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## CHRISTIANS AND MUSLIMS IN ONE ANOTHER'S LEGAL TEXTS

David M. Freidenreich

The differences between medieval Islamic law regarding Christians and medieval Christian (canon) law regarding Muslims exemplify the profound asymmetries in the ways Muslims and Christians thought about adherents of one another's traditions during the Middle Ages. Islamic law addresses Christians primarily as non-Muslims subject to Muslim rule; the legal inferiority of Christians, according to Islamic jurists, befits those who reject God's ultimate and supreme revelation. Secondly, Islamic law addresses Christians as adherents of a divine scripture. Because their beliefs and practices conform in a limited sense to God's will, Sunnīs ascribe to Christians and other 'People of the Book' an elevated status among non-Muslims. Shī'ī jurists contest this distinction between People of the Book and other non-Muslims as part of a broader doctrinal critique of Sunnī Islam itself. For both Sunnīs and Shī'īs, the legal status of Christians carries theological significance.

Canon law, in contrast, devotes minimal attention to Islamic beliefs and practices. This is because medieval Christian jurists perceived Muslims as posing a political rather than a theological challenge. Much of canon law regarding Muslims responds to their roles as rulers and invaders. Even when addressing neighbourly relations, canonists express grave concerns about the dangers they perceive Muslims posing to Christians. Differences within canon law literature regarding Muslims correlate not with doctrinal fissures, as they do in Islamic law, but rather with the political border between Christian and Muslim domains.

The present essay distils and synthesises detailed surveys of Christians in Islamic law and Muslims in canon law published in volumes 1–4 of *Christian-Muslim relations: a bibliographical history* (Freidenreich 2009a, 2009b, 2011a, 2011d, 2012b). Interested readers should consult those studies for further information and more comprehensive citations. The comparative format of the present essay, however, yields an analysis that differs in important ways from those presented in these earlier surveys.

Scholars of Christian attitudes toward Judaism helpfully distinguish between 'Jewish law', laws that developed within the Jewish tradition, and 'Jewry law', Christian laws relating to Jews. Similarly, this essay uses the term 'Islamic law' to refer to laws written by Muslims, and 'Saracen law' to describe canon law regarding Muslims, commonly referred to in Latin as *Sarraceni*. The subset of Islamic law that addresses Christians can best be labelled '*dhimmi* law', a term we will examine in the next section.

When studying Saracen law and *dhimmi* law, it is also helpful to distinguish 'imposed law' from 'reflexive law'. The former refers to laws that members of the dominant tradition seek

to impose on subject populations. 'Reflexive law' refers to regulations that religious authorities apply to members of their own community as a form of defence against perceived external threats. Islamic and Christian authorities only formulated imposed law when they had reason to believe that government officials might enforce it. It is no coincidence, therefore, that all Saracen law produced within the Islamic world, as well as Saracen law produced in Western Europe before the era of Crusades and 'reconquests', is reflexive in nature. Most *dhimmī* law, by contrast, is imposed.

It is important to bear in mind that, as a general rule, the authors of Islamic law and canon law alike were not government functionaries. Their works express normative ideals that did not necessarily receive support from the coercive powers of the state: rulers enforced or ignored *dhimmī* and Saracen law on the basis of expedience. Popular adherence to the imposed and reflexive norms surveyed here also varied greatly. This survey, therefore, describes the aspirations of religious authorities rather than the lived experiences of medieval Christians and Muslims.

### Islamic law, part 1: Christians as *dhimmīs*<sup>1</sup>

A sizeable majority of Islamic law regarding Christians treats them as *dhimmīs* – more formally, *ahl al-dhimma*, 'people subject to a guarantee of protection'. This term applies solely to non-Muslims living in lands governed by Muslims who accept the authority of their Muslim overlords even as they refuse to embrace Islam. The term *dhimmī* thus excludes converts, non-Muslims who rebel against Muslim rule and non-Muslims who live outside territories subject to Islamic law. Some jurists limit the protection associated with *dhimmī* status to Jews and Christians, who adhere to divinely revealed scriptures, but most extend that protection to virtually all other non-Muslims as well (Friedmann 2003: 54–86).

