedmann, *Tolerance and Coercion*, 39–53.

⁷³ Friedmann, *Tolerance and Coercion*, 52–53.

⁷⁴ Friedmann, *Tolerance and Coercion*, 41–45, 52. See also Fattal, *Le statut légal*, 114–115, who notes Mālik’s exception that a Muslim who lay in wait for a *dhimmī* should be killed.

⁷⁵ On the legal reasoning behind this, see Fattal, *Le statut légal*, 115–116.

⁷⁶ See Wheeler, Abū Yūsuf, 2016.

killed by a Muslim. Upon advice from the caliph, he was able to prevent the perpetrator’s death by requiring the *dhimmī*’s family to prove the dead man had paid the *jizya*, which they could not.⁷⁷ Abū ‘Abd Allāh Muḥammad b. al-Ḥasan al-Shaybānī (d. 805), a student of both Abū Ḥanīfa and Abū Yūsuf,⁷⁸ wrote the *Kitāb al-Aṣl*, one of two works that would become a standard for the Ḥanafīs.⁷⁹ Here he stated that a Muslim is “liable to retaliation for offenses against a Dhimmī, whether for murder or other matters.”⁸⁰ In regard to blood money, Fattal records several hadiths that Ḥanafī jurists cited to support their position that the *diyya* of a *dhimmī* was equal to that of a Muslim, including one from ‘Alī: “We have given them the *dhimma*, and they give us the *jizya* to make their blood equal to ours.”⁸¹

By comparison with the Ḥanafīs, the Mālikī and Ḥanbalī schools took intermediate positions,⁸² and al-Shāfi‘ī maintained that in no situation was a believer to be killed for an unbeliever.⁸³ Instead, he put the *diyya* for a Jew or Christian at one-third that of a Muslim, and prescribed discretionary punishment (*ta‘zīr*) and no more than a year’s imprisonment for the offender.⁸⁴

While it is clear that al-Jāḥiẓ does not consider the blood of a Christian to be equal to that of a Muslim, why does he specifically compare Christian hierarchs with Ja‘far, ‘Alī, al-‘Abbās, and Ḥamza? These four Muslims represent three generations of early martyrs from the family of Muḥammad.⁸⁵ Notwithstanding the high esteem in which their community held them, their blood price would be the same as that of any other free Muslim man. If one were to say, then, that the *diyya* for a *dhimmī* is equal to that of a Muslim, the preposterous ramification would be that one is valuing the life of a Christian the same as that of these foremost Muslim martyrs. The logic is that of *reductio ad absurdum*.⁸⁶

⁷⁷ Friedmann, *Tolerance and Coercion*, 42–43.

⁷⁸ E. Chaumont, Al-Shaybānī, in C. E. Bosworth et al. (eds.), *Encyclopaedia of Islam*, 2nd ed., vol. 9, Leiden: Brill, 1997, 392–394, esp. 392.

⁷⁹ W. Heffening and J. Schacht, Ḥanafīyya, in P. Bearman et al. (eds.), *Encyclopaedia of Islam*, 2nd ed., Brill Online, 2012, http://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-2/hanafiyaya-SIM_2703.

⁸⁰ Trans. Khadduri, *Islamic Law of Nations*, 172–173 [§760–763].

⁸¹ Fattal, *Le statut légal*, 117.

⁸² See, for example, the views recorded in the law manual of the Mālikī jurist Ibn ‘Abd al-Barr (Müller, *Non-Muslims as Part of Islamic Law*, 55–58).

⁸³ Friedmann, *Tolerance and Coercion*, 45.

⁸⁴ Friedmann, *Tolerance and Coercion*, 45, 48; see also D. S. Margoliouth, *The Early Development of Mohammedanism*, New York: C. Scribner’s Sons, 1914, 113.

⁸⁵ Ḥamza b. ‘Abd al-Muṭṭalib (Muḥammad’s uncle), Ja‘far b. Abī Ṭālib and ‘Alī b. Abī Ṭālib (sons of another of Muḥammad’s uncles), and the latter’s son al-‘Abbās b. ‘Alī b. Abī Ṭālib. Three died in battle; ‘Alī was assassinated, and his son Ḥasan fulfilled *qiṣāṣ* (Robert M. Gleave, ‘Alī b. Abī Ṭālib, in Kate Fleet et al. [eds.], *Encyclopaedia of Islam*, *THREE*, Brill Online, 2016, http://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-3/ali-b-abi-talib-COM_26324).

