

The Moroccan *Mellāh*: Governing Jewish Spaces and the Islamic Secular

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Introduction

In the Moroccan city of Tetouan, the Jewish quarter, or *mellāh*, is an area clearly demarcated by walls and separated from the old *medina*. From 1807 until the early twentieth century, Jewish communities were required to live there. In front of the *mellāh* lies the palace, and to the right of the palace lies the old *medina*. The separating wall indicates both intimate proximity and separation. Both of these concepts are at the heart of the phenomenon of the *mellāh* and of the relationship between Jews and Muslims in Morocco. *Mellāhs* also existed elsewhere in Morocco, including in Marrakesh, Meknes, Rabat, and in Fez, where the first *mellāh* was established in 1438. Yet in Tangier, while there was a Jewish area, there was no walled and clearly demarcated enclave.

Narratives about the *mellāh*'s purpose and its relationship to Islamic law, as well as what the *mellāh* says about the history of Muslim-Jewish relations in Morocco, are complex and layered. Stillman speaks of the *mellāh* as a "highly ritualized degradation."¹ According to Miller, "in Moroccan parlance as well as in Western minds, the *mellāh* became a metaphor for a state of isolation of Jews and their removal from the mainstream of social life."² Yet the *mellāh* has also been portrayed as a symbol of the protection Jews received from the Sultan and of their special status in Moroccan history, on the basis that "Jews felt safer in these quarters."³

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1 Stillman, *The Jews of Arab Lands*, 85. I would like to thank Muhammad Shah Shajahan for his assistance in research on the *mellāh*.

2 Miller, "Apportioning Sacred Space in a Moroccan City", 57–83, at 58.

3 Bensadon, *Where the Wind Blew*, 223.

Jews being separated from—and yet protected by—Muslims raises the question of the extent to which such a status derives from, or is tangential to, the *sharī'a*. In response to Sherman Jackson's groundbreaking framing in *The Islamic Secular*, this article raises the question of whether the *mellāḥ* is part of what Jackson identifies as the *sharī'a* realm or whether it is part of the non-*sharī'i* realm. Jackson argues that the *sharī'a* was limited and bounded, thus opening a sphere beyond its jurisdiction: the non-*sharī'i* realm, or the "Islamic secular," which is subject to considerable flexibility. This separation, he suggests, could be foundational for a new form of Islamic governance, which could also incorporate some of the features of pre-modern empires; in contrast to the modern state, these empires assumed that "different people within the polity will be governed differently."⁴

This article will examine the implications of Jackson's arguments, both regarding the distinction between the *sharī'i* and the non-*sharī'i* realms and regarding the suggestion that future Islamic governance should move away from the legal monism of the modern nation-state, with particular reference to the *mellāḥ* and its connection with the *sharī'a*. While academic literature on *dhimmis* in Islam, and on the institution of *dhimma*, has tended to focus on the rights and duties of the *dhimma* through the lens of toleration and discrimination, this article also addresses, as others have, the spatialization of relations between Muslims and non-Muslims.⁵

This article argues that the *mellāḥ* can, on the whole, be viewed as an illustration of Jackson's concept of the Islamic secular, the non-*sharī'i* realm. It is an example of governmental decisions that were not dictated by the *sharī'a* but rather were subject to the pragmatic considerations the ruler chose to implement. However, despite Jackson's compelling distinction in *The Islamic Secular*, this article will also argue that the *mellāḥ* points to the difficulties involved in disentangling the *sharī'i* from the non-*sharī'i* realm and in identifying where the one ends and the other begins. Although the *mellāḥs* were not an inevitable consequence of *sharī'a* provisions, they also emanated from the texts and the core ideas of the *sharī'a*.

Uncovering the definitive reason for the *mellāḥs*' establishment is, ultimately, an impossible task. No official documents remain offering a clear explanation, and over time layers of interpretation have built up around this multifaceted phenomenon. Rather than seek to explain the ultimate reason for their establishment, this article will use the *mellāḥ* to consider the implications of Jackson's arguments about the distinction between the *sharī'i* realm and the non-*sharī'i* realm, and about a possible future form of Islamic governance as it pertains to non-Muslims.

4 Jackson, *The Islamic Secular*, 280.

5 Huntingford Craig, "[In]Secure Space".

Sherman Jackson and the Islamic Secular

In *The Islamic Secular*, Sherman Jackson puts forward a new model for thinking about Islamic thought, which he refers to as the “Islamic secular.” Central to Jackson’s identification of the Islamic secular is the distinction between the *shar‘i* and the non-*shar‘i* realms. The *shari‘a* realm is subject to concrete divine dictates, since it stems from the *shari‘a* and its sources: the Qur‘an, the Sunna, and their extensions through *uṣūl al-fiqh*. The non-*shar‘i* realm, however, is not subject to God’s concrete communications and is “not a dictate or a derivative of *shari‘ah* or its sources.”⁶ It is rather an open space that lies outside the jurisdiction of the *shari‘a* and is differentiated from it. The realm outside of the *shari‘a*, which Jackson calls the Islamic secular, is a realm that is subject to flexibility and discretionary authority. He argues that it is “a residual realm, a contingent construct whose parameters emerge out” of the relationship between Islamic values and the limits of what the *shari‘a* can explicitly tell us.⁷ It includes the area of *siyāsa*, which involved the “state’s rightful role in upholding the normative order, separate from the efforts of judges and jurists.”⁸ However, while the Islamic secular is a realm of governmental discretionary authority, it is not non-religious. In fact, Jackson contends, it remains religious, Islamic, “in the sense of falling within the attention of Islam as religion.”⁹ Unlike Western secularism, the Islamic secular is subject to the universal and totalizing “divine gaze of the God of Islam.”¹⁰

Jackson argues that the *shar‘i* and the non-*shar‘i* realms together mean that “Islam consists in not one but *two* distinct yet inextricably bound modes of religiosity.”¹¹ Both of these modes of religiosity are subject to the divine gaze, but only the *shar‘i* realm is subject to its dictates. Therefore, he argues, “between the circumference of *shari‘ah* and that of Islam as a whole, there exists a ‘space’ within which Muslims do not and cannot rely solely on concrete divine dictates.”¹² He argues that this distinction between the *shar‘i* and non-*shar‘i* modes is intrinsic to Islamic jurisprudence. Many Islamic jurists understood the *shari‘a* as “a bounded entity” and they understood that there were cases in which “*no ḥukm shar‘i* can be relied upon to resolve the dispute in question.”¹³