*Dhimmī* law protects the fundamental rights of non-Muslims while rendering them socially and legally inferior to Muslims, as befits those who follow religions inferior to Islam. The underlying logic of *dhimmī* law is thus theological. Muslim authorities must abstain from acts of hostility toward *dhimmīs*, respect the property rights of these non-Muslims and protect them from attack by Muslims or foreigners. Islamic law further grants to *dhimmīs*, including the slaves and wives of Muslim masters, the right freely to exercise their religion in private. *Dhimmīs*, however, must acknowledge their subservience to Muslim authorities and adhere to Islamic *dhimmī* laws. Non-Muslims who refuse to accept these terms or who renege on their commitments forfeit the right to live as non-Muslims in the lands of Islam.

Chief among the obligations imposed upon *dhimmīs* is payment of the *jizya*, a Qur'ānic obligation (Q 9:29) that Muslim jurists classically interpret as an annual poll tax imposed solely upon non-Muslims. Jurists offer two distinct interpretations of the *jizya*, each of which accounts for different details in the laws governing its payment. On the one hand, this tax constitutes a fee for services rendered to *dhimmīs* by Muslims: not only the right to live as non-Muslims in Islamic territories, but more specifically the protection provided by Muslim soldiers, notwithstanding the fact that non-Muslims do not themselves perform military service. For this reason, jurists generally exempt women, minors, slaves and the infirm from the *jizya* payment, as Muslims in these categories are exempt from military service. (Authorities differ over whether and to what degree the tax applies to indigent *dhimmīs*.) On the other hand, the *jizya* constitutes a penalty imposed upon *dhimmīs* on account of their refusal to embrace Islam. This notion underlies the widespread norm of exacting payment of the *jizya* in humiliating circumstances. The *jizya* has no fixed amount; this unpredictability, some jurists explain, enhances the humiliating nature of the tax. *Dhimmīs* are also required to pay distinctive property taxes and to pay taxes on commercial transactions at a higher rate than Muslims (Cohen 2008: 68–72; Fattal 1958: 264–313).

The inferiority of *dhimmīs* to their Muslim overlords exemplified by the *jizya* is reinforced through a variety of laws. Many of these appear in the so-called 'Pact of 'Umar', which purports to be a set of surrender terms proposed by Christians to the second caliph, 'Umar ibn al-Khattāb (r. 634–44) (Cohen 1999, 2008: 54–65). It is telling that Christians exemplify *dhimmīs* in general in this highly influential Sunnī text. Although Shī'īs do not recognise the legitimacy of the Pact of 'Umar, their legal literature incorporates many of the Pact's terms. Christians must show deference to Muslims by rising when Muslims wish to sit and refraining from building homes higher than those of Muslims. They must provide hospitality to travelling Muslims, may not shelter foreign spies and may not strike Muslims, nor may they purchase slaves whose service ought to benefit Muslims. Christians further agree not to ride horses or bear arms, both symbols of elevated social status, and commit themselves not to adopt Muslim styles of dress, honorific titles or Arabic signets. Various legal sources also prohibit Muslims themselves from adopting the mannerisms of non-Muslims, especially in matters of dress and ritual, and instruct Muslims to refrain from greeting non-Muslims in the same manner that they greet fellow believers (Kister 1989).

As Yohanan Friedmann (2003: 35) observes, *dhimmī* law exemplifies the Ḥadīth, 'Islam is exalted and nothing is exalted above it'. To this end, the Pact of 'Umar curtails the public display of non-Muslim religious life. Christians may not build new churches, monasteries or other religious buildings and may not restore any such buildings that fall into ruin or are located in Muslim neighbourhoods. Christians agree not to proselytise and not to prevent Christians from converting to Islam. The Pact of 'Umar also obligates Christians to refrain from holding religious ceremonies in public and from displaying religious symbols publicly, to beat the wooden clappers of their churches (the local equivalent of church bells) very quietly, not to raise their voices when praying, and to direct their funeral processions away from Muslim populations. These regulations collectively serve to minimise the public 'footprint' of Christianity within the Islamic world.