⁸⁶ There may be an additional layer to al-Jāḥiẓ’s comparison here: the Church of the East had saint days for commemorating Iraqi Christian hierarchs martyred under the Persians. Could al-Jāḥiẓ be comparing the popularity of these public Christian commemorations with ones for the Muslim martyrs?

A few lines later, al-Jāhīz mentions a hadith in which Muḥammad specifies that “they” do not sit equal with “us”; and, “If they insult you, then strike them; and if they strike you, then kill them.”⁸⁷ This is one of the only times he uses hadith in the “Refutation.” He does not give an *isnād* (chain of transmission), nor mention that the context is ‘Alī speaking to a Jew, not a Christian. More important than the hadith’s origins for him, presumably, is that it unambiguously gives Muslims a different legal status from *dhimmīs*.

One can hardly expect that al-Jāhīz, who expressed disdain for blindly following tradition, would side with the traditionist judges against the *ashāb al-ra’y* (as the followers of Abū Ḥanīfa were called). In fact, al-Jāhīz’s hadith instructor was Abū Yūsuf, according to some accounts, and one of his main patrons was Aḥmad b. Abī Duwād, the inquisitor of the traditionist hero Ibn Ḥanbal. On this particular point, though, he buttresses his rational argument with a questionable hadith in order to oppose what may very well have been the majority opinion among Iraqi judges in theory, even if it was rarely put into practice.⁸⁸ Al-Jāhīz, not being a jurist, does not share the goals or methods of the jurists. Yet, notwithstanding his hadith citation and the substance of his disagreement with Abū Yūsuf, if one were to place his mode of argument on the spectrum of legal reasoning, it would be opposite the traditionalist views that gave primacy to hadith and closest to the thought of jurists like Abū Yūsuf, who emphasized *ra’y* or reasoned legal opinion.⁸⁹ This becomes all the more evident in the remainder of the passage.

Christians Slandering the Prophet’s Mother

Next, al-Jāhīz criticizes his fellow Muslims for letting Christians off lightly when they slander the Prophet’s mother. What is the justification for a mild punishment? That the Prophet’s mother was not a Muslim, a technicality that supposedly excused the offenders from facing the *ḥadd* punishment of eighty stripes for falsely accusing a Muslim woman of adultery.⁹⁰ Two points are at issue here: (1) the applicability of *ḥudūd* (prescribed punishments) and (2) what constitutes a breach of the *dhimmī* covenant.

Al-Jāhīz seems rather uninterested in *ḥadd* definitions, except to the extent that they are used a justification for lenience toward Christians. Here, the difference between his priorities and those of the jurists becomes quite visible. The latter were quite concerned with limiting the definition of *ḥadd* crimes and establishing standards of proof

⁸⁷ Ed. Harūn, *Rasā’il al-Jāhīz*, 318.8–9. Author’s translation. The earliest collection in which I have found this hadith is *Ḥilyat al-awliyā’* by Abū Nu‘aym al-Isfahānī (948–1038), no. 5204.

⁸⁸ Judges of the Ḥanafī persuasion seem to have been particularly dominant in Iraq and among the early ‘Abbāsids (see Heffening and Schacht, Ḥanafīyya).

⁸⁹ See Abū Yūsuf, trans. in Ben Shemesh, *Taxation in Islam* 3, 1–7; and Mathieu Tillier, Iraq, Islamic Law in, in Stanley N. Katz (ed.), *The Oxford International Encyclopedia of Legal History*, vol. 3, Oxford: Oxford University Press, 2009, 304–6, esp. 305.