6 Jackson, *The Islamic Secular*, 23, 3.

7 Jackson, *The Islamic Secular*, 135, 80.

8 Jackson, *The Islamic Secular*, 139.

9 Jackson, *The Islamic Secular*, 3.

10 Jackson, *The Islamic Secular*, 2.

11 Jackson, *The Islamic Secular*, 3.

12 Jackson, *The Islamic Secular*, 2.

13 Jackson, *The Islamic Secular*, 5, 78.

For Jackson, the secular realm encompasses historical institutions such as the *dhimma*. Jackson argues that the discriminatory features of the *dhimma* were not simply determined by *sharī'a* sources or doctrines, but rather were “incorporated into Islam via a combination of *sharī'* and non-*sharī'* energies.”¹⁴ Thus, he argues, a future form of Islamic governance “need not necessarily be secularized in the modern Western sense of separating *sharī'ah* from the state in order to adjust or jettison” such discriminatory features.¹⁵

Jackson's discussion of non-Muslims and their governance in Islamic polities primarily concerns judicial autonomy. He points out that many Islamic jurists felt that non-Muslims could follow their own laws and did not need to be subject to the adjudication of the *sharī'a*. For example, Imām Shāfi'i's position was that a Muslim “is not required to apply *sharī'ah* to non-Muslims but has a choice either to do so or not,” since he knew “of no reliable reports of the Prophet or any of the Rightly Guided Caliphs” determining that adjudicating among non-Muslims was “an unsolicited religious duty.”¹⁶ Imām Mālik also argued for leaving “non-Muslims to their own devices.”¹⁷

This is a compelling position that turns on its head the assumption that one has to either choose between a Western secular model or a model based on the *sharī'a* as a totalizing construct. Jackson is proposing a highly original way of thinking about Islamic governance.¹⁸ However, his proposal also raises the following question. Was leaving non-Muslims to their own devices a discretionary act, something that was the result of pragmatic governmental decisions, or was it a positive religious injunction based on the *sharī'a*? Jackson seems to argue for the former. He contends the “apparent absence of Prophetic hadith on the topic” of non-Muslims policing their own communities suggests that “much of this policy was the result of non-*sharī'*, Islamic Secular deliberations.”¹⁹ However, there are grounds for arguing that the principle of communal autonomy itself—if not necessarily its specific institutional manifestation in the *dhimma*—is part of the *sharī'a*.

Jackson suggests that future Islamic governance might be better based on rejecting the idea that the Muslim state should be legally monistic, imposing *sharī'a* on all its citizens. He argues that the model of empire

14 Jackson, *The Islamic Secular*, 281.

15 Jackson, *The Islamic Secular*, 281.

16 Jackson, *The Islamic Secular*, 282.

17 Jackson, *The Islamic Secular*, 284.

18 Jackson, *The Islamic Secular*, 5.

19 Jackson, *The Islamic Secular*, 284.

based on legal pluralism allows for communal autonomy. Such a model, he contends, could better align with the interests of religious minorities, since it would foreground their religious worldview as opposed to marginalizing it through unitary state law. Empires, he argues, “maintain distinctions and hierarchy among the populations they incorporate.”²⁰ In contrast to the modern state, the empire-state’s basic point of departure is that “different people within the polity will be governed differently.”²¹

Reviving the judicial pluralism of the imperial model is an interesting proposition that deserves considerable attention. However, it does raise the question of whether the concept of judicial autonomy can be disentangled from the other dimensions of the *shari’a* insofar as they relate to non-Muslims. Jackson’s statement that “much of what defined the lives of pre-modern non-Muslims was the result of non-*shar’i* rather than strictly *shar’i* deliberations” raises the question of how and whether the line between the *shar’i* and the non-*shar’i* realms can be drawn.²² Perhaps in anticipation of the problem of drawing such a line, he writes, “It is important to bear in mind that this differentiated realm [i.e. the secular realm] is not an independent, self-subsisting domain that can be concretely identified or pointed to as such. It is, rather, a residual realm.”²³ Yet, if we are to think through the implications of this model of Islamic governance, which allows for non-Muslims to be left to their own devices, surely a concrete identification of where the residual realm begins and the *shar’i* realm ends needs to be made?

The Mellāḥ

In *The Islamic Secular*, Jackson does not focus on “the substance of *shari’ah* rules” but rather “whether and how to apply them to non-Muslims.”²⁴ Yet, it is in the substance of such rules that what belongs to the area of God’s communications and what does not can be identified. Here, I think through the above questions with reference the *shari’a* rules on non-Muslims, with a focus on how those rules were implemented in the historical institution of the *mellāḥ*. In many senses, it is not that easy to extract such rules from how they took shape in social, legal, and historical contexts even though the *shari’a/fiqh* dichotomy implies that it is. I do not use the example of the *mellāḥ* to point to the inherent discrimination of Islamic law. Rather, the *mellāḥ* is an example of a possible extension of

20 Jackson, *The Islamic Secular*, 279–80.

21 Jackson, *The Islamic Secular*, 280.

22 Jackson, *The Islamic Secular*, 281–82.

23 Jackson, *The Islamic Secular*, 80.

24 Jackson, *The Islamic Secular*, 280.

dhimmi status onto a specific spatial arrangement. Despite its status as a controversial outlier, in looking at the institution of the *mellāḥ*—which in many respects lies within Jackson’s realm of the Islamic secular—one can address the question of where the *shar’i* realm ends and the non-*shar’i* realm begins.