In private, however, Christians have the right to practise their own religion and even violate Islamic norms. Most jurists, for example, allow Christians to purchase, possess and consume wine, even when married to Muslim husbands. Similarly, *dhimmīs* may engage in interest-generating commercial activities among themselves. Violating Islamic norms of blasphemy, however, nullifies the terms of the *dhimma* and warrants capital punishment.

Forced conversion of non-Muslims is generally forbidden, although jurists condone the compulsory conversion of non-Muslim women, minors and prisoners of war in various circumstances. Islamic law defines the offspring of marriages between Muslim men and Christian women as Muslims. Conversion from Islam to Christianity or any other religion is strictly forbidden: apostate Muslims are ineligible for *dhimmī* status and are therefore liable to the death penalty if they refuse to re-embrace Islam (Friedmann 2003: 87–159).

Non-Muslims may not reside in the region of Mecca and Medina or enter the precincts of the Ka'ba; some jurists extend that prohibition to all mosques. Similarly, non-Muslims may not possess or study the Qur'ān or other sacred texts. Some jurists associate these prohibitions with the assertion that all non-Muslims are impure, a topic to which we will return in the next section.

Islamic law forbids *dhimmīs* from serving in positions of authority over Muslims, whether as public officials, members of the military or owners of Muslim slaves – this because social hierarchies should mirror the relationship between Islam and other religions. It also restricts commercial interactions in which a Muslim might become inferior to a *dhimmī*. For the same reason, legal proceedings involving a Muslim and a *dhimmī* must be held in an Islamic court; when the accused is a Muslim, *dhimmīs* are not allowed to offer testimony against him (Fattal 2004: 89–102). Muslims also receive preference over *dhimmīs* in matters of inheritance and certain commercial transactions.

Note that nearly all of the *dhimmī* laws surveyed thus far are imposed upon non-Muslims. Laws that treat Christians as People of the Book, to which we now turn, are primarily reflexive in nature: they regulate what Muslims themselves may or may not do in matters that relate to non-Muslims. Laws that fall into this latter category may still profitably be labelled '*dhimmī* law', as they presume the inferiority and subservience of Christians (and Jews). These laws, however, highlight the relatively elevated status among non-Muslims that Sunnīs ascribe to People of the Book.

### Islamic law, part 2: Christians as 'People of the Book'<sup>2</sup>

Islamic laws that treat Christians as *dhimmīs* express a binary distinction between Muslims and non-Muslims. Laws that treat Christians as People of the Book, in contrast, reveal that Sunnī jurists not only distinguish those who revere a divine scripture from other non-Muslims but grant legal significance to that difference. Shī'ī statements on the same laws contest the relevance of this distinction on the grounds that only Muslims – indeed, only Shī'īs – truly understand God's will. This debate is, at its core, theological.

The difference between Sunnī and Shī'ī approaches to classifying foreigners can be seen most clearly in discussions of the blood-money that is due in certain cases to the surviving relatives of a murder victim. When the victim is a male Muslim, the required blood-money is set at 12,000 dirhams. According to members of the Mālikī and Ḥanbalī schools of Sunnī law, the relatives of male victims who are Christian or Jewish receive 4,000 (or, some say, 6,000) dirhams, whereas the payment due upon the death of a Zoroastrian or other non-Muslim is only 800 dirhams (Friedmann 2003: 47–50). These figures express in mathematical terms the relative status of Islam, scripture-based religions and other religious traditions. Shī'ī jurists, tellingly, award only 800 dirhams of blood-money to the relatives of Christian, Jewish and Zoroastrian victims alike. The Shī'ī equation of Christians with Zoroastrians, to the detriment of the former, emphasises that People of the Book are unbelievers notwithstanding their divinely revealed scriptures.

The logic behind these competing conceptions of Christians as People of the Book becomes clear in Sunnī and Shī'ī interpretations of the following qur'ānic verse:

Permitted to you this day are the good things, and the food of those who were given the Book is permitted to you, and your food is permitted to them. So are the chaste women among the believers and the chaste women among those who were given the Book before you.