⁹⁰ See Finkel, *Risāla*, 329 n. 54; Carra de Vaux, et al., Ḥadd; Y. Linant de Bellefonds, *Ḳadhif*, in P. Bearman et al. (eds.), *Encyclopaedia of Islam*, 2nd ed., Brill Online, 2012, http://referenceworks.brillonline.com/entries/encyclopaedia-of-islam-2/kadhif-SIM_3755.

that were very difficult to attain to⁹¹—concerns which, one could argue, not only were the outworking of theoretical principles but also served a stabilizing purpose in society. Al-Jāhīz’s guiding consideration, by contrast, is putting Christians in their proper place, for which too-narrow *ḥadd* definitions are useless. Notably, this is the converse of one the reasons Timothy may have been anxious about Christians appearing in Islamic courts—namely, that they might convert to escape the threat of *ḥadd* enforcement.

Rather than focusing on this slander as an offense liable to *ḥadd* punishment under the category of *qadhf*, or false accusation, al-Jāhīz dwells on the contention that such speech against the prophet’s mother is a violation of Christians’ *dhimmī* pacts. In other words, he implicitly argues that the charge should be one of blasphemy (*shatm*) rather than false accusation (*qadhf*). The offense is one against Muḥammad himself. Christians argue that “inventing lies against the prophet does not violate the covenant or dissolve the pact,”⁹² whereas al-Jāhīz thinks it ridiculous to need to specify such terms in a pact:

To tell someone who is the lowest of the low and the smallest of the small—who asks and begs of you to accept his ransom, whom you are doing a favor by taking his payment of the poll-tax (*jizya*) and sparing his blood—to tell him, “You are required by the covenant not to fabricate lies against the mother of the Messenger of the Lord of the Worlds, the Seal of the Prophets, the Lord (*sayyid*) of the First and Last,” is something inconceivable for [even] ordinary people to do, let alone for the illustrious and elite, the leaders of all humanity . . .⁹³

The gravity of a charge of blasphemy becomes clear when one considers the juristic discussion surrounding the offense, especially with regard to a person’s *dhimmī* status. As Tolán notes, blasphemy became a particular issue for jurists of the 8th-9th centuries, and

to insult God or Muhammad (or for some jurists, Muhammad’s Companions), was a crime equivalent, for some legal scholars, to apostasy (*ridḍa*) or unbelief (*kufr*), each of which could warrant the death penalty in certain cases.⁹⁴

One example of blasphemy being taken as apostasy is the account in al-Ṭabarī’s history that Caliph al-Mutawakkil had ‘Īsā b. Ja‘far flogged to death and thrown into the Tigris for his defamation (presumably as a Shi‘ite) of Abū Bakr, ‘Umar, ‘Ā’isha, and Ḥafsa; his

⁹¹ Carra de Vaux, et al., Ḥadd note an exception to this with regard to *qadhf*, or false accusation of adultery; still, that the slandered person be a Muslim was a standard requirement for administering the corresponding *ḥadd* penalty, which was based on Q 24:4: “those who accuse chaste women (*al-muḥṣanāt*) . . .” (see Linant de Bellefonds, *Qadhf*).

⁹² Ed. Harūn, *Rasā’il al-Jāhīz*, 318.11–12. Author’s translation.

⁹³ Ed. Harūn, *Rasā’il al-Jāhīz*, 319.14–320.5. Author’s translation.

⁹⁴ John Tolán, *Blasphemy and Protection of the Faith: Legal Perspectives from the Middle Ages, Islam and Christian–Muslim Relations*, 27 (2016), 35–50.

offense was interpreted as coming out “in opposition against God and His Messenger.”⁹⁵ Much later, the Ḥanbalī jurist Ibn Qudāma (d. 1223) includes “falsely impugning the honor of the Prophet’s mother” as one of the indications of apostasy.⁹⁶

In regard to *dhimmīs*, al-Shāfi‘ī (767–820) had apparently found such defamatory statements to be so much of a problem that he specified the following in the *dhimmī* pact that he suggested as a template for future agreements:

If any one of you speaks improperly of Muḥammad, may God bless and save him, the Book of God, or of His religion, he forfeits the protection (*dhimma*) of God, of the Commander of the Faithful, and of all the Muslims; he has contravened the conditions upon which he was given his safe-conduct.⁹⁷