The *mellāḥ*, a specifically Moroccan phenomenon, was a walled quarter established by official decree in Fez, Meknes, Marrakesh, Tetouan, and elsewhere. In most other parts of the Islamic world, Jewish quarters grew more informally and organically. The *mellāḥ* had gates, which in some places were locked at night, and likewise had strict boundaries. While the *mellāḥs* were separate, they were not cut-off spaces. Rather, the boundaries were porous and there were many “personal dyadic ties between Muslim patrons and Jewish clients.”²⁵

The quarters’ name was likely derived from the Arabic word for salt, referring to the salt marsh in Fez where the first *mellāḥ* was established in 1438 by Sultan ‘Abd al-Ḥaqq II, the last Sultan of the Marinid dynasty (mid-thirteenth to fifteenth centuries). In Marrakesh, a *mellāḥ* was established in the mid-sixteenth century, possibly in 1557–8, by the Sa’di Sultan Muḥammad al-Shaykh.²⁶ According to the Spanish chronicler Luis del Mármol Carvajal (1524–1600), who was there before the creation of the *mellāḥ*, the decision was “made by the sultans without the community having a choice.”²⁷ In Meknes, Sultan Mawlāy Ismā’il established a *mellāḥ* in 1679 and declared Meknes the capital of the ‘Alawite empire (1666–1912). In 1807, the ‘Alawite Sultan Mawlāy Sulaymān suddenly replaced Tetouan’s earlier *Mellāḥ al-Bāli*, which had been less segregated, with a fully walled quarter.²⁸ However, there was no formal walled *mellāḥ* in Tangier, Safi, or many coastal towns.

The *Shari’a*

Unsurprisingly, some scholars have argued that the *mellāḥ* is a logical development of *shari’a* provisions. Such an argument is evident in the concept of the Islamic city, which holds that dividing the city into the *medina* for the Muslim masses and the *mellāḥ* for the Jews was an Islamic restructuring of space.²⁹ Conversely, some scholars question the relationship between the *mellāḥ* and the *shari’a*, arguing that there was no

25 Deshen, *The Mellah Society*, 27, 122–23.

26 Emily Gottreich, “On the Origins of the Mellah of Marrakesh,” 287–305, at 293.

27 Ojeda-Mata, “Jews under Islam” 104–30, at 116.

28 Calvo-Serrano - García-Carrillo - Santiago-Zaragoza, “Mellah Al-Jadid”, 1496–503, at 1499.

29 Gottreich, “Rethinking the ‘Islamic City’”, 118–46, at 119.

unified opinion among Muslim scholars on whether the *dhimma* should imply a spatial segregation between believers and non-believers.³⁰

Certainly, the reason Moroccan sultans decided to establish *mellāhs* was not so much to enforce any kind of *sharī'a*-mandated segregation, but rather to govern the population and address specific governmental challenges. The fact that the *mellāhs* were established at different times and inconsistently seems to confirm this distinction. Yet, while the decision to create walled areas was not an inevitable outcome of the *sharī'a* texts—the Qur'an, *ḥadīth*, and their extensions in *fiqh*—neither was it disconnected from them. While the *mellāh* can be seen as part of the Islamic secular, fully identifying the area the Islamic secular inhabits requires identifying what the *sharī'a* stipulations are for non-Muslims. Below, I think through the *dhimma* and, more specifically, the *mellāh*'s relationship with the *sharī'a*.

Submission and Hierarchy

Despite considerable temporal and geographical variation, the Islamic jurisprudential framework that emerged to govern relations with non-Muslims was the concept of the *dhimma*, an indefinitely renewed contract of protection. In this contract, the Muslim community accorded hospitality, protection, and freedom of religion to non-Muslims on condition that these latter paid a *jizya* (poll-tax) and acknowledged the domination of Islam. The Qur'anic precedent for this contract was not extensive, with two references to the concept of *dhimma* (9:8 and 9:10) and one to the payment of the *jizya* (9:29). The *dhimma* was also based on Muḥammad's dealings with non-Muslims, principally the Constitution of Medina. The actual implications of the *dhimma*—the specific rights and duties it entailed—are not clearly laid out in Islamic sources. However, payment of a tribute in return for protection and freedom of religion formed the basis for relationships between Muslims and non-Muslims in the Islamic imperial context. Such a relationship was driven by a theological position that accepted Jews and Christians due to their shared heritage with Islam, while denying them full and equal membership of the body politic via the claim that Islam had come to correct these two religious traditions. Thus, the social and political system that emerged was to some extent shaped by how the new faith positioned itself theologically.

The tribute payment was based on a Qur'anic verse (9:29), which, according to al-Māwardī, meant that the *jizya* was “imposed by an explicit Qur'anic command.”³¹ While the *jizya* did represent a form of submission, it did not require that that form of submission be humiliating or be taken

30 Gottreich, “Rethinking the ‘Islamic City,’” 120.

31 al-Māwardī, *The Ordinances of Government*, 158.

to the discriminatory level it sometimes was. The hard-edged dimensions of submission were developed later, under the Pact of 'Umar, which by the ninth century had become an integral part of the Muslim legal tradition. Modified over time and frequently violated, it was a source of many of the later discriminatory policies for non-Muslims.³² Elements of the Pact of 'Umar, such as dress restrictions, were applied to Jews in Morocco, although not consistently. Eugène Aubin (1863–1931) described the restrictions he saw as possibly dating from—or, at least, being revived during—the sixteenth century “Mohammedan revival” of the Sharīfian dynasties.³³ According to Miller, the *jizya* as a form of submission was implemented in Morocco by the “necessity for the *dhimmi* to present himself in person to pay the tax,” and, as such, the collection of tribute was a visual representation of this power differential.³⁴

Jackson argues that such discriminatory manifestations were part of what he identifies as the Islamic secular realm. It is indeed true in that there is nothing in the *sharī'a* texts that requires the concept of submission to be taken in such a direction. Rather, policies like the *jizya* were extrapolations from *shar'ī* texts, possible choices in the context of building and consolidating an Islamic empire driven by a supersessionist theology. Such extrapolations were not inevitable, and were indeed only one of a variety of directions in which the *sharī'a* could have been taken.

However, Jackson's argument that the *sharī'a* was bounded, opening a space for flexible deliberation, does raise the question of the extent to which that open space is flexible, or whether it is constrained, in this case by the power differential inherent in the *sharī'a* position on non-Muslims.

Protection

In Morocco, “protection” is frequently mentioned as one of the main reasons why Jews were restricted to a certain space. The notion of protection forms an essential part of the *sharī'a*'s commitment to non-Muslims. The *jizya* payment, which was, according to al-Māwardī, “in return for protection,” gave *dhimmīs* the right to the cessation of hostilities against them and to positive protection.³⁵ As the *amīr al-mu'minīn*, it was expected that the Sultan would provide protection to those living in his lands. It was reported that one of the last things uttered by the Prophet was “keep my covenant [in regard to] the protected non-Muslims.”³⁶

32 Ibn Kathīr, *Tafsīr Ibn Kathīr*, 4:406–7.

33 Harris, *With Mulai Hafid at Fez*, 192; Aubin, *Morocco of Today*, 285.

34 Miller, “*Dhimma Reconsidered*”, 103–26, at 107–8, 116.

35 al-Māwardī, *The Ordinances of Government*, 158–59.