(Q 5:5)

Sunnī interpreters uniformly understand Q 5:5 to permit consumption of meat that Christians (and Jews) slaughter in accordance with their own religious norms. This permission, they declare, reflects the theological affinity of Judaism and Christianity to Islam. The importance of this affinity to Sunnī jurists is especially apparent in discussions regarding Christian butchers who violate qur'ānic norms for animal slaughter (Freidenreich 2011b: 131–56, 198–203).

The limits to this affinity, however, become apparent as Q 5:5 continues. Chaste Jewish and Christian women are no less suitable for marriage than chaste Muslim women because all come from communities committed to an authentic scripture. A Muslim woman may not marry a Christian or Jewish man, however, because a Muslim wife may not be subservient to a non-Muslim husband on account of Islam's exalted status relative to other religions. Sunnī jurists, who regard such a union as a serious breach of the proper social order, prescribe severe punishments

for *dhimmīs* who transgress this norm, and they require married women who convert to Islam to separate from their non-Muslim husbands if the husbands do not follow suit (Friedmann 2003: 160–93). Sunnī discussions of Q. 5:5 strike a careful balance between the legitimation of Christianity and Judaism on the one hand and the affirmation of Islam's superiority on the other. The former principle, no less than the latter, is crucial to the self-definition of Islam that emerges from these texts: Islam stands in continuity with its predecessor religions even as it constitutes the culmination and climax of God's unfolding revelation.

Early Shī'ī sources affirm the permissibility of Christian food and Christian wives, but by the eleventh century Shī'ī jurists were far more restrictive than their Sunnī counterparts. Christian (and Jewish) acts of animal slaughter are invalid because, due to their incorrect theology, non-Muslims cannot invoke God's name properly. Indeed, the beliefs of People of the Book are no better than those of Zoroastrians and other non-Muslims. Shī'ī authorities go further, contending that most foods that non-Muslims touch become impure on account of their flawed beliefs; Q 5:5, Shī'īs explain, refers solely to foods that are not susceptible to contracting impurity (Freidenreich 2011c). Sunnīs who ascribe impurity to non-Muslims, in contrast, do not regard this impurity to be communicable to foodstuffs. According to classical Shī'ī authorities, Muslims may only take Christian (and Jewish) women as temporary wives or concubines, not as full wives.

Shī'ī authorities explicitly contrast these positions regarding Christians with those of their Sunnī counterparts, in the process making the case that Sunnīs fail to understand or observe the Qur'ān's teachings. Indeed, these arguments regarding People of the Book seek to discredit not merely Judaism and Christianity but also, and more importantly, Sunnī interpretations of Islamic law. Because Sunnīs use reflexive laws governing foodstuffs and marriage as a means of expressing the affinity between Muslims and People of the Book, Shī'ī authorities are able to employ discourse about the same laws to express the sharp discontinuity not only between Muslims and Christians but also between Sunnīs and Shī'īs. Christians, one might say, are caught in the crossfire of an intra-Islamic theological debate.

### Canon law, part 1: Muslims as rulers and invaders<sup>3</sup>

Whereas *dhimmī* law reflects theological claims about the status of Christianity, Saracen law reflects concerns about the power wielded by Muslims. Canon law, especially within the Eastern Mediterranean but also in Western Europe, responds to the circumstances of Christian social inferiority initiated by the Arab Conquest. 'Barbarian invasions' brought to the fore legal questions about the use of armed force by priests and about the responsibilities of bishops who serve embattled communities. Eastern jurists relaxed regulations governing the eucharistic sacrifice in periods of Muslim oppression and in towns of 'barbarian pagans'. (Notice that canonical literature frequently employs pre-Islamic terminology to refer to Muslims. Although the intended referent of such terms is often clear from context, in many cases one cannot be certain that a law regarding non-Christians in fact addresses Muslims.)