In general, Mālikīs, Shāfi‘īs, and Ḥanbalīs all stipulated the death penalty for *dhimmīs* who blasphemed, considering it to be a breach of contract.⁹⁸ The Shāfi‘ī *faqīh* Abū al-Ḥasan ‘Alī b. Muḥammad al-Māwardī (d. 1058) listed six conditions of a *dhimmī* contract that must be observed, *whether or not* they are explicitly stated in the document; three of these had to do with defamation against God’s scripture, his Messenger, and the Islamic faith.⁹⁹ Around the year 785, Mālik b. Anas himself reportedly advocated death for an Egyptian Christian who cursed the prophet.¹⁰⁰ Two different opinions were apparently passed down from Mālik regarding the punishment of *dhimmīs* who slandered the prophet: both prescribed execution, but one allowed the *dhimmī* to escape by converting to Islam. Müller suggests that it was probably in view of this difference of opinion that Ibn ‘Abd al-Barr held that *dhimmī* pacts should include an explicit clause forbidding public slander of the prophet with Muslims present.¹⁰¹

Ḥanafīs were again the exception, leaving the punishment of *dhimmīs* who blasphemed up to judicial discretion and giving a sentence of execution only in the most grave cases.¹⁰² The fact that the death penalty was a possibility, however, marks a contrast between blasphemy and other breaches of covenant for which execution was not sanctioned. For those who failed to pay the *jizya* (poll-tax), Abū Yūsuf prescribed imprisonment—not torture or death—despite the fact that *jizya* payment was theoretically the primary prerequisite for receiving protection (*dhimma*).¹⁰³ Al-Shaybānī wrote that

⁹⁵ Trans. Joel L. Kraemer, *The History of Al-Ṭabarī*, vol. 34 (Incipient Decline: The Caliphates of al-Wāthiq, al-Mutawakkil, and al-Muntaṣir A.D. 841–863/A.H. 227–248), Albany, N.Y.: SUNY Press, 1989, 135–136 and n. 148.

⁹⁶ Friedmann, *Tolerance and Coercion*, 122 and see n. 6.

⁹⁷ Translation adapted from Levy-Rubin, *Non-Muslims in the Early Islamic Empire*, 71–72.

⁹⁸ Fattal, *Le statut légal*, 122.

⁹⁹ Tolan, *Blasphemy*, 42.

¹⁰⁰ Fattal, *Le statut légal*, 123.

¹⁰¹ Müller, *Non-Muslims as Part of Islamic Law*, 41.

¹⁰² Fattal, *Le statut légal*, 122.

¹⁰³ Trans. Ben Shemesh, *Taxation in Islam* 3, 84–85.

even *dhimmīs* who violated their covenant by fighting against Muslims were subject only to captivity, rather than execution.¹⁰⁴

Al-Jāḥiẓ’s argumentation that slandering the prophet’s mother constitutes a breaking of the *dhimmī* covenant is thus an early attestation of these debates regarding blasphemy law. By all indications, he was writing before any one version of *dhimmī* regulations was accepted as binding on all *dhimmīs*.¹⁰⁵ Moreover, he makes plain that the *dhimmī* contracts to which he is referring did not explicitly state anything about such defamation of the prophet or his family; instead, he has to explain why the rightly-guided imams “did not stipulate that ... lies must not be invented against the prophet (PBUH) or his mother.” He bases his reasoning on the idea that such terms were obviously intended by the parties to the contract and did not need to be stated explicitly.¹⁰⁶

Here, more than ever, al-Jāḥiẓ’s legal reasoning regarding *dhimmīs* is on display. His argumentation depends primarily, not on hadiths, but on a chain of logic that flows from a common-sense understanding of agreements and from an invocation of esteem for the first caliphs. Once again, his method, in legal terms, is most comparable to that of the *aṣḥāb al-raʾy* (Abū Ḥanīfa’s followers), but is directed against judges who were lenient toward offending *dhimmīs*, like the subscribers to nascent Ḥanafī thought.