36 al-Māwardī, *The Ordinances of Government*, 159.

The maps of Fez, Marrakesh, and Tetouan indicate that the *mellāḥ* was located just outside the *medina*, right next to the royal palace, under its watchful gaze. The reason for the establishment of the *mellāḥ* in Fez was ostensibly to protect Jews from violence.³⁷ Muḥammad al-Wazzān al-Faṣī (c. 1494–c.1544), also known as Leo the African, relates that “upon the death of a certain king they [the Jews of Fez] were all robbed by the Moores, whereupon king Abusahid caused them to remove into new Fez.”³⁸ In Marrakesh (1557–8), the reputation of the first Sa‘di sultan was strengthened by the protection the *mellāḥ* gave to its inhabitants.³⁹ Sultan Mawlay Ismā‘il Ibn Sharif (1682–1727) unified Morocco with Meknes as its capital, where he rebuilt many ruined synagogues and established the *mellāḥ*, “which attracted Jewish immigrants from throughout the country.”⁴⁰ While the motivation of protection is not as clear in the case of Tetouan, in each of these towns, the location next to the palace underscored the sultan’s personal protection. One Jewish writer states, “Deliberately situated near the Sultan’s palace or the governor’s residence, Jews received protection from rioters by paying these rulers a tax.”⁴¹

The majority of juristic analyses emphasize that the Islamic ruler was to give non-Muslims protection from outside invaders and from internal attacks. If they were unable to do so, they were required to return the *jiyza*. Imām Mālik related that “war will be waged for them on any enemy of theirs.”⁴² In Morocco, internal attacks came primarily from the rural areas that often eluded the state’s effort to centralize power. From the late thirteenth century onward, Jews were the only religious minority in Morocco, and violence against them became a means for Amazigh tribes to attack the sultan’s authority. Eugène Aubin notes that violence was often perpetrated by tribesmen or rebellious soldiers during periods of instability, relating that “security is complete so long as the Sultan’s authority rests intact but is at the mercy of every oscillation of the central power, so that the Mellāḥs are always the first to suffer in Moroccan agitations.”⁴³

Surveillance and Control

Protection, however, also enabled control. The assertion of control through the *mellāḥ* was perhaps an expedient response to the perception

37 Aubin, *Morocco of Today*, 210–11, 215–16; Meakin, *The Moors*, 451.

38 Leo Africanus, “Leo Africanus on the Jews of Morocco”, 145–46, at 145.

39 Gottreich, “On the Origins of the Mellah of Marrakesh”, 300.

40 Gottreich, *Jewish Morocco*, 94.

41 Bensadon, *Where the Wind Blew*, 223.

42 Mālik ibn Anas, *Al-Muwatta’*, 17:24, 270.

43 Aubin, *Morocco of Today*, 285.

that the Jewish community had become too successful and powerful. Islamic jurisprudence held that non-Muslims should not be in positions of authority over Muslims, based on Qur'anic verses 4:141 and 4:144. The Sunni scholar Muḥammad Ibn 'Abd al-Karim al-Maghili (1440–1505), during a time of significant Jewish immigration, argued that Jews had overstepped their *dhimmi* status by associating with authorities; by thus violating the *dhimma* pact, they had forfeited their right to protection.⁴⁴ Al-Maghili's views gained traction under the demographic pressures of immigration in the sixteenth century.⁴⁵ However, they were also opposed by many scholars of his time, including Ibn Zakrī, who pointed out to the Sultan of Fez “that the Muslims had obligations toward the *dhimmis* just as the latter had obligations towards the Muslims.”⁴⁶

Jews emerged as prominent intermediaries with Europeans, facilitating international trade and commerce. In 1901, Burton Holmes wrote that “the commerce of the land is largely in the hands of Moorish Jews, who are forbidden by law to leave the country, lest a general exodus occur, and the trade of the entire empire, deprived of their fostering care, languish and ultimately die.”⁴⁷ Such economic power contributed to the impetus to confine and control Jews in the *mellāḥ*. It appears to have been among the motivations for establishing the *mellāḥ* at Fez: in the twelfth century “the Jews of Fez became so powerful that they held the whole centre of the city, and one of them was actually nominated Governor. A rising broke out against this too fortunate community.”⁴⁸ There are indications that a *mellāḥ* was conceived at this time, although it was not established until the end of the Marinid period (1244–1465), during which time Jewish prestige and influence grew significantly, prompting anti-Jewish violence.⁴⁹

The establishment of the *mellāḥ* was also likely motivated by the need to control and limit the economic power of Jews in Morocco. When the *mellāḥ* was established in Fez in 1438, Jews were forbidden from possessing freehold property in the city outside its walls.⁵⁰ In Meknes in 1679, the *mellāḥ* was positioned next to the *kasbah*, which facilitated *jizya* collection at a “moment of fiscal need.”⁵¹ In Tetouan, the establishment of the *mellāḥ* under Sultan Mawlay Sulaymān took place in the context

44 Hunwick, “Al-Mahili and the Jews of Tūwāt”, 155–83; 175.

45 Hunwick, “Al- Mahili and the Jews of Tūwāt”, 166.

46 Hunwick, “Al- Mahili and the Jews of Tūwāt”, 172, 179.

47 Holmes, *The Burton Holmes Lectures*, 205.

48 Aubin, *Morocco of Today*, 215.

49 Harris, *With Mulai Hafid at Fez*, 192–93; Gottreich, *Jewish Morocco*, 69–71.

50 Aubin, *Morocco of Today*, 215–16.

51 Gottreich, *Jewish Morocco*, 94.

of deteriorating relations between Jews and Muslims.⁵² Sulaymān's motivations were likely connected to his broader urban management policies, part of his attempt to centralize sovereignty by centralizing the *makhzen* (state apparatus). Sulaymān also promoted the self-sufficiency of the economy in the light of growing European influence and followed the 'Alawite policy of promoting their own religious legitimacy as the Sharīfian descendants of the Prophet.⁵³