Pope Nicholas I (r. 858–67) warns priests to assign acts of penance judiciously lest sinners, 'in desperation', flee to nearby 'pagan' territory (*Decretum* C. 26 q. 7 c. 3). Eastern Christian authorities instruct their followers not to turn to Islamic courts to resolve their disputes or ask powerful Muslims to interfere with Christian judicial proceedings. Simultaneously, these authorities reformed canon law itself so that Christian courts could better compete in the judicial marketplace with the more powerful, and thus more attractive, Islamic courts (Simonsohn 2011). Many codes of Eastern canon law from the eleventh to the fourteenth centuries incorporate elements of Islamic civil and even ritual law, although the authors of these works are careful to

distinguish between aspects of Islamic law that they regard as worthwhile and those they deem erroneous (see, for discussion of one example, Freidenreich 2012a). In another reflection of Islamic law's influence upon Eastern canon law, the *Lawcode of Mxit'ar Gosh* inverts elements of *dhimmi* law in the process of creating laws for an Armenian Christian kingdom: foreigners alone pay the poll tax, may not testify against Christians, and so on (Thomson 2000).

Many statements regarding Muslims in Western canon law portray these 'Saracens' as violent and deeply threatening. Twelfth-century papal decretals, for example, depict Saracens as wont to rape and murder Christians. Western canon law forbids Christians from supporting Saracen war efforts by serving on Saracen pirate ships, providing shipbuilding expertise and especially selling arms to Saracens. Pope Clement III (r. 1188–91) extended the latter prohibition to cover all commerce with Saracens, even in times of truce (*Decretales* 5.6.12). Canonists devote considerable attention to the subject of Christians captured by Saracens.

As Latin Christians began to wage war against Muslim kingdoms, popes and canonists developed theories to justify these attacks. In a highly influential early statement on this subject, Pope Alexander II (r. 1061–73) explained, 'There is in fact a difference between the position of the Jews and that of the Saracens. We legitimately wage war against the last-mentioned, who persecute the Christians and expel them from their cities and their own settlements; the aforementioned, on the other hand, are willing to serve' (*Decretum* C. 23, q. 8 c. 11) (Herde 2002). In other words, Muslims cause harm to Christians, who may justifiably come to the aid of their brethren and recover lost territory. Later canonists specifically justify efforts to reclaim the Holy Land and other territories from which Christians were expelled by Saracens. Pope Innocent IV (r. 1243–54) added that popes may authorise the use of force when Saracen and other infidel rulers fail to enforce natural law or refuse to allow Christian missionary activity in their territories (Muldoon 1979: 6–15). Notice how these theories of just war against Muslims focus on political acts by Muslims rather than the theological error of Islam.

#### Canon law, part 2: Muslims as neighbours<sup>4</sup>

Many commentators on Pope Alexander's canon distinguishing Saracens from Jews interpret this statement as conditional: If Saracens persecute Christians, then Christians may legitimately wage war against them, but Saracens who are subservient like Jews should be treated in the same manner as Jews. The political behaviour of Muslims, in short, determines their legal status. A striking feature of Western canon law is that, over the course of the late twelfth and early thirteenth centuries, bishops and jurists extended to Saracens much of canonical Jewry law, including elements that traditionally applied exclusively to Jews.

Canonists justified the application of Jewry law to Muslims on the grounds that Saracens 'judaize' by practising circumcision, observing dietary laws and imitating Jewish rituals (Freidenreich 2008). This seems to be a post facto rationalisation, however, as the imposition of Jewry law on Muslims began more than a decade before the argument that Saracens judaize first appears in Western legal literature. A more plausible explanation is that Jewry law offered a ready-made model for defining the legal status of Muslims in newly conquered territories. Perhaps even more important is the fact that Christians perceived these Muslims as posing the same kinds of dangers that Christians had long associated with the Jews in their midst.

Neither Muslims nor Jews may exercise power over Christians, whether as government officials, slaveholders or doctors, out of concern that they harm those Christians. Medieval authorities not only extend the longstanding prohibition against sexual intercourse between Christians and Jews to apply to Christian–Saracen relations, they also craft a new regulation designed to prevent such intercourse: Jews and Saracens alike must dress in a manner distinct from their

Christian neighbours (*Decretales* 5.6.15). Lest they mock Christian rites or otherwise offend their Christian neighbours, neither Jews nor Saracens may live alongside churches or cemeteries, attend mass or appear in public at Easter-time.