The Nature of al-Jāḥiẓ’s Concerns

What is it that so troubles al-Jāḥiẓ about the verdicts of Muslim judges regarding Christians? Why does he consider these situations so concerning? Clearly his objectives are quite different from those of the judges, who must have been keenly aware that their verdicts affected the stability of a carefully balanced multi-religious community. This is clear from the example of Abū Yūsuf above, who ultimately chose to preserve the peace of the community rather than execute his strict sentence. It is also clear from the development in juristic policy that specified Muslim judges were not bound to take internal *dhimmī* cases and might consult with *dhimmī* authorities before doing so.¹⁰⁷ To overrule the verdict of a Christian or Jewish leader regarding his own community would certainly not ease that group’s tensions with the Muslim community. Neither would harshly punishing a *dhimmī* offense for which a lighter punishment could be justified. In

¹⁰⁴ Trans. Khadduri, *Islamic Law of Nations*, 219 [§1263–1268].

¹⁰⁵ See Levy-Rubin, *Non-Muslims in the Early Islamic Empire*, 60–72 and Gibson, *Closest in Friendship?*, 179–180. Al-Jāḥiẓ uses a variety of terms to describe the agreements between Christians and Muslims (*‘ahd*, *‘aqd*, and *shurūt*), but he never explicitly refers to the “Pact of ‘Umar” or any other document stipulating terms of *dhimma*. His statements make clear that he knows early Islamic leaders made compacts with those they were conquering, and he lists a few terms that he evidently considers typical of these agreements: “humiliation (*al-dhillā*) and inferior status (*al-ṣaghāra*), paying the poll-tax (*jizya*), sharing churches (*muqāsamat al-kanāʾis*), not aiding one Muslim faction against another, and others like these” (Ed. Harūn, *Rasāʾil al-Jāḥiẓ*, 319.13–319.14, author’s translation). Yet he does not expressly indicate that there is a single covenant governing all Christians; in fact, his references to “imams,” “predecessors,” and “leaders” in the plural as those who stipulated the terms of protection for *dhimmīs* imply that there are multiple covenants in effect.

¹⁰⁶ In this, one can recognize a similarity to the juristic concept of *maʾrūf*—conditions that were known but not stipulated (Christian Müller, personal communication, Oct. 15, 2015).

¹⁰⁷ Müller, *Non-Muslims as Part of Islamic Law*, 39.

the day-to-day affairs that threatened to undo the social order, the *qāḍi* had the power to defuse violence and quell chaos.

Al-Jāḥiẓ, by contrast, saw the current social order as itself being the problem. It may be difficult to imagine that, after a century of ‘Abbāsīd rule, Muslim elites felt any threat from non-Muslims in their midst. Yet al-Jāḥiẓ’s rhetoric and al-Mutawakkil’s actions reveal that they did. The entire thrust of the “Refutation’s” social critique is to show that Christians were more harmful to the Muslim community than Jews or Zoroastrians, a view contrary to the one popularly held:

Now we—may God have mercy on you!—do not disagree with the masses concerning how wealthy the Christians are, that they have prominent authority (*mulk qā’im*),¹⁰⁸ that their clothing is cleaner, or that their professions are better. Where we differ, rather, is about the difference between the two forms of unbelief—the two sects [Christianity and Judaism]—regarding the extent of [their] obstinacy and importunity, [their] lying in wait for the people of Islam using every kind of trickery, with vile manners and malicious by nature.¹⁰⁹

If, as al-Jāḥiẓ claims, contemporary Christians are not the ones Q 5:82 commends as “closest in friendship” to the believers but are instead more dangerous than Jews, who in that passage are “strongest in animosity,” then the peril Christians pose to the *umma* (Muslim community) is of the most serious kind.

What is the nature of the trickery, vileness, and malice al-Jāḥiẓ assigns to Christians?¹¹⁰ First, Christians use the intellectualism for which they are so admired to attack the Qur’ān and to trap weak Muslims.¹¹¹ The fact that the majority of the apostates executed for *zandaqa* had Christian parents shows how much confusion Christians have caused by investigating “obscure matters with weak minds.”¹¹² Notwithstanding that the majority of conversions were presumably from Christianity to Islam rather than vice versa, a few apostasies, even if they were lapses by Muslims of Christian background, bespoke an unsettling undulation in the advancing tide of Islam.¹¹³

Second, wealthy Christians spurn the outward signs of their *dhimmī* status. They ride excellent horses, hire guards, wear fine clothes, hide or neglect to wear their *dhimmī*

¹⁰⁸ Or, “enduring authority”; or, possibly, “a reigning king” (see trans. in Allouche, *Un traité de polémique*, 135).