Communal Autonomy

One of the key concepts associated with the *dhimma* was communal autonomy, also the central concept Jackson envisages as the foundation for a future Islamic political order. While Jackson seems to argue that the concept lies in the realm of the Islamic secular, an argument could be made for it being intrinsic to the *shari'a*.⁵⁴ The Qur'an emphasizes that "There is no compulsion in religion" (2:256) and "To you be your religion (*din*), and to me be mine" (109:6). The concept of communal autonomy is also based on Muhammad's dealings with non-Muslims, the most important of which is the so-called "Constitution of Medina," which allows "the Jews [to] have their religion and the Muslims [to] have theirs."⁵⁵ Imām Mālik stated: "They remain in the *din* they were in, and they continue to do what they used to do."⁵⁶

The *dhimma* itself did not explicitly presuppose but certainly implied communal autonomy, since the contract of protection required the Muslim ruler to allow People of the Book and, in the case of the Māliki and Ḥanafī schools of law, all non-Muslims, to practice their religion. Thus, a level of communal autonomy became attached to the *dhimma* status, informed by Islam's theological stance toward People of the Book. The idea that Jews and Christians should be able to "continue to do what they used to do" was linked to the partial theological acceptance of these groups.

Jews in Morocco had extensive communal autonomy. The judicial system was the "pride of Jewish self-government."⁵⁷ Both rabbis and lay people were community leaders. In 1909, Lawrence Harris reported that "the real heads of the communities are the Rabbis, who have an immense power over the people."⁵⁸ There were also Councils of the Community, which performed

52 Serrano, - Carillo - Santiago-Zaragoza, "Mellah Al-Jadid," 1499.

53 El-Mansour, *Morocco in the Reign of Mawlay Sulayman*.

54 Jackson, *The Islamic Secular*, 294.

55 Ibn Ishāq, *The Life of Muhammad*, 231–33.

56 Mālik ibn Anas, *Al-Muwatta'*, 17:24, 271.

57 Deshen, *The Mellah Society*, 47.

58 Harris, *With Mulai Hafid at Fez*, 193–94.

a number of roles including incarcerating individuals in the *mellāh*'s prison.⁵⁹ The *shaykh al-yahūd* represented the "authority of the Makhzen in the Mellāh, and can requisition, in case of need, the *mokhaznis* necessary for the upkeep of order."⁶⁰ Deshen argues that the Jewish community guarded such autonomy carefully and tried to limit the influence of the Muslim authorities. For instance, Jewish authorities tried to assert the Jewish courts' right to exclusive jurisdiction and regarded resorting to the Muslim courts as a sin, although many Jews did just that.⁶¹

The question is, to what extent did the *mellāh*'s spatial dimension facilitate the exercise of this autonomy? Certainly, spatial boundaries would better enable community policing and perhaps enable community leaders to reinforce their jurisdiction. However, the dominant assumption is that Jews wanted to leave the *mellāh*, which was often portrayed as cramped, stifling, and unsanitary.⁶² The Alliance Israélite Universelle, founded in 1860, undertook to culturally regenerate Moroccan Jews.⁶³ The organization established schools, including for girls; promoted secular education; and encouraged the adoption of European habits.⁶⁴ Jews often migrated from the *mellāh* when they succeeded economically.⁶⁵ Deshen argues that imperialist incursions "caused a parallel attrition in the authority of the Jewish community over individual community members," perhaps in part due to flight from the *mellāh*.⁶⁶ The emphasis upon integration—informed by modern nationalism—coupled with the Vichy government policies of the 1940s compelling Jews to return to the *mellāh*, turned them into places associated with "stagnation and death."⁶⁷ In the 1950s, as a child, Michel Bensadon was forbidden from going to the Jewish quarter of Tangier, where poor Sephardi Jews lived.⁶⁸

However, such nationalistic and perhaps class-based interpretations do not tell us whether the *mellāhs* in the pre-colonial period were seen as supportive of Jewish cultural and religious traditions and of Jewish autonomy. Given the importance that Jews attached to having access to synagogues and *mikvehs*, kosher facilities, and communal institutions,

59 Aubin, *Morocco of Today*, 293–94.

60 Aubin, *Morocco of Today*, 293–94.

61 Deshen, *The Mellah Society*, 27–28.

62 Bendahan, *Mazaltob: A Novel*.

63 Gottreich, *Jewish Morocco*, 115.

64 Gottreich, *Jewish Morocco*, 118.

65 Aubin, *Morocco of Today*, 4.

66 Deshen, *The Mellah Society*, 7.

67 Miller, "The Mellah of Fez," 114.

68 Bensadon, *Where the Wind Blew*, 223.

including *yeshivot*, it is to be expected that Jews saw practical advantages in living closely together and separately from Muslims, even if living there had not been their choice. Living separately also helped Jews avoid some of the more humiliating forms of restriction. Gottreich writes that in Marrakesh, upper-class foreigners preferred to reside in that town's *mellāḥ*, established in the mid-sixteenth century, indicating "that the *mellāḥ* was—at least, in its early days—a desirable abode."⁶⁹

Separation

The idea of limiting interactions sits uncomfortably with modern notions of integration and multiculturalism. However, inevitably, the question of how and under what circumstances interaction was appropriate did feature in discussions of *dhimmī* communities. Unlike in Shia *fiqh*, a Sunni consensus emerged that non-believers were substantially pure. This is despite the early eighth-century promotion of the doctrine that non-Muslims were substantively impure.⁷⁰ In addition, Safran argues that Andalusian Mālikī jurists of the ninth century "treated the Christian as a serious threat to ritual purity."⁷¹ Such treatment suggests, she argues, a concern "about the integrity of Islam and the Muslim community in a multi-confessional polity," although she also identifies "a trend of emphasis [within later Mālikī jurisprudence] away from a strict definition of the Christian as *najas*."⁷²