The Council of Vienne (1312) forbids loud invocations of 'Machometus' and public pilgrimage to the shrine of a Saracen saint (*Constitutiones Clementinae* 5.2.un). This rule, which contravenes surrender terms offered to Iberian Muslims by their Christian conquerors, parallels longstanding prohibitions against Jewish worship that might disturb Christian passers-by (Bussi 1935: 479–86). Canon law permits Jews to pray in accordance with their own rite and protects existing synagogues from destruction while forbidding the construction of new synagogues. Some canonists extend these rules to Muslims, although others rule that all Islamic worship is illegal.

Secular authorities extended to Saracens the legal status of *servi regiae camerae* (imprecisely: 'serfs of the royal treasury') that originally applied specifically to subject populations of Jews (Abulafia 2000). Some ecclesiastical authorities did the same, placing Muslims under the direct authority of the local prince or bishop. Canonists also required Saracens, like Jews, to pay tithes to the Church.

We have already seen that Innocent IV regards missionary activity to Saracens and other infidels as a fundamental obligation of the Church. Western canonists draw upon established Jewry law to establish rules governing the conversion of Saracens, most notably in their insistence that conversion must result from a voluntary choice. Baptism may be performed by anyone, a point Innocent IV illustrates with the example of baptism performed by an infidel Saracen. Christians must allow their Saracen slaves to convert; popes, councils and canonists seek to overcome resistance on the part of slaveholders by stipulating that such converts remain slaves, even in regions where Christian slavery is not customary.

Numerous Western councils decree that baptised Jews and Saracens may not suffer a loss of their possessions or their inheritance on account of their conversion to Christianity. In most cases, baptised Saracens may also remain married to their spouses, even if those marriages are to overly close cousins or to individuals who remain Muslim; Western canonists draw the line at polygamy, however, declaring that the husband is only legally married to his first wife (Kedar 1985). Converts were also barred from performing circumcision and observing traditional food customs. Eastern canon law, which focuses exclusively on the reversion of Christians who apostatised to Islam, requires former apostates to undergo penance and, in the Greek Orthodox tradition, a ritual of reversion. Apostates may not inherit from nor grant bequests to Christians, but those who revert are immediately eligible to do both.

Western canon law of the twelfth to the fifteenth centuries serves the political objective of managing and, ideally, converting a subject Muslim population. Eastern canonists of the same period faced a very different challenge, namely keeping fellow Christians within the fold despite the attractiveness of the dominant Islamic civilization. They responded by formulating reflexive laws designed to mitigate the dangers of Christian–Muslim interaction. Eastern canonists sought to prevent Christians from adopting Islamic wedding and funeral rituals or participating in Islamic festivals, and they barred Christians from conversing with non-Christians prior to taking communion. In an effort to preserve the Christian nature of the household, bishops forbade Christians from marrying Muslims or employing them as wet nurses.

Canonists differ regarding the question of whether apostasy to Islam by a spouse automatically annuls a marriage; those who allow such marriages to persist express concern that otherwise both spouses would apostasise. Discussion of this issue is not limited to Eastern canonists: in response to questions posed by friars in Tunis, Pope Gregory IX declares that Christians may continue to associate with apostate spouses and relatives, either out of necessity or in the hope of bringing

them back to the Christian faith (Tolan 2007). The pope's response would have focused instead on punishing the initial act of apostasy if these questions came from a location in which Christians exercised political authority.

Jewry law, which constitutes a central component of Western Saracen law beginning in the twelfth century, is completely absent from Eastern Saracen law. This difference is telling. Eastern Christian polemicists had long associated Muslims with Jews, but Eastern canonists refrained from doing so. The threat posed by the dominant Islamic civilization, after all, bore no relation to the malice ascribed to Jews, and Jewry law did not provide a useful model for addressing the challenge of assimilation. The strategic association of Muslims with Jews within canon law contrasts sharply with the consistent association of Christians and Jews within Islamic law and reflects once more the orientation of Saracen law towards political, not theological, objectives.

### Notes

- 1 Freidenreich 2009a: 101–9, 2011a: 29–33.
- 2 Freidenreich 2009a: 109–14, 2011a: 33–40.
- 3 Freidenreich 2009b: 86–90, 2011d: 45–53, 2012b: 49–52.
- 4 Freidenreich 2011d: 53–68, 2012b: 45–8, 52–7.

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