¹⁰⁹ Ed. Harūn, *Rasā’il al-Jāḥiẓ*, 316.15–317.3. Author’s translation.

¹¹⁰ On the following points from al-Jāḥiẓ’s *Radd*, see the more detailed discussion in Gibson, *Closest in Friendship?*, 136–202.

¹¹¹ Ed. Harūn, *Rasā’il al-Jāḥiẓ*, 303, 320.

¹¹² Ed. Harūn, *Rasā’il al-Jāḥiẓ*, 315.

¹¹³ On the concern about apostasy that was prevalent around this time in Muslim, Christian, and Jewish communities, see Simonsohn, *Conversion, Apostasy, and Penance*, especially the discussion of Ibn Ḥanbal’s responsa, which made a distinction between apostates who were originally Muslim and those who were reverting to another religion (207–209). Also significant is the admonition in Isho’ bar Nūn’s law book not to expose those who have returned to Christianity after apostatizing to Islam (ed. Sachau, *Rechtsbücher*, 172–173 [§124]; Simonsohn, *Conversion, Apostasy, and Penance*, 209–210).

waistbands (*zunnār*), and even refuse to pay the poll-tax (*jizya*).¹¹⁴ In other words, they refuse to occupy the place granted to them by the Qur’ān and, at least according to a number of Muslim jurists, by their covenants with Muslims. Such behavior indicated that Christians could not be trusted to willingly submit to Islamic governance.

Third, Christian practices were not only disgusting and impure (thereby threatening to defile the Muslim community as well?), but also had the aroma of Manichaeism, which from al-Jāhīz’s perspective was a pernicious heresy plaguing the *umma*. Christian asceticism, including fasting from meat, sexual abstinence, and revering ecclesiastical leaders, seemed to have a certain resemblance to the customs of the Manichaean elect.¹¹⁵ Was this really a group with which Muslims could align themselves as friends?

These concerns parallel the justifications al-Mutawakkil gives for his edicts about the *ahl al-dhimma*. According to what he says in his decree (dated 850) dismissing non-Muslims from positions of authority over Muslims, Islam is the superior religion, and Muslims have no need to rely on any non-Muslim.

For what the ruler seeks for his appointments is the people of good will and trustworthiness; in the *dhimmīs* these two qualities are altogether lacking. As for trustworthiness, not one of them is to be trusted over the monies collected and the affairs of the Muslims because they are enemies of the religion and rebels against it. As for good will, it does not exist among those whose place among the Muslims is one of compulsion, subjugation, humiliation, and abasement.¹¹⁶

He claims God has “plainly forbidden befriending them,” citing Q 5:51, about not taking the Jews and Christians as allies, and other verses.¹¹⁷ In a separate decree detailing the ways *dhimmīs* should distinguish their personal appearance from that of Muslims, al-Mutawakkil again expounds on the supremacy of Islam, this time emphasizing its moral superiority over other religions:

The Muslims, through God’s favor by which He has elected them, and the superiority He gave them by the religion He chose for them, are distinguished from members of other religions by their righteous laws, their fine and upright statutes, and their evident proof. They are distinguished through God’s purifying their religion by what He permits and forbids them¹¹⁸

He gives in detail the Qur’ānic prohibitions on “partaking of offensive food, drink and sexual relations” of the people of other religions.¹¹⁹ There seems little question, then, that

¹¹⁴ Ed. Harūn, *Rasā’il al-Jāhīz*, 317.

¹¹⁵ Ed. Harūn, *Rasā’il al-Jāhīz*, 321.

¹¹⁶ Trans. Luke Benson Yarbrough, *Islamizing the Islamic State: The Formulation and Assertion of Religious Criteria for State Employment in the First Millennium AH*, Ph.D., Princeton University, 2012, 379.

¹¹⁷ Trans. Yarbrough, *Islamizing the Islamic State*, 379–380.

¹¹⁸ Trans. Kraemer, *Incipient Decline*, 92–93.