There are other indications that there were concerns with what kinds of interactions were appropriate. Bathhouses were one area of concern.⁷³ The Mālikī jurist Ibn al-Ḥajj al-'Abdarī (1258–1336), who was born in Fez, deplored Muslim women bathing with Jewish and Christian women, not because he saw non-Muslim women as ritually impure but rather because he felt that Muslim women's bodies should not be seen by non-Muslim women.⁷⁴ Additionally, Gottreich reports that many Mālikī jurists addressed the appropriate level of mixing between Muslims and Jews on long caravan trips between Morocco and sub-Saharan Africa.⁷⁵ Echoes of this concern remain in the *fatwā* of the late-nineteenth-century scholar Ja'far Ibn Idris al-Kattānī, who responded to concerns about "the integrity of Islam" and argued that ultimately goods manufactured by

69 Gottreich, "On the Origins of the Mellah of Marrakesh," 298.

70 Holmes Katz, *Body of Text*, 164.

71 Safran, "Rules of Purity and Confessional Boundaries", 197–212, at 199.

72 Safran, "Rules of Purity," 203, 207.

73 Gottreich, *Jewish Morocco*, 34.

74 Ahmed, *Women and Gender in Islam*, 120–21.

75 Gottreich. *Jewish Morocco*, 34.

non-Muslims were permissible.⁷⁶ In addition, when Sir Moses Montefiore (1784–1885) left the old *medīna*, having eschewed staying in the *mellāḥ* where foreigners usually stayed, the house where he had stayed was sealed up, since it was regarded as unclean.⁷⁷ Questions of ritual purity were likely not the main factor in the creation of *mellāḥs*, however, since they were established later and not consistently. Yet physical separation was seen as beneficial and perhaps also as a way of managing an increasingly large religious minority coming from southern Spain, notwithstanding the fact that the 1438 *mellāḥ* in Fez pre-dates the exodus. Muḥammad al-Wazzān al-Fasī states that the reason for the establishment of the *mellāḥ* in Fez was to “separate ‘em from the Mores.”⁷⁸ In addition, according to Marmol, the establishment of the *mellāḥ* at Marrakesh was “so that the Jews were not among the Moors.”⁷⁹

The concern with policing boundaries and limiting interactions likely did not operate in one direction. Jews might have valued how the *mellāḥ* helped them guard their communal autonomy, although more research needs to be done here. Mansour suggests that the *mellāḥ* of Essaouira was established in 1804 when Jews asked Mawlāy Sulaymān “to take protective measures on their behalf.”⁸⁰ He also reports that “religious groups made him [Sulaymān] issue an order to build millah-s for Rabat, Salé, and Tetouan.”⁸¹ Such requests were related to the request for protection, but a further suggestion that Jews might have wanted separation itself lies in evidence from Tangier, where there was no formal walled *mellāḥ*. There, Jews voluntarily appear to have created informal segregation. Miller writes that “the desire to mark out a separate space was tied in a deep and compelling way to the question of self-identity, so that even when not coerced to do so, Jews created a *mellāḥ* of their own.”⁸²

The *Mellāḥ* —The Islamic Secular?

On one level, the *mellāḥ* is an illustration of Sherman Jackson’s argument about the Islamic secular, since their establishment involved non-*shar‘i* decisions made by Moroccan sultans as they grappled with how to manage one sizeable religious minority. They were driven by pragmatic considerations related, in part, to urban planning, governance, state

76 Terem, “Consuming Anxieties”, 115–41, at 115–16.

77 Gottreich, “Rethinking the ‘Islamic City,’” 119.

78 Leo Africanus, “Leo Africanus on the Jews of Morocco,” 145–46.

79 Ojeda-Mata, “Jews under Islam,” 116.

80 Mansour, *Morocco in the Reign of Mawlay Sulayman*, 15.

81 Mansour, *Morocco in the Reign of Mawlay Sulayman*, 15.

82 Miller, “Apportioning Sacred Space”, 76.

consolidation, and economic management. As such, the *mellāhs* operated in the area of what Jackson describes as the “open space” of the Islamic secular. The features of what emerged in this open space were not the exclusive product of fixed, transcendent *shari’a* sources or doctrines. The *shari’a* does not specifically require or even recommend such spatial divisions between Muslims and non-Muslims.

Yet the *mellāh*’s connection to the provision of protection in return for the payment of tribute raises the question of the extent to which what happens in that open space is determined by the *shari’a* and whether that open space is as flexible and as discretionary as Jackson implies. Jackson seems to wish to extract the concept of communal autonomy from its social, theological, and legal frameworks and argue that all the discriminatory provisions associated with this particular implementation of communal autonomy were part of an Islamic secular that can be modified. Yet the question remains: can the concept of communal autonomy be separated from the power differential inherent in the *dhimma*, from the idea that freedom of religion was granted in return for a form of submission? Or is the idea of communal autonomy driven by the very power differential inherent in the *dhimma* itself? Indeed, was communal autonomy granted because it was expedient or because it was a value in and of itself? And if it was a value as such, was it linked to a kind of benevolent tolerance and forbearance based on a graded theological supersessionism?

Communal Autonomy and the Future for Non-Muslims

In this last section, I return specifically to Jackson’s advocacy of communal autonomy within a future Islamic order, which is an argument that no doubt will gain significant traction as the limits of the modern nation-state paradigm become ever clearer. Jackson suggests that a kind of empire-state could provide, among other possible systems, some inspiration for thinking about the future of Islamic governance. Yet at times he is non-committal about what kind of system he is advocating. The following passage is instructive:

Muslims may embrace the modern state [...] or they may reject it for what they perceive to be its desire to domesticate religion; or they may see it as promoting nationalist navel-gazing and opt for a broader political arrangement and consciousness, such as the *ummah* or the caliphate; or they may move to a domestic version of the “empire-state” of old; or they may simply seek to domesticate the modern state by, in Foucault’s words, “cutting off the king’s head.”⁸³

⁸³ Jackson, *The Islamic Secular*, 248.

Jackson, however, posits some kind of alternative involving a decentralization of power and a political order driven by community interests. He calls for a political order that contains Islam's empire-like pluralism as well as its conception of the *shari'a*'s boundedness. Here, Jackson refers to India and Israel as states that "function explicitly, to all intents and purposes, as empire-states, applying different regimes of law to different segments of the population, at least in various areas of the law."⁸⁴ Yet religious minorities in both countries currently suffer under the grip of religious nationalism.

Jackson asks whether accommodation or equality of respect might be a better foundation for the Muslim state's relations with non-Muslims than formal equality. He asks whether "holding an Islamic state to a standard of equality always serves non-Muslim interests."⁸⁵ Here, he turns to the Coptic Orthodox Church in Egypt and states that in recent years it has reflected an "empire- state sensibility" and that the *shari'a* could function there "in a modernized version of an empire-state structure."⁸⁶ Certainly, the Coptic Orthodox Church has tried to increase its control over the personal status law applied to the Christian community. The church has an interest in reducing the ability of Coptic Christians to have family status issues adjudicated by uniformly-applied state law. The church therefore seems to be supporting a move away from equality before the law in the areas of marriage and divorce.⁸⁷ Yet, despite the Coptic Orthodox Church's efforts, a number of individual Copts chafe at the Church's increased power and wish to appeal to equality before the law. According to Dshen, the tension between the collectivism of the community and the particularism of the individual also manifested itself in the way the Jewish community experienced communal autonomy in eighteenth- and nineteenth-century Morocco.⁸⁸

Thus, Jackson's constructive argument for judicial autonomy for non-Muslims in a modernized version of an empire-state structure raises the question of under what premises that judicial autonomy should be exercised. In the Ottoman Empire, the Greek Orthodox Church could exclusively enforce its communal laws, so that all "the cadis and military governors were bound to execute the decisions of the Patriarch referable to the Greek Christians and likewise those of the bishops in their respective dioceses."⁸⁹

⁸⁴ Jackson, *The Islamic Secular*, 294.

⁸⁵ Jackson, *The Islamic Secular*, 296.

⁸⁶ Jackson, *The Islamic Secular*, 290-91.

⁸⁷ Scott, "Islamic Law", 215-36.

⁸⁸ Dshen, *The Mellah Society*, 1.

⁸⁹ Ubicini, *Letters on Turkey*, 36.

However, many *dhimmīs*—including Coptic Christians and Jews—only had the right to concurrent communal autonomy and appealed to the *sharīʿa* courts. Such communities could only impose internal sanctions on *dhimmīs* who did so.⁹⁰ In light of this historical evidence, how does Jackson envisage communal autonomy being implemented in a future Islamic order? Should non-Muslims have a right, implied by al-Shāfiʿī, to appeal to the *sharīʿa* or should their community have the right to enforce their own communal law and prevent members of that community from appealing to other jurisdictions? In addition, in what areas should non-Muslims have communal autonomy? Christian communities in the Middle East are currently pushing to broaden their current communal autonomy's areas, principally divorce and marriage, to include inheritance law. This move constitutes something relatively new.

Here, I return to the spatial dimension of communal autonomy, where the *mellāḥ* offers food for thought. Egyptian Islamist writers of the 1990s and early 2000s put much energy into showing that Muslims and Christians lived closely together. They argued that having authentic friendships and alliances with non-Muslims was both judicially permissible and a historical fact. This argument was then used as a basis on which Muslims and Christians could build a community in modern Egypt informed by Islamic governance.⁹¹ One can understand why these Egyptian Islamists used a history of living together as a defense against accusations that Islamic law is inherently discriminatory. However, the emphasis upon integration does not consider the circumstances under which non-Muslim communities would—and did—want to enforce spatial boundaries. In fact, it is possible that Christians, Jews, and Muslims living in these contexts would have wanted to monitor interreligious boundaries carefully. Interreligious marriage was perhaps the biggest challenge that could result from greater fraternization. Most non-Muslim communities have historically considered interreligious marriage a “taboo.”⁹² In contemporary Egypt, since the 1970s, Coptic Christians have increasingly carved out institutional and communal space. Such a retreat to—and enlargement of—Christian spaces has often been blamed on the Islamist revival of the 1970s and 1990s and been decried as harmful to Egyptian nationalism. However, this narrative does not consider the possibility

90 Hacker, “Jewish Autonomy in the Ottoman Empire”, 153–202, at 183; Guirguis - Doorn-Harder, *Emergence of the Modern Coptic Papacy*, 19; Marglin, *Across Legal Lines*, 38–40.

91 al-Bishri, *Al-Muslimūn wa 'l-Aqbāt*. I thank Matthew Anderson from Dialogue Across Borders for prompting me to think deeper about this feature of Islamist discourse.

92 Avi Shlaim, *Three Worlds: Memoirs of an Arab-Jew* (London: Oneworld, 2023), 75.

that some Coptic Christians see such communal spaces as an opportunity to thrive.

The particular spatial arrangement of the *mellāḥ*, albeit a controversial outlier, provokes a consideration of what communal autonomy might mean, how it would work, and who would ultimately get to decide its limits. Jackson's argument, which advocates for taking communal autonomy seriously in a future Islamic form of governance, is a refreshing and original one. It steps outside the paradigm of the modern nation-state and liberates us from the assumption that Muslims should either embrace a Western secular model or embrace a model based on the idea that the *shari'a* is a totalizing construct. However, a future form of Islamic governance that rejects both would need to return to the substance of *shari'a* regulations on non-Muslims to address the precise nature of the *shari'a*'s boundedness and what is open to discretionary governance. In addition, the question of how jurists would disentangle the concept of communal autonomy from other aspects of the *shari'a*, such as the power differential between Muslims and non-Muslims inherent in the idea of submission and protection, would also need to be addressed.

While more research on the *mellāḥ* and on whether it reinforced Jewish judicial autonomy is clearly needed, such research could provide interesting ways of thinking about the relationship between Muslims and non-Muslims that might move beyond a focus on the nation-state paradigm as a solution to the *shari'a*'s discriminatory measures. The *mellāḥ* is a particular physical manifestation of boundaries between Muslims and non-Muslims. While the setting of such boundaries has been frowned upon in nationalist narratives, the *mellāḥ* might be an unexpected example—notwithstanding its discriminatory dimensions—of the circumstances under which non-Muslim communities could thrive under Jackson's model of judicial autonomy. It could provide food for thought for an empire-state political order based on the decentralization of power and driven by community interests, all informed by conceptions of the *shari'a*'s boundedness.