¹¹⁹ Trans. Kraemer, *Incipient Decline*, 91.

the dangers al-Jāḥiẓ has outlined in the “Refutation of Christians” are concrete ones that the caliph believes must be remedied. One need not, and probably cannot, disentangle the political motivations for these policies from the spiritual ones, tempting as it may be to do so. Any political action was better taken with Qur’ānic justification; yet one can also suppose that it was the caliph’s spiritual understanding of an ideal society that shaped his political course.

Returning to the way Muslim judges treated Christians in their courts, what al-Jāḥiẓ saw to be at risk in these situations is probably in keeping with the other perils he mentioned. In fact, this discussion flows directly from his description of the ways Christians flout their *dhimmī* status. Muslim judges who put the same monetary value on the life of a Christian as on the life of a Muslim merely encourage Christians to continue their defiant ways and to retaliate Muslim offenses. Those who use a technicality to justify lightly punishing slander of the prophet’s mother open the floodgates for the *ahl al-dhimma* to violate the spirit of their covenants with Muslims, keeping only the letter of those agreements. Islam, in his view, cannot retain its superior place in society unless the rulings of Muslim judges keep *dhimmīs* in their place.

The elite status some Christians held only exaggerated the tension between al-Jāḥiẓ and the jurists with whom he took issue. *Dhimmī* personages of influence, by their position, raised the stakes on any legal rulings. While this influence might make judges more careful about handing down incendiary verdicts, it gave al-Mutawakkil and al-Jāḥiẓ all the more reason to try to change this carefully preserved status quo.¹²⁰

Successfully remedying this situation meant that the caliph had to garner a certain degree of popular support from his Muslim subjects for his policies toward *dhimmīs*. The tone of the official propaganda is evident from al-Mutawakkil’s decrees. Yet Muslim judges kept anti-*dhimmī* actions by ordinary civilians in check; perhaps these judges also threatened to impede the caliph’s momentum. The caliphs preceding al-Mutawakkil had exerted their control over the judiciary to the maximum during the *miḥna*.¹²¹ While al-Mutawakkil seems to have stopped his predecessors’ policies of requiring that judges profess the Qur’ān’s createdness, he was interested in wielding his power in the area of *dhimmī* policy. If al-Jāḥiẓ’s “Refutation” had some part in the ideological campaign against *dhimmīs*, it may have been to swing popular opinion away from the judges and toward the caliph. As in the situation mentioned above with the *qāḍī* Abū Yūsuf, the outcome of a case could be heavily influenced by the weight of the general public, and it is to this audience which al-Jāḥiẓ appeals.

Conclusion

The perspectives of these two ninth-century figures, Timothy and al-Jāḥiẓ, have shown the landscape of an Islamic judiciary system in which Christians might find

¹²⁰ One wonders whether anything could be learned about al-Mutawakkil’s policy shift toward *dhimmīs* by studying his judicial appointments, as Christopher Melchert has done regarding the *miḥna* (Religious Policies of the Caliphs from Al-Mutawakkil to Al-Muqtadir, A.H. 232–295/A.D. 847–908, *Islamic Law and Society*, 3 [1996], 316–42).

¹²¹ Compare Tillier, *Courts*, 229; Tillier, *Judicial Authority*, 126.

themselves to be willing or unwilling litigants, not only in individual cases, but in larger disputes over religious dominance, communal integrity, and rightful authority. Both were concerned about how verdicts involving retaliation, among other things, would affect their communities. From Timothy’s view, the threat was that his parishioners might, for the sake of retaliation or other gain, subject themselves to the authority of non-believers. This danger was not just a social one, that they would fracture the community, but also a spiritual one, that they would compromise or convert for worldly advantages. From al-Jāhiz’s perspective, the leniency that Muslim judges accorded Christian plaintiffs and defendants who came to resolve disputes with Muslims was one of the major factors that allowed Christians to continue to disregard their secondary status as protected subjects (*ahl al-dhimma*) and to occupy social positions that rightly belonged only to Muslims. As such, it was a snare on the path toward a social order in which Islam held the unquestioningly superior place. For both the Christians and the Muslim, then, this judicial landscape posed numerous hazards that required careful navigation for preserving the well-being of their respective communities, and both recognized that the court system would play a role in the long-term trajectory of their pluralistic society.