Bibliography

- Ahmed, Leila, *Women and Gender in Islam: Historical Roots of a Modern Debate*, New Haven: Yale University Press, 1992.
- Aubin, Eugène, *Morocco of Today*, London: J.M. Dent & Co.; New York: E.P. Dutton & Co., 1906.
- Bendahan, Blanche, *Mazaltob: A Novel*, Walham: Brandeis University Press, 2024.
- Bensadon, Michel Emile, *Where the Wind Blew: A Boyhood Lost in Tangier*, Self-published, Createspace, 2013.
- al-Bishrī, Tāriq, *Al-Muslimūn wa 'l-Aqbāt fī Itār al-Jamā'a al-Waṭaniyya*, Cairo: Dār al-Shurūq, 1988.
- Calvo-Serrano, Julio - Fabián García-Carrillo - Juan Manuel Santiago-Zaragoza, "Mellah Al-Jadid: The Jewish Quarter of Tetouan, Morocco; An Identifiable Architecture?" *Procedia Engineering* 161 (2016): 1496–1503. <https://doi.org/10.1016/j.proeng.2016.08.616>.
- Deshen, Shlomo, *The Mellah Society: Jewish Community Life in Sherifian Morocco*, Chicago: University of Chicago Press, 1989.
- Gottreich, Emily, *Jewish Morocco: A History from Pre-Islamic to Postcolonial Times*, London: I.B. Tauris, 2021.
- Gottreich, Emily, "On the Origins of the Mellah of Marrakesh", *International Journal of Middle East Studies* 35, no. 2 (2003): 287–305. <https://doi.org/10.1017/S0020743803000126>.
- Gottreich, Emily, "Rethinking the 'Islamic City' from the Perspective of Jewish Space", *Jewish Social Studies* 11/ 1 (2004): 118–146. <https://doi.org/10.1353/jss.2005.0005>.
- Guirguis, Magdi - Nelly Van Doorn-Harder, *Emergence of the Modern Coptic Papacy*, Cairo: American University of Cairo Press, 2022.
- Hacker, Joseph R., "Jewish Autonomy in the Ottoman Empire: Its Scope and Limits. Jewish Courts from the Sixteenth to the Eighteenth Centuries", *The Jews of the Ottoman Empire* içinde. ed. Avigdor Levy. Princeton, NJ: The Darwin Press, t.y. 153–202.
- Harris, Lawrence, *With Mulai Hafid at Fez: Behind the Scenes in Morocco*, London: Smith, Elder & Co., 1909.
- Holmes, Burton, *The Burton Holmes Lectures*, Battle Creek, Michigan: The Little-Preston Company, 1901.
- Holmes Katz, Marion, *Body of Text: The Emergence of the Sunni Law of Ritual Purity*, Albany: State University of New York Press, 2002.
- Huntingford Craig, Michelle. "[In]Secure Space: The Mellah of Fez, Morocco" doktora tezi, UCLA, 2011.
- Hunwick, John O., "Al-Mahili and the Jews of Tūwāt: The Demise of a Community", *Studia Islamica* 61 (1985): 155–183.
- Ibn Ishāq, *The Life of Muhammad: A Translation of Ishāq's Sirat Rasūl Allāh*, Trans. A. Guillaume. ed. Ibn Hisham. Lahore: Oxford University Press, 1968.
- Ibn Kathir, Ismā'il Ibn 'Umar. *Tafsir Ibn Kathir*, Trans. Shaykh Safiur-Rahman al-Mutabarkpuri, I-X, Riyadh: Darussalam, 2000.
- Jackson, Sherman A., *The Islamic Secular*, Oxford: Oxford University Press, 2024.
- Leo Africanus. "Leo Africanus on the Jews of Morocco", *Exile in the Maghreb: Jews under Islam, Sources and Documents*, 997–1912 içinde. ed. Paul B. Fenton - David G. Littman. Madison: Farleigh Dickinson University Press, 2016. 145–146.
- Mālik ibn Anas, Imām. *Al-Muwatta'a*, Trans. Aisha Abdurrahman Bewley, Norwich: Diwan Press, 2014.
- Mansour, Mohamed El, *Morocco in the Reign of Mawlay Sulayman*, Cambridgeshire: North African Studies Press, 1990.
- Marglin, Jessica M., *Across Legal Lines: Jews and Muslims in Modern Morocco*, New Haven: Yale University Press, 2016.
- al-Māwardī, 'Alī Ibn Muḥammad, *The Ordinances of Government: A Translation of al-Aḥkām al-Sultāniyya w'al-Wilāyāt al-Dīniyya*, Trans. Wafaa H. Wahba. London: Garnet Publishing, 1996.

- Meakin, Budgett, *The Moors: A Comprehensive Description*, London: The Macmillan Company, 1902.
- Miller, Susan Gilson. "Apportioning Sacred Space in a Moroccan City: The Case of Tangier, 1860–1912", *City & Society* 13/1 (2001): 57–83. <https://doi.org/10.1525/city.2001.13.1.57>
- Miller, Susan Gilson "Dhimma Reconsidered: Jews, Taxes, and Royal Authority in Nineteenth-Century Tangier", *In the Shadow of the Sultan: Culture, Power, and Politics in Morocco* içinde. ed. Rahma Bourqia - Susan Gilson Miller, Cambridge, MA: Harvard University Press, 1999. 103–126.
- Ojeda-Mata, Maite, "Jews under Islam in early modern Morocco in travel chronicles", *Jewish Culture and History* 21/2 (2020): 104–130. <https://doi.org/10.1080/1462169X.2020.1739888>
- Safran, Janina M., "Rules of Purity and Confessional Boundaries: Maliki Debates about the Pollution of the Christian", *History of Religions* 42/3 (2003): 197–212, <https://doi.org/10.1086/375036>
- Scott, Rachel M, "Islamic Law, Unitary State Law, and Communal Law: Divorce and Remarriage in Egypt's Coptic Community", *Exchange* 49/3-4 (2020): 215–236. <https://doi.org/10.1163/1572543x-12341567>
- Shlaim, Avi, *Three Worlds: Memoirs of an Arab-Jew*, London: Oneworld, 2023.
- Stillman, Norman A., *The Jews of Arab Lands: A History and Source Book*, Philadelphia: The Jewish Publication Society of America, 1979.
- Terem, Etty, "Consuming Anxieties: Mobility of Commodities across Religious Boundaries in Nineteenth-Century Morocco", *Journal of the Economic and Social History of the Orient* 60 (2017): 115–141. <https://doi.org/10.1163/15685209-12341421>
- Ubicini, M.A., *Letters on Turkey*, New York: Arno Press, 1